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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RICARDO VILLA; WILLIAM DOMKA; and DAVID REED, Petitioners/Appellants, v. CITY OF MARICOPA, Defendant/Appellee.	2 CA-CV 2009-0020 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200801811

Honorable Gilberto V. Figueroa, Judge

REVERSED AND REMANDED

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B R A M M E R, Judge.

¶1 Appellants Ricardo Villa, William Domka, and David Reed (collectively, Villa) appeal the trial court's grant of summary judgment in favor of appellee City of Maricopa (the City) in their special action challenging the City's petition for annexation. Villa asserts that the City improperly counted several signatures on the annexation petition because only one of two or more joint owners of the respective properties had signed, that one petition page has no valid signature, and that several petition pages were not signed by the properties' owners. We reverse.

Factual and Procedural Background

¶2 The following facts are undisputed. On April 17, 2007, the City filed a blank annexation petition with the Pinal County Recorder's Office. The City subsequently filed two revisions to that petition, the last on December 19, 2007. City employees determined there were 309 owners of property worth a total of $127,838,523 within the area proposed to be annexed. Under A.R.S. § 9-471(A)(4), the City was required to obtain the signatures of "owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of annexation." After excluding the owners of more than one parcel, the City calculated that it had obtained 156 signatures, representing just over fifty percent of the owners and approximately fifty-three percent of the total property value subject to the proposed annexation, thereby complying with § 9-471(A)(4). On May 14,

2008, the City adopted an ordinance approving the annexation and recorded the signed annexation petition the following day.

¶3 On June 12, 2008, Villa filed a special action challenging the revised annexation, asserting the City had not collected enough valid signatures to satisfy § 9-471(A)(4). Villa attached to the complaint a document detailing specific objections to dozens of signatures, including assertions that certain individuals who had signed petition pages did not own the subject property; that some individuals had signed petition pages for more than one property, and the City had incorrectly counted each of those properties in calculating the number of property owners who had signed the petition; and that some petition pages had not been signed or dated.

¶4 The City then filed a motion for summary judgment, which the trial court granted after oral argument. The court determined Villa "ha[d] failed to raise a reasonable fact issue as to any of the properties [he] challenged in the[] original complaint" and found the City "ha[d] met all the statutory requirements for the Annexation." Thus, the court granted summary judgment in favor of the City and instructed the City to file a proposed form of order. The court signed the proposed order on December 19, 2008, and this appeal followed.[1]

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[1]Villa also moved for summary judgment. After granting the City's motion, the trial court stated it "d[id] not see any benefit in addressing" that motion but asked Villa if he was "requesting Summary Judgment if the Court found that the ordinance was invalid." Villa refused to answer the court's question "due to frustration." Villa does not assert on appeal that the court erred in implicitly denying his motion for summary judgment; he asks only that we reverse the grant of summary judgment in favor of the City and "remand to the Superior Court for further proceedings."

Discussion

¶5 Summary judgment is proper when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Ariz. R. Civ. P. 56(c)(1). A court should grant summary judgment "if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990). We review de novo whether there are any genuine issues of material fact and whether the trial court applied the law properly. *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, ¶ 8, 156 P.3d 1157, 1160 (App. 2007).

Joint Tenants

¶6 Villa contends the trial court should not have granted summary judgment in favor of the City because he presented evidence the City had miscounted the number of joint property owners signing the annexation petition.[2] As we noted above, to annex territory, a

[2]The City asserts Villa has waived "new factual theories and arguments" because he raised them for the first time on appeal. *See Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, ¶ 17, 158 P.3d 232, 238 (App. 2007) (arguments first raised on appeal waived). The City reasons Villa did not specifically address in his filings below all of the petition signatures by joint tenants that he now challenges on appeal. But Villa asserted in response to the City's motion for summary judgment that some signatures were invalid because not all joint tenants had signed and that signatures by "friends, agents or other[s]" should not be valid. The City responded that "agents are authorized to sign as a matter of law" and that it was Villa's burden to demonstrate a purported agent lacked authority to sign the petition. Thus, this issue was squarely presented to the trial court, and Villa has not waived these arguments. We also reject the City's argument that we must affirm because Villa did not provide this court with a transcript of the oral argument on the City's motion. Although we "assume the missing portions of the record would support the trial court's

city must file with the county recorder a petition signed by more than one-half the persons owning property in the area to be annexed, who own property representing one-half or more of the total value of the property within the annexation area. § 9-471(A)(4). Pursuant to § 9-471(F)(4), "[i]f an undivided parcel of property is owned by multiple owners, such owners shall be deemed as one owner" for purposes determining the number of owners required to sign the petition and when tallying the number of signatures. "[A]ll the individuals jointly owning a parcel [must] cast the parcel's vote for annexation or must each cast only his or her proportionate share of the vote." *Nw. Fire Dist. v. City of Tucson*, 185 Ariz. 102, 103, 912 P.2d 1331, 1332 (App. 1995). Thus, if a parcel is owned by three people and only one signs the petition, the signing owner's signature will generally count as only one-third of an owner for purposes of tallying the number of owners signing the petition. *See id.* We presume the validity of the annexation, *see McCune v. City of Phoenix*, 83 Ariz. 98, 102-03, 317 P.2d 537, 540 (1957), and Villa bears the burden to show otherwise. *See* § 9-417(C).

¶7 Villa attached to his complaint copies of the annexation petition showing that several of the properties in the area proposed to be annexed were owned by two or more parties and that, for several of the jointly owned properties, only one of the owners had signed the petition. Villa also submitted to the trial court copies of deeds and county assessor records relating to several of the jointly owned properties. It is undisputed that these

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findings and conclusions," *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, ¶ 16, 66 P.3d 70, 73 (App. 2003), our review of the entire record, for the reasons we discuss, compels a result contrary to the one the trial court reached. *See Brookover*, 215 Ariz. 52, ¶ 8, 156 P.3d at 1160 (grant of summary judgment reviewed de novo).

properties are held in joint tenancy[3] and that the City counted the aforementioned signatures as one owner. Villa asserts that, because § 9-471(F)(4) requires all joint tenants to sign the petition in order to count as one owner when the total number of signatures is counted, and because he presented evidence that, for several parcels, not all joint tenants did sign, he demonstrated a genuine issue of fact "regarding whether the Petition contains fewer valid signatures than are required."

¶8 As it did below, the City asserts that the signing property owners signed as agents of the other joint tenants and that Villa has failed to show otherwise. Although one joint tenant, given the authority to do so, properly may sign as an agent of another joint tenant, "[t]he sole signature of one joint tenant . . . cannot be presumed to indicate th[at] authority" absent some evidence of agency.[4] *Ferree v. City of Yuma*, 124 Ariz. 225, 228, 603 P.2d 117, 120 (App. 1979). Otherwise, "a joint tenant favoring annexation would be able to commit the full parcel in favor of annexation even if other joint tenants were opposed." *Nw. Fire Dist.*, 185 Ariz. at 103, 912 P.2d at 1332.

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[3]The properties Villa points to on appeal, that both parties apparently agree are held in joint tenancy, are those owned by Steven and Karen Friess, Gerald and Wanda Keene, "Scotty Kirkpatrick, et al.," Donald and Toni Limbrick, Tony and Okson Marks, "Nghis Nguyen, et al.," "Leonard & Ginger Redman, et al.," Jose and Edelmira Salazar, the Sims, "Jesse & Marilyn Worthington, et al.," and "Ricky Worthington, et al."

[4]It is undisputed that spouses own several of the jointly owned properties in question. When spouses hold property as community property, one spouse signing an annexation petition "may be presumed to be an agent of the other spouse as to their Community property interest." *Ferree v. City of Yuma*, 124 Ariz. 225, 227, 603 P.2d 117, 119 (App. 1979). However, when spouses hold property in joint tenancy, as is the case here, "the relationship as husband and wife" does not presumptively "make one spouse an agent for the other," and evidence of agency is required. *Id.*

¶9 Because Villa has shown that only one joint tenant signed for several jointly owned parcels, and because the signature of one joint tenant generally represents only his or her proportionate share of the vote of all owners, the burden shifted to the City to show "[s]ome indicia of agency." *Ferree*, 124 Ariz. at 228, 603 P.2d at 120; *see also Nw. Fire Dist.*, 185 Ariz. at 103, 912 P.2d at 1332. Such indicia exist, for example, when a joint tenant notes on the petition that he or she has signed "on behalf of" another joint tenant, *Nw. Fire Dist.*, 185 Ariz. at 103, 912 P.2d at 1332; when the signing joint tenant notes on the petition that the other tenant's name had been signed "'by'" the signing tenant, *McCune*, 83 Ariz. at 103, 317 P.2d at 540; and when evidence extrinsic to the petition, such as a sworn statement by the nonsigning joint tenant, shows the signer had authority to sign for the other joint tenant. *See Ferree*, 124 Ariz. at 227, 603 P.2d at 119; *cf. Harris v. City of Bisbee*, 219 Ariz. 36, ¶¶ 14, 21, 192 P.3d 162, 166, 168-69 (App. 2008) ("destroyed" presumption of validity for referendum petition restorable by extrinsic evidence that statutory requirements met). "If there [are] some indicia of agency presented," the burden shifts back to "the party objecting to the ordinance [to] submit[] evidence to show the lack of authority of the signing [joint tenant]." *Ferree*, 124 Ariz. at 227, 603 P.2d at 119; *see also McCune*, 83 Ariz. at 103, 317 P.2d at 540. "[A]bsent indicia of agency," however, "where only one joint tenant signed the annexation petition, only that joint tenant's proportionate undivided interest may be included in determining whether the petition has been signed by the [requisite number of] owners." *Ferree*, 124 Ariz. at 228, 603 P.2d at 120.

¶10 The City contends that, by affirming on the petition that they were "authorized to sign for this parcel," the signing joint tenants were, in fact, asserting that they were signing the petition on behalf of the other joint tenants, an indicator of agency. We disagree. That joint tenants are entitled to sign for a parcel they co-own is a right inherent in their undivided ownership of the property and does not suggest that, for the purpose of counting how many property owners signed an annexation petition, their signature is intended to represent not only their own vote but that of their joint tenant or tenants as well. No signing joint tenants in this case represented on the petition that their signatures were "on behalf of" their other joint tenants. *See Nw. Fire Dist.*, 185 Ariz. at 103, 912 P.2d at 1332. Nor was any evidence extrinsic to the petitions submitted showing that any of the joint tenants had signed or intended to sign on behalf of the other joint tenants or had represented that they had the authority to do so. *See Ferree*, 124 Ariz. at 227, 603 P.2d at 119. "Agency not having been asserted" by the signing joint tenants, either on the petition itself, in an affidavit, or otherwise, "it need not be disproved." *Nw. Fire Dist.*, 185 Ariz. at 103, 912 P.2d at 1332. The City was required to obtain signatures of "more than one-half of the persons owning real . . . property" and there is a genuine issue of material fact whether the city obtained that many. § 9-471(A)(4). Accordingly, the trial court erred in granting summary judgment in favor of the City.

No Valid Signature

¶11 Villa asserts the signature page of one petition does not contain a valid signature. The page in question refers to property shown in the assessor's records as owned

by John and Rosa Galindo and Cleo Cruz. The signature line on the petition page is empty, but three signatures—each apparently in different handwriting—appear directly below the names of the listed property owners: "Galindo John," "Rosa," and "Cleo Cruz." Without citation to authority, Villa contends the signatures are invalid because they are not on the signature line and because "the Galindo's signatures [are] not in signature format" and therefore do not constitute signatures. *See generally* Ariz. R. Civ. App. P. 13(a)(6) (argument shall contain citation to authority).

¶12 The fact the signatures are not on the designated signature line is immaterial. *See Town of Scottsdale v. Pickrell*, 98 Ariz. 382, 384-85, 405 P.2d 871, 872-73 (1965) (requiring only substantial compliance with petition provisions of § 9-471); *see also Reidy v. Almich*, 4 Ariz. App. 144, 147-48, 418 P.2d 390, 393-94 (1966) ("A signature may be effective as such, no matter where placed upon an instrument, providing that it was the intent of the signator that such be the case."). Moreover, we find no authority suggesting a signature must have a particular "format"—or even contain both a first and last name—in order to be valid, and we find ample authority to the contrary. *See In re Ernst B.*, 675 N.Y.S.2d 805, 806 (N.Y. Fam. Ct. 1998) ("Any mark placed on a document with the intent to execute the document is a sufficient signature on the document."); 80 C.J.S. *Signatures* § 8 (2009) (instrument properly signed when only given name used "if a fuller signature is not required or contemplated under the particular circumstances"); *Black's Law Dictionary* 1415 (8th ed. 2004) (signature is "[a]ny name, mark, or writing used with the intention of authenticating a document"). Pursuant to § 9-471(C), it was Villa's burden to demonstrate

the challenged signatures do not reflect an intent to sign the document. He has failed to meet that burden.

Signatory Not Owner

¶13 Villa also asserts three of the petition signers do not own the property for which they signed the petition. First, Villa points out that Dennis Gresham signed the petition in April 2008 for property he had sold to Nick Fine in February 2008. Although the City asserts Gresham was acting as Fine's agent because the two "had an ongoing business relationship," the mere existence of an unspecified business relationship neither suggests nor establishes an agency relationship.[5] And we have already rejected any suggestion that Gresham was acting as Fine's agent by checking the box stating he was the property owner and was "authorized to sign for this parcel."

¶14 The City also argues, however, that Gresham's signature is sufficient because he was listed as the property owner on the latest assessor's records from which the City generated the petition lists. It reasons that, because § 9-471(F)(1) requires it to determine the number of owners of a parcel from "the last assessment of the property," a signature by the person shown as owning that property as of the last assessment is sufficient. We disagree. That subsection refers only to how the City is to calculate the number of required signatures.

[5]Although the City fails to cite the record in support of this assertion, its statement of facts below refers to an affidavit by a City employee that states Gresham and Fine "are business partners." However, we find no support in the record for the City's assertion in its answering brief that Fine had "confirmed to [the City] that Mr. Gresham had authority to sign the petition on his behalf." *See* Ariz. R. Civ. App. P. 13(a)(6) (argument shall contain citations to "parts of the record relied on"); Ariz. R. Civ. App. P. 13(b)(1) (appellee's brief "shall conform to the [same] requirements" as appellant's).

Section 9-471(A)(4) requires the petition to be "signed by the owner[]." Because Gresham did not own the property at the time he signed the petition, and was not shown to be acting as the owner's agent, his signature is invalid.

¶15 Second, Villa asserts the City improperly counted a signature for properties owned by Paradise Valley Center, LLC because Alan Barr signed the petitions after he had sold the properties to Paradise Valley Center.[6] Although Villa asserts Barr could not sign for those properties because he "was neither a member nor manager of Paradise Valley Center, LLC," Villa apparently overlooks the Arizona Corporation Commission record attached to his complaint listing Alan Barr as the statutory agent for Paradise Valley Center. There is no evidence in the record suggesting Barr lacked authority to sign on Paradise Valley Center's behalf. *See Ferree*, 124 Ariz. at 227, 603 P.2d at 119.

¶16 Similarly, Villa asserts that the signature by Larry Hart for property owned by Stageline Ranches, LLC, is invalid because Hart "has no ownership interest in the property" and is "not a member or manager of Stageline Ranches, LLC." But Villa cites no authority, and we find none, suggesting that only a "member or manager" of a company may sign a petition on behalf of that company, and Hart stated on the petition that he was signing as the "Authorized Agent" of Stageline Ranches. *See Nw. Fire Dist.*, 185 Ariz. at 103, 912 P.2d

[6]It is not entirely clear to which properties Villa refers in his opening brief. His citations to the record are inaccurate, and he refers to a deed recorded in February 2008, although we can find only a reference to the deeds for two properties Barr sold to the Paradise Valley Center that were recorded April 3, 2008.

at 1332. Nothing in the record contradicts that assertion. *See Ferree*, 124 Ariz. at 227, 603 P.2d at 119.

Disposition

¶17 For all of the foregoing reasons, we reverse the trial court's entry of summary judgment in favor of the City. We remand the case to the trial court for further proceedings consistent with this decision.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge