

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24



DIVISION ONE
FILED: 06/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

MARIE PANZARELLA,) 1 CA-CV 11-0580
)
Plaintiff/Appellant,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
YAVAPAI COUNTY SHERIFF'S OFFICE;) Rule 28, Arizona Rules
YAVAPAI COUNTY ATTORNEY'S OFFICE;) of Civil Appellate
SHEILA POLK, in her capacity as) Procedure)
Yavapai County Attorney; STEVE)
WAUGH, in his capacity as Yavapai)
County Sheriff; YAVAPAI COUNTY)
MEDICAL EXAMINER'S OFFICE; and TIM)
CARTER, in his capacity as)
Superintendent of Schools,)
)
Defendants/Appellees.)
)

Appeal from the Superior Court in Yavapai County

Cause No. P1300CV201001948

The Honorable Anna C. Young, Judge

AFFIRMED

Marie Panzarella
Plaintiff/Appellant Pro Se

Prescott

Jellison Law Offices, P.L.L.C.
By James M. Jellison
Attorneys for Defendants/Appellees

Phoenix

P O R T L E Y, Judge

¶1 Marie Panzarella ("Panzarella") appeals from a judgment dismissing her action against the Yavapai County Sheriff's Office; the Yavapai County Attorney's Office; Sheila Polk, in her capacity as Yavapai County Attorney; Steve Waugh, in his capacity as Yavapai County Sheriff; the Yavapai County Medical Examiner's Office; and Tim Carter, in his capacity as Superintendent of Schools (collectively, "the Yavapai County Defendants"). Panzarella does not challenge the grounds on which the trial court dismissed her action. Instead, she only raises an issue that the trial court did not address or rule on, and over which we have no jurisdiction. As a result, we affirm the dismissal.

FACTS AND PROCEDURAL HISTORY

¶2 Panzarella filed an amended complaint against the Yavapai County Defendants and eighteen other individuals and entities, alleging corruption, conspiracy, negligence, gross negligence, the acquisition of illegal drugs "through the recruitment of Yavapai County children," the "distribution of illegal drugs[] to Yavapai County children and adults," violation of drug-free zones, and "other heinous violations."

¶3 The amended complaint asserted that her son, Kendall Linne ("Kendall"), who died October 3, 2007, at the age of eighteen, had been a special education student in the custody,

care, and protection of the defendants, and that the defendants were derelict in their duty to Kendall. Panzarella alleged that illegal activities were being conducted using students of the Special Education Department and with the defendants' consent, and she sought an investigation "to positively identify the perpetrators . . . and remove them from positions of power." She asserted that drug dealers had used Kendall's apartment, car, and other belongings through fear and intimidation, and that the defendants protected those drug dealers and allowed them to operate in the community.

¶14 The Yavapai County Defendants moved to dismiss the complaint on the grounds that Panzarella had not filed a notice of claim pursuant to Arizona Revised Statutes ("A.R.S.") section 12-821.01(A) (2003), had not stated a discernible cause of action, and had named three defendants – the Yavapai County Sheriff's Office and Sheriff Waugh as the Yavapai County Sheriff, the Yavapai County Attorney's office and Sheila Polk as Yavapai County Attorney, and the Yavapai County Medical Examiner's Office – that were not jural entities.

¶15 In response, Panzarella stated that a notice of claim was not necessary because she was not seeking monetary relief. She also asserted that she provided a statement of facts underlying her claims in her initial and amended complaints.

¶16 After noting that Panzarella admitted that she had not filed a notice of claim, the Yavapai County Defendants also argued that Panzarella had not addressed their argument that the amended complaint did not plead factual allegations to implicate those defendants in any conduct that would give rise to a cognizable claim or their argument that some of them were non-jural entities not subject to suit.

¶17 The unsigned July 8, 2011 minute entry states that Panzarella had "failed to make any well-pled factual allegations that would show that any of the Yavapai County Defendants engaged in tortious conduct," and therefore dismissed the claims for failure to state a claim. The court also found that any claim for monetary damages was barred for failure to file a notice of claim pursuant to A.R.S. § 12-821.01.

¶18 Panzarella filed a pleading on July 26, 2011, entitled a "Continuance of Civil Action Case," which appears to have been a motion to vacate under Arizona Rule of Civil Procedure ("Rule") 60(c).¹ She asserted that the "ruling of previous dismissals" was moot and requested that the motion to dismiss be denied. The Yavapai County Defendants did not file a response.

¹ Panzarella cited Rule 60(b), which is the federal counterpart to Arizona Rule of Civil Procedure 60(c). Ariz. R. Civ. P. 60(c), State Bar Comm. Note.

¶9 The court entered a signed judgment on August 22, 2011, certified it as a final judgment pursuant to Rule 54(b), and dismissed Panzarella's amended complaint as to the Yavapai County Defendants. Eight days later, Panzarella filed a document captioned "Request Appeal," which was treated as a notice of appeal.

¶10 Panzarella then filed a pleading on September 9, 2011, captioned "Appeal Request for Change of Venue," in which she asserted, in part, that the trial judge should not have been appointed to consider the case because she had prior working relationships with the defendants and their attorneys. Panzarella attached a copy of a newspaper article indicating that the judge had worked as an associate with the Jensen Law Firm from 1997 to 1998; the Jensen Law Firm represented one of the non-Yavapai County Defendants. Six days later, Panzarella filed a "Motion to Vacate or Modify Judgment" on the grounds that the judge was improperly presiding over the case despite having previously worked with the Jensen Law Firm.

¶11 The Yavapai County Defendants responded to the September 15, 2011 pleading and argued that the court lacked jurisdiction because Panzarella had filed a notice of appeal before she filed her motion to vacate the judgment. They further argued that, even if the court had jurisdiction,

Panzarella had not raised sufficient grounds under Rule 60 to vacate the judgment.

¶12 The court acknowledged receipt of the "Request for Change of Venue" and the "Motion to Vacate or Modify Judgment," noted that Panzarella's notice of appeal preceded the pleadings, and ordered that it would take no action until it was directed to do so by the Court of Appeals.

¶13 This court has jurisdiction over the order of dismissal pursuant to A.R.S. § 12-2101(A)(1) (West 2012).

DISCUSSION

¶14 Ordinarily, "[i]n reviewing a trial court's decision to dismiss a complaint for failure to state a claim, we assume as true the facts alleged in the complaint and will not affirm the dismissal unless [we are] satisfied as a matter of law that plaintiffs would not be entitled to relief under any interpretation of the facts susceptible of proof." *Fid. Sec. Life Ins. Co. v. State*, 191 Ariz. 222, 224, ¶ 4, 954 P.2d 580, 582 (1998) (citation omitted). Here, however, Panzarella does not argue that the decision to grant the motion to dismiss was erroneous, but argues only that the trial judge should have recused herself.

¶15 A party must present its legal theories in a timely manner to the trial court to give it the opportunity to rule properly. *Payne v. Payne*, 12 Ariz. App. 434, 435, 471 P.2d 319, 320 (1970) (citations omitted). Once a trial court has entered a final judgment and an appeal has been filed, the trial court loses jurisdiction over the case "except in furtherance of the appeal." *Castillo v. Indus. Comm'n*, 21 Ariz. App. 465, 467, 520 P.2d 1142, 1144 (App. 1974) (citations omitted). Therefore, the trial court has no authority to address matters related to the appeal that are presented to it after a notice of appeal has been filed. *City of Phoenix v. Leroy's Liquors, Inc.*, 177 Ariz. 375, 380-81, 868 P.2d 958, 963-64 (App. 1993) (trial court could not rule on motion for reconsideration where notice of appeal was filed before court considered motion); *Apache E., Inc. v. Means*, 124 Ariz. 11, 14, 601 P.2d 615, 618 (App. 1979) (citations omitted) (trial court divested of jurisdiction to rule on motion for rehearing because motion was filed after the notice of appeal). In turn, this court has no jurisdiction over an appeal from matters over which the trial court lacked authority to rule. *McHazzlett v. Otis Eng'g Corp.*, 133 Ariz. 530, 533, 652 P.2d 1377, 1380 (1982) (citations omitted); *Leroy's Liquors, Inc.*, 177 Ariz. at 380-81, 868 P.2d at 963-64 (citation omitted); *Apache E., Inc.*, 124 Ariz. at 14, 601 P.2d at 618 (citations omitted). Consequently, this court lacks

jurisdiction except to dismiss an appeal from a matter presented to the superior court after a notice of appeal has been filed; we will not consider such issues for the first time on appeal. *McHazlett*, 133 Ariz. at 533, 652 P.2d at 1380 (citations omitted); *Apache E., Inc.*, 124 Ariz. at 14, 601 P.2d at 618 (citation omitted).

¶16 Although Panzarella argued in the trial court that the judge should have recused herself, she did not present the argument until after the court had dismissed the Yavapai County Defendants and until after Panzarella filed a notice of appeal from that judgment. The trial court, lacking jurisdiction, did not rule on the issue. This court, therefore, has no jurisdiction to consider the issue on appeal.²

¶17 The Yavapai County Defendants seek attorneys' fees as sanctions pursuant to Arizona Rule of Civil Appellate Procedure 25, arguing that the appeal is frivolous. In our discretion, we deny the request.

² In addition, this court has no jurisdiction to address matters not listed in the notice of appeal. *Premier Fin. Servs. v. Citibank*, 185 Ariz. 80, 87, 912 P.2d 1309, 1316 (App. 1995) (citation omitted); *Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (citations omitted). Because Panzarella's argument that the trial judge should have recused herself was not included in her notice of appeal, directly or by reasonable implication, the issue is not properly before this court.

CONCLUSION

¶18 The trial court's ruling is affirmed.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

PHILIP HALL, Judge

/s/

DIANE M. JOHNSEN, Judge