

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



DIVISION ONE  
FILED: 11/13/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

**IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE**

LNV CORPORATION, its assignees ) No. 1 CA-CV 11-0603  
and/or successors, )  
 ) DEPARTMENT B  
Plaintiff/Appellee, )  
 ) **MEMORANDUM DECISION**  
v. )  
 ) (Not for Publication -  
TULI MOLINA WOHL and JOHN DOE ) Rule 28, Arizona Rules  
WOHL, wife and husband, ) of Civil Appellate  
 ) Procedure)  
Defendants/Appellants. )  
 )

---

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-009999

The Honorable Michael L. Barth, Commissioner

**AFFIRMED**

---

McCarty Holthus Levine ) Scottsdale  
by Matthew A. Silverman  
Jessica R. Kenney  
Lakshmi Jagannath

and

Mariscal, Weeks, McIntyre & Friedlander, P.A. ) Phoenix  
by Michael R. Scheurich  
Charles H. Oldham  
Attorneys for Plaintiff/Appellee

Donald O. Loeb, P.L.C. ) Scottsdale  
by Donald O. Loeb  
Attorneys for Defendants/Appellants

---

**H O W E**, Judge

¶1 Tuli Molina Wohl appeals from the trial court's entry of judgment on the pleadings in favor of LNV in its action for forcible entry and detainer. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 LNV filed a complaint against Wohl for forcible entry and detainer ("FED"). The complaint alleged that LNV had become the owner of certain real property ("the Property") at a trustee's sale and that Wohl had been given notice to vacate the Property but had not done so. Attached to the complaint was a Trustee's Deed Upon Sale ("Trustee's Deed"), recorded May 4, 2011. The Trustee's Deed stated that the sale had occurred at public auction on April 26, 2011, that the conveyance had been made upon a default under Wohl's Deed of Trust, and that the grantee, LNV, was the foreclosing beneficiary. It identified Quality Loan Service Corporation as the Trustee.

¶3 In her answer, Wohl denied that LNV was the lawful owner and challenged the validity of the Trustee's Deed. Wohl asserted that LNV acquired the Trustee's Deed in violation of Arizona Revised Statutes ("A.R.S.") sections 33-801 to -821 (Westlaw 2012),<sup>1</sup> and the Trustee's Deed was therefore void and conveyed no legal interest.

---

<sup>1</sup> We cite to the current version of applicable statutes when no revision material to this decision has occurred.

¶14 LNV filed a motion for judgment on the pleadings, arguing that the only issue in a FED action is the right to possession. It maintained that inquiries into title were prohibited and that challenges to the trustee's sale be brought in a separate civil action. LNV further argued that, even if challenges to the title could be considered, the court must presume from the Trustee's Deed that LNV met the statutory requirements for a valid deed of trust.

¶15 Wohl moved to dismiss the FED action, claiming that the superior court lacked jurisdiction because LNV had failed to comply with certain statutory requirements. She further argued that LNV was not the owner of the note secured by the deed of trust, and therefore LNV could neither hold her in default of the note nor foreclose on the Deed of Trust.

¶16 Wohl responded that she was not attempting to litigate the merits of title but was instead contesting the court's jurisdiction on the grounds that LNV had not complied with statutory requirements governing deeds of trust, and was therefore entitled to litigate the right to possession.

¶17 On August 11, 2011, after hearing argument, the court granted LNV's motion for judgment on the pleadings and denied Wohl's motion to dismiss. The court found Wohl guilty of forcible detainer, ordered that the Property be surrendered to LNV and that if the Property was not surrendered on or before

August 17, 2011, a writ of restitution would issue to the Sheriff to take possession of the Property and restore it to LNV.

¶8 Wohl filed a notice of appeal and a request for supersedeas bond hearing pursuant to Rule 7, Arizona Rules of Civil Appellate Procedure ("ARCAP"), Rule 17(a) and (c), Arizona Rules of Procedure for Eviction Actions ("RPEA"), and A.R.S. § 12-1182. The court set a hearing date of August 17, 2011.

¶9 LNV responded that Wohl was not entitled to a stay because she could not show that she would likely succeed on the merits; that she would suffer irreparable harm if no stay were granted; that the harm to her would be greater than the harm to LNV; and that public policy favored a stay. On August 17, the court heard oral argument on Wohl's motion and denied her request for bond, finding that she was not entitled to a stay of the judgment.

¶10 We have jurisdiction over the FED judgment pursuant to A.R.S. §§ 12-1182 and -2101(A)(1). For the reasons stated below, we lack jurisdiction to consider Wohl's argument regarding the denial of her request for a stay.

#### **DISCUSSION**

¶11 LNV has moved to dismiss the appeal because Wohl failed to provide a transcript of the proceedings despite a continuance to obtain such a transcript, failed to properly cite

the record in asserting facts in her opening brief as ARCAP 13(a)(4) requires, and included exhibits in the appendix to her opening brief that are not part of the record. This court considers only evidence contained in the record. *Ashton-Blair v. Merrill*, 187 Ariz. 315, 317, 928 P.2d 1244, 1246 (App. 1996). Our review is limited to those arguments, theories, and facts properly presented below. *CDT Inc. v. Addison, Roberts & Ludwig, CPA, P.C.*, 198 Ariz. 173, 178, ¶ 19, 7 P.3d 979, 984 (App. 2000). An appellant is obligated to ensure that the record on appeal contains all documents and information necessary to address the issues raised. ARCAP 11(b); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). We presume any missing information supports the superior court's conclusions. *Baker*, 183 Ariz. at 73, 900 P.2d at 767.

¶12 We decline to dismiss this appeal. Wohl appeals from the court's grant of judgment on the pleadings. The pleadings in this case consist of the complaint and the answer. Ariz. R. Civ. P. 7(a). The record here contains the complaint, the answer, and the relevant motions and responses sufficient for this court to review the court's ruling on the pleadings that Wohl was guilty of FED.

¶13 We will disregard Wohl's appendix Exhibits A to E because they are not part of the record.<sup>2</sup> Similarly, we will disregard those facts asserted in Wohl's statement of the case in her opening brief relating to the execution of the deed of trust and promissory note, the alleged attempted securitization of the loan, and the assignment of the deed of trust. Wohl has not cited to the record to support those facts, and they do not appear in the record. We will presume that the missing transcripts of the proceedings support the superior court's decision. See *Baker*, 183 Ariz. at 73, 900 P.2d at 767.

¶14 In a motion for judgment on the pleadings, the allegations in the opposing party's pleading are accepted as true, and any allegations in the moving party's pleading that have been denied are deemed false. *Food for Health Co. v. 3839 Joint Venture*, 129 Ariz. 103, 106, 628 P.2d 986, 989 (App. 1981). The motion is granted only if the position of the opposing party entitles the moving party to judgment. *Id.*; *Wenrich v. Household Fin. Corp.*, 5 Ariz. App. 335, 338, 426 P.2d 671, 674 (1967). A plaintiff is entitled to judgment on the pleadings if the defendant's answer fails to assert a legally sufficient defense to the claim. *Pac. Fire Rating Bureau v.*

---

<sup>2</sup> LNV had also moved to strike Exhibit F, Trustee's Deed Upon Sale. We deny that request. That document is included in the record as Exhibit A to LNV's complaint.

*Ins. Co. of N. Am.*, 83 Ariz. 369, 376, 321 P.2d 1030, 1035 (1958).

¶15 LNV filed a complaint for forcible detainer pursuant to A.R.S. § 12-1173.01, which provides that a forcible detainer action can be employed to remove persons that retain possession of real property despite a written demand for possession where "the property has been sold through a trustee's sale under a deed of trust." A.R.S. § 12-1173.01(A)(2). In an action for forcible detainer, "the only issue shall be the right of actual possession and the merits of title shall not be inquired into." A.R.S. § 12-1177(A). The only appropriate judgment is dismissal of the complaint or the granting of possession to the plaintiff. *United Effort Plan Trust v. Holm*, 209 Ariz. 347, 351, 101 P.3d 641, 645 (App. 2004). A forcible detainer action is intended to be a summary, speedy remedy for obtaining possession of property by the person entitled to possession. *Andreola v. Ariz. Bank*, 26 Ariz. App. 556, 557, 550 P.2d 110, 111 (1976); *Colonial Tri-City Ltd. P'ship v. Ben Franklin Stores, Inc.*, 179 Ariz. 428, 433, 880 P.2d 648, 653 (App. 1993).

¶16 Wohl argues that no evidence shows that the original lender properly transferred the note Wohl signed or that the original deed of trust was ever lawfully assigned. She contends that those from whom LNV purportedly obtained the underlying note and the deed of trust lacked the capacity to convey those

interests. Consequently, she argues, LNV had no authority to appoint Quality Loan Service Corporation as trustee, and Quality Loan Service Corporation therefore had no authority to conduct the sale. Because Quality Loan Service Corporation had no authority to conduct the sale, LNV could not validly purchase the Property and had no right of possession and lacked standing to file a forcible detainer action. Citing authority from other jurisdictions, she argues that LNV had the burden of showing, but failed to show that, at the time the Notice of Trustee Sale issued, it possessed the note on which the foreclosure was based.

¶17 Wohl's arguments challenge the process by which LNV obtained the Trustee's Deed and therefore relate to title, which is not a proper inquiry in a forcible detainer action. Moreover, the Arizona Supreme Court recently held that "Arizona's non-judicial foreclosure statutes do not require the beneficiary to prove its authority or 'show the note' before the trustee may commence a non-judicial foreclosure." *Hogan v. Wash. Mut. Bank*, \_\_\_ Ariz. \_\_\_, \_\_\_, ¶ 1, 277 P.3d 781, 782 (2012). In *Hogan*, the plaintiff filed suit to enjoin trustees' sales unless the beneficiaries proved that they were entitled to collect on the respective notes. *Id.* at ¶ 3. The court recognized that a deed of trust could be enforced only by one having the right to enforce the underlying obligation, but



rejected the argument that the enforcing party had the burden of demonstrating its rights prior to a non-judicial foreclosure sale. *Id.* at \_\_\_, ¶ 6, 277 P.3d at 783. The court noted that non-judicial foreclosures were intended to be quick, efficient, and outside of the judicial process, and that

Requiring the beneficiary to prove ownership of a note to defaulting trustors before instituting non-judicial foreclosure proceedings might again make the "mortgage foreclosure process . . . time-consuming and expensive," and re-inject litigation, with its attendant cost and delay, into the process.

*Id.* at \_\_\_, ¶ 12, 277 P.3d at 784 (internal citations omitted). Under *Hogan*, LNV was not required to prove that it held the underlying note at the time of the trustee's sale.<sup>3</sup>

¶18 Although she denied the validity of the deed, Wohl acknowledged that LNV held a trustee's deed for the property and admitted that she had received notice to vacate. LNV properly brought the detainer action under A.R.S. § 12-1173.01(A)(2), and

---

<sup>3</sup> *Hogan* also stated that the "dispositive question" was "whether the trustee, acting pursuant to its own power of sale or on behalf of the beneficiary, had the statutory right to foreclose on the deeds of trust." \_\_\_ Ariz. at \_\_\_, ¶ 10, 277 P.3d at 784. The court noted that Hogan had "alleged no reason to dispute the trustee's right." *Id.* On appeal, Wohl contends that the trustee was not properly appointed and so had no authority to conduct the sale. She did not make this argument in superior court, and so has waived it. *CDT Inc.*, 198 Ariz. at 178, ¶ 19, 7 P.3d at 984 (holding that we consider only those arguments, theories, and facts properly presented below).

Wohl did not present a cognizable defense to the action. The superior court's grant of judgment on the pleadings is affirmed.

¶19 Wohl also argues that the superior court had no discretion to deny her request for a supersedeas bond hearing. We lack jurisdiction over this issue. Wohl filed a notice of appeal on August 12, 2011, from the judgment entered by the superior court on August 11, 2011. The court issued its ruling on Wohl's request for a supersedeas bond hearing in an unsigned minute entry dated August 17, 2011, and filed on August 24, 2011. The August 12 notice of appeal therefore did not encompass the subsequent ruling. Further, the record does not contain a signed written order and related notice of appeal pertaining to the court's ruling on the issue of the supersedeas bond hearing. Consequently, no appealable order has been issued. See Ariz. R. Civ. P. 58(a); *Haywood Secs., Inc. v. Ehrlich*, 214 Ariz. 114, 114-15, ¶ 1, 149 P.3d 738, 738-39 (2007) (orders appealable under A.R.S. § 12-2101 must be in writing, signed by the court, and filed with the clerk pursuant to Rule 58(a)).

¶20 LNV has requested an award of attorneys' fees and costs on appeal pursuant to A.R.S. § 12-1178(A), which provides:

If the defendant is found guilty of forcible entry and detainer or forcible detainer, the court shall give judgment for the plaintiff for restitution of the premises, for all charges stated in the rental agreement and

for damages, attorney fees, court and other costs . . . .

Wohl was found guilty of forcible detainer. Pursuant to this section, LNV is entitled to an award of its reasonable attorneys' fees and costs. We therefore grant its request for fees and costs under A.R.S. § 12-1178 upon compliance with ARCAP 21.<sup>4</sup>

**CONCLUSION**

¶21 The superior court's decision is affirmed.

\_\_\_\_\_/s/\_\_\_\_\_  
RANDALL M. HOWE, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
MAURICE PORTLEY, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
PATRICIA A. OROZCO, Judge

<sup>4</sup> LNV also requested an award of fees and costs as sanctions pursuant to ARCAP 25 and A.R.S. § 12-349. Having granted the request for fees and costs pursuant to A.R.S. § 12-1178(A), we do not address the request for sanctions.