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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 10/16/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

FEDERAL NATIONAL MORTGAGE) No. 1 CA-CV 11-0747
ASSOCIATION,)
) DEPARTMENT C
Plaintiff/Appellee,)
) **MEMORANDUM DECISION**
v.)
) (Not for Publication -
BERNARD PRZYBYLSKI,) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
Defendant/Appellant.)
)
_____)

Appeal from the Superior Court in Yavapai County

Cause No. CV 2011-01508

The Honorable Warren R. Darrow, Judge

AFFIRMED

Bernard John Przyblyski, Jr.
In Propria Persona

Chino Valley

Tiffany & Bosco, P.A.
by Leonard J. McDonald, Jr.
David W. Cowles
Attorneys for Appellee

Phoenix

H A L L, Judge

¶1 Bernard Przyblyski appeals the judgment for Federal National Mortgage Association (Federal) on its claim of forcible detainer. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶12 On September 16, 2011, Federal filed a forcible detainer action alleging that Przybylski was occupying and refusing to surrender possession of a property Federal purchased in a trustee's sale on August 29, 2011. Federal attached a copy of the trustee's deed to its complaint.

¶13 Przybylski did not file an answer to the complaint. He did file a motion, however, requesting that the superior court stay the forcible detainer proceedings until final judgment was entered in parallel litigation already underway in federal court. In his motion, Przybylski explained that the foreclosure sale would be deemed "null and void" if he prevailed in the federal litigation, and therefore a stay in the state action "would be the most prudent judicial procedure."

¶14 On November 7, 2011, the superior court held a hearing on the forcible detainer complaint. After hearing argument from both parties, the superior court implicitly denied Przybylski's request for a stay and found him guilty of forcible detainer.

¶15 This appeal followed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(A)(1) (Supp. 2012).

DISCUSSION

¶16 On appeal, Przybylski raises numerous challenges to the validity of Federal's title to the property, including claims of defective notice and fraud.

¶17 The only issue Przybylski raised in the superior court, however, was a request for stay. Therefore, the scope of our review is limited to whether the court abused its discretion by implicitly denying his stay request.¹ *State v. Ott*, 167 Ariz. 420, 428, 808 P.2d 305, 313 (App. 1990) ("Whether to grant a stay is within the trial court's discretion."). When "parallel proceedings would substantially prejudice the [litigant's] rights," the court should grant a stay request. *Id.*

¶18 Here, Przybylski did not contend that he would suffer any prejudice if the court denied his request for a stay. Rather, he opined that he had "a good likelihood" of prevailing in his federal appeal and argued that, if he was successful in that appeal, all the forcible detainer proceedings would be

¹ Although the superior court held a hearing on the forcible detainer action on November 7, 2011, Przybylski did not provide transcripts of the hearing as part of the appellate record. Therefore, any argument he may have raised at the hearing, beyond his request for a stay, is not properly before us. See *Walker v. Walker*, 18 Ariz.App. 113, 114, 500 P.2d 898, 899 (1972) (explaining that appellate courts "must presume that the findings by the trial court were supported by the evidence at trial" when a party fails to provide transcripts of the proceedings); *Trantor v. Fredrikson*, 179 Ariz. 299, 300, 878 P.2d 657, 658 (1994) (holding an issue not raised in the superior court is waived on appeal).

"null and void." Thus, Pryzbylski argued, "the most prudent judicial procedure" was for the superior court to stay the forcible detainer proceedings. Absent any valid claim of prejudice, we cannot conclude that the superior court abused its discretion in denying Przybylski's request for a stay. Moreover, even assuming, based on the circumstances then known to the superior court, that the court should have stayed the proceedings pending the outcome of the federal litigation, Przybylski's federal appeal was dismissed on February 22, 2012. Therefore, he was not prejudiced by the denial of his stay request.

CONCLUSION

¶19 We affirm the superior court's order finding Przybylski guilty of forcible entry and detainer.

_____/s/_____
PHILIP HALL, Presiding Judge

CONCURRING:

_____/s/_____
PETER B. SWANN, Judge

_____/s/_____
LAWRENCE F. WINTHROP, Judge