DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

JOHN P. BAKER, Plaintiff/Appellant, v. DUANE BELCHER, SR; OLIVIA V. MEZA; LEONARD TED ROBERTS; MARIAN YIM, Defendants/Appellees.	)	No. 1 CA-CV 12-0365 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Maricopa County

Cause No. CV2008-018832

The Honorable Bethany G. Hicks, Judge

AFFIRMED

John P. Baker — Phoenix
Pro Per Plaintiff/Appellant

Thomas C. Horne, Attorney General — Phoenix
By Daniel P. Schaack, Assistant Attorney General
Attorneys for Defendants/Appellees

H A L L, Judge

¶1 John P. Baker appeals from the superior court's order granting Duane Belcher, Sr., Olivia V. Meza, Leonard Ted

Roberts, and Marian Yim (Defendants) summary judgment. We affirm.

BACKGROUND

¶2 Baker is an inmate with the Arizona Department of Corrections currently serving the first of two consecutive seventeen-year sentences for his kidnapping convictions, each of which was a dangerous crime against children in the first degree committed against a minor under fifteen years of age. The first kidnapping sentence commenced October 4, 2005, after Baker's sentences for numerous convictions of child abuse expired. On December 5, 2006, Baker applied for a regular parole hearing with the Arizona Board of Executive Clemency (Board). The Board held a hearing with Baker on December 22, 2006, and denied Baker's application finding parole would not be in the best interest of the State.[1]

¶3 On August 6, 2008, Baker filed a complaint against Defendants, who were members of the Board at the time of the parole hearing.[2] In challenging the denial of his parole application, Baker alleged that the Board was improperly

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[1] The Board "shall authorize the release of the applicant on parole if . . . it appears to the [B]oard, in its sole discretion, that there is a substantial probability that the applicant will remain at liberty without violating the law and that the release is in the best interests of the [S]tate." Ariz. Rev. Stat. (A.R.S.) section 31-412(A) (Supp. 2012).

[2] Only Belcher, Roberts, and Meza were present at Baker's hearing.

constituted because three of the Defendants came from the same "background or profession" (i.e. probation officers or other probation workers) in violation of A.R.S. § 31-401 (Supp. 2012).[3] He also alleged that, because his current sentences ordered "flat-time," the Board "broke another law by holding a parole hearing . . . [and t]his disregard for the law is NOT a good example for potential parolees." Baker further claimed the Board "illegally denied parole" because his poor health made it impossible for him to "repeat the alleged crimes[.]" Finally, Baker alleged the Board's decision amounted to cruel and unusual punishment and violated his due-process rights.

¶4 Baker moved for summary judgment, and Defendants cross-moved for summary judgment. Finding Baker's argument regarding the Board's composition to be the only viable issue raised, the court concluded that Defendants were *de facto* Board members and thus their denial of Baker's parole was binding. *See Jennings v. Woods*, 194 Ariz. 314, 331-32, ¶¶ 86-88, 982 P.2d 274, 291-92 (1999) (describing and applying law regarding *de facto* public official). Consequently, the court granted Defendants' cross-motion for summary judgment. Baker timely appealed.

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[3] "No more than two members from the same professional discipline shall be members of the [B]oard at the same time." A.R.S. § 31-401(B).

DISCUSSION

¶5 We review de novo the grant of a motion for summary judgment. *Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 199, ¶ 15, 165 P.3d 173, 177 (App. 2007). Summary judgment is appropriate 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). We will affirm a grant of summary judgment if the trial court was correct for any reason, "even if that reason was not considered by the [trial] court." *Parkinson v. Guadalupe Pub. Safety Ret. Local Bd.*, 214 Ariz. 274, 277, ¶ 12, 151 P.3d 557, 560 (App. 2007) (*quoting Glaze v. Marcus,* 151 Ariz. 538, 540, 729 P.2d 342, 344 (App. 1986)); *see City of Tempe v. Outdoor Sys., Inc.*, 201 Ariz. 106, 111, ¶ 14, 32 P.3d 31, 36 (App. 2001); *see also Regan v. First Nat. Bank*, 55 Ariz. 320, 327-28, 101 P.2d 214, 218 (1940) (affirming when an issue was determinative of an action even though it was not presented to trial court).

¶6 The court did not err in granting Defendants summary judgment. As Baker has admitted in his summary-judgment motion and again on appeal, he was not (and is not) eligible for parole as a matter of law because his sentences must be served as "flat-time." *See* A.R.S. § 13-604.01(D) (1997).[4] Accordingly,

[4] Because this statute has been revised and renumbered since May 1, 1997, the date of the offenses for which Baker was

any error that conceivably occurred in the parole hearing proceedings and resulted in the Board's denial of parole could not have prejudiced Baker. To the extent Baker argues the Board erred by merely conducting the hearing because the possibility of parole caused him to "get his hopes up" and suffer "anxiety" and "mental anguish," we reject such a contention as it is legally and factually without merit. First, this argument is not supported by authority. Second, in conducting the parole hearing, any error that occurred by virtue of Baker's parole ineligibility was at least in part attributable to Baker. The record reflects that Baker requested the parole hearing when he completed and submitted a "Board Hearing Application" form. Because Baker is not eligible for parole, we cannot find reversible error in the court's award of summary judgment to Defendants.

¶7 Nonetheless, before concluding, we briefly address three ancillary issues Baker raises. He intimates the superior court should have afforded him leniency as an *in propria persona* litigant in his attempts to comport with procedural rules.[5] We

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convicted, we cite the version in effect at that time. *See* 2008 Ariz. Sess. Laws, ch. 301 (2nd Reg. Sess.). Absent material revisions, we cite to a statute's current version.

[5] Specifically, Baker argues the court should have explained to him the "principles and requirements to oppose a motion for summary judgment." In support, he cites to federal cases. Arizona Rule of Civil Procedure 56, however, does not require

reject this argument because Arizona law is well-settled that courts hold parties appearing *in propria persona* to the same standards as attorneys. *Kelly v. NationsBanc Mortgage Corp.*, 199 Ariz. 284, 287, ¶ 16, 17 P.3d 790, 793 (App. 2000); *Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134, 138 (App. 1999); *Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1983); *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 689 P.2d 84, 87 (App. 1983) (finding that persons representing themselves "held to the same familiarity with required procedures" as an attorney); *Homecraft Corp. v. Fimbres*, 119 Ariz. 299, 301, 580 P.2d 760, 762 (App. 1978) (finding that one who represents himself "is held to the same familiarity with . . . notice statutes and local rules as would be attributed to a duly qualified member of the bar"). Furthermore, Baker's compliance, or lack thereof, with our rules of civil procedure did not affect the court's award of summary judgment to Defendants, and it has no bearing on our disposition of this appeal.

¶8 Next, Baker asserts the superior court erred by ruling on only "one issue" set forth in his summary judgment motion.

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such judicial assistance, and to the extent the related federal rule of civil procedure does allow or require it, Arizona state courts are not bound by the federal rule or federal courts' interpretations of the rule. This is especially so in light of established Arizona law requiring *in propria persona* litigants be held to the same standards as attorneys when following procedural requirements.

Baker misconstrues the court's order; the court dismissed his entire complaint because he failed to carry his burden of proving that he was entitled to judgment as a matter of law. The court expressly considered all issues Baker raised, and disposed of them all.

¶9 Finally, Baker argues that the court erred in denying his motion in limine[6] to preclude evidence of his underlying convictions from being presented to the jury. This argument lacks merit because based on the disposition of this case on summary judgment, there will be no jury trial in this matter. It was therefore unnecessary for the court to rule on the motion and its denial of the motion was not error.

CONCLUSION

¶10 The superior court's award of summary judgment to Defendants is affirmed.

_/s/_____
PHILIP HALL, Judge

CONCUR:

_/s/_____
MARGARET H. DOWNIE, Presiding Judge

_/s/_____
MAURICE PORTLEY, Judge

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[6] Baker initially titled this motion a "Motion for Order of Protection."