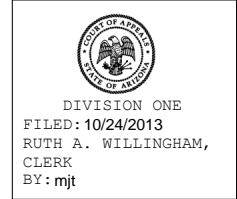


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DAMARIS CHANDLER,) 1 CA-CV 12-0837
)
Plaintiff/Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MARIA BROCKBANK; MIKE) Rule 28 Arizona Rules of
WASHINGTON; CLIFTON L. BURGNER;) Civil Appellate Procedure)
THE SYNDICATE, LLC.,)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV2012-011691

The Honorable Maria del Mar Verdin, Judge

JURISDICTION ACCEPTED/RELIEF DENIED

Damaris Chandler Mesa
Plaintiff/Appellant in propria persona

Guy P. Wolf Attorney at Law Phoenix
Attorney for Defendants/Appellees Washington,
Burgener and The Syndicate, LLC

Maria Brockbank Cave Creek
Defendant/Appellee in propria persona

O R O Z C O, Judge

¶1 Damaris Chandler (Chandler) appeals the trial court's
order granting Appellees' Motion to Dismiss after she failed to

respond to Appellees' motion. For the following reasons, we convert this appeal to a special action. We also accept special action jurisdiction and deny relief.

FACTS AND PROCEDURAL HISTORY

¶12 Chandler is a former residential tenant of Appellee, the Syndicate, LLC (Syndicate). Named Appellee Maria Brockbank acquired the Property through a sheriff's foreclosure deed.¹ Brockbank then transferred her interest in the Property to the Syndicate by special warranty deed. Appellee Clifton L. Burgener is the principal and sole member of the Syndicate, while Appellee Mike Washington is an employee of the Syndicate.²

¶13 After acquiring title to the Property, Appellees issued Chandler a five-day notice for non-payment of rent. Appellees then brought an eviction action for non-payment of rent in Encanto Justice Court.

¶14 Following a justice court trial, Appellees prevailed and obtained a judgment against Chandler, thereby rejecting Chandler's presentation of various issues regarding the Property's condition. Chandler filed an appeal to the superior court, which affirmed the eviction action judgment. See *City of*

¹ There is no evidence that Chandler served Brockbank or that Brockbank participated in the civil action below. Accordingly, although Brockbank is named in this appeal, she is not actually a party to the appeal.

² We refer to Burgener, Washington, and the Syndicate collectively as Appellees.

Phoenix v. Superior Court, 110 Ariz. 155, 157, 515 P.2d 1175, 1177 (1973) (“We take judicial notice of Superior Court records.”).

¶15 While the justice court matter was pending, Chandler, appearing in propria persona, filed this civil action against Appellees in the Superior Court on August 17, 2012. Chandler’s complaint in this civil action makes similar claims to those litigated in the justice court trial on August 31, 2012. After the justice court trial, Chandler served Appellees on September 10, 2012 with a summons for this separate civil action. Thereafter, Appellees filed a Motion to Dismiss this action pursuant to Arizona Rules of Civil Procedure 12(b)(6) and 12(b)(7). When Chandler did not respond to Appellees’ motion, the trial court granted the motion and dismissed this case without prejudice. The trial court also granted Appellees’ motion for attorney fees and costs, which Chandler also appeals.

DISCUSSION

A. *Jurisdiction*

¶16 Even though the parties have not challenged this court’s jurisdiction, “[a]s a threshold matter, we are obligated to examine our jurisdiction over an appeal. . . .” *Kool Radiators, Inc. v. Evans*, 229 Ariz. 532, 534, ¶ 8, 278 P.3d 310, 312 (App. 2012) (internal quotation marks and citations omitted). “We may resolve only those appeals authorized by

statute." *Id.* Pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101.A, our appellate jurisdiction is limited to appeals from a trial court's final judgments in an action with few exceptions, none of which are applicable here. See A.R.S. § 12-2101.A (Supp. 2012).

¶7 Dismissals without prejudice are not final judgments on the merits. See *Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, 108, ¶ 13, 158 P.3d 232, 237 (App. 2007). The trial court dismissed the present action without prejudice. Therefore, the dismissal was not a final judgment on the merits, and we do not have appellate jurisdiction.

¶8 Nonetheless, we may exercise special action jurisdiction when there is no "equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a) (2013). With special action jurisdiction, it is appropriate for this court to review an order awarding attorney fees entered with a dismissal without prejudice. See *Kool Radiators, Inc.*, 229 Ariz. at 535, ¶ 11, 278 P.3d at 313. Consequently, we exercise our discretion and accept special action jurisdiction to address both the trial court's dismissal without prejudice and the trial court's award of attorney fees because Chandler would not otherwise have a remedy by appeal. See *Villares v. Pineda*, 217 Ariz. 623, 624, ¶ 10, 177 P.3d 1195, 1196 (App. 2008).

B. Dismissal

¶9 We review a trial court's order granting a motion to dismiss de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355-56, ¶ 7, 284 P.3d 863, 866-67 (2012). "[W]e will uphold dismissal only if the plaintiff[] would not be entitled to relief under any facts susceptible of proof in the statement of the claim." *Id.* (quoting *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346, 922 P.2d 308, 311 (1996)) (internal quotation marks omitted).

¶10 In this case, the trial court granted Appellees' Motion to Dismiss because Chandler failed to respond. When one party has filed a motion to dismiss, the non-moving party must respond to a Rule 12(b)(6) motion within ten days. Ariz. R. Civ. P. 7.1(a) (2000). If the non-moving party fails to file and serve an answering memorandum, "such non-compliance may be deemed a consent to the denial or granting of the motion, and the court may dispose of the motion summarily." Rule 7.1(b).

¶11 Chandler does not deny that she failed to respond to Appellees' Motion to Dismiss. Under Rule 7.1(b), the trial court was free to deem this non-compliance as consent to grant Appellees' motion. See Rule 7.1(b). Because Chandler has not shown error, we affirm the trial court's action in granting Appellees' Motion to Dismiss. See *Arnold v. Van Ornum*, 4 Ariz. App. 89, 90-91, 417 P.2d 723, 724-25 (1966) ("If the opposing

party does not serve and file the required answering memorandum, the court may dispose of the motion summarily." (internal quotation marks omitted)).

C. Attorney Fees and Costs

¶12 Finally, Chandler challenges the trial court's order granting attorney fees and costs in favor of Appellees. Chandler, however, failed to object to Appellees' motion for attorney fees. Chandler's failure to object below precludes her from raising this argument on appeal. See *In re Marriage of Pownall*, 197 Ariz. 577, 583, ¶ 27, 5 P.3d 911, 917 (App. 2000).

¶13 Because Chandler has not demonstrated an error by the court in granting the motion, we affirm the trial court's award of attorney fees and costs. See *Arnold*, 4 Ariz. App. at 90-91, 417 P.2d at 724-25.

CONCLUSION

¶14 For the foregoing reasons, we accept jurisdiction and deny relief.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

RANDALL M. HOWE, Presiding Judge

/S/

SAMUEL A. THUMMA, Judge