NOTICE: NOT FOR PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION DOES NOT CREATE
LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

FEDERAL NATIONAL MORTGAGE ASSOCIATION, its successors and/or assigns, *Plaintiff/Appellee*,

v.

JOYCE JELSMA LUBBERS, *Defendant/Appellant*.

No. 1 CA-CV 13-0206
FILED 09-25-2014

Appeal from the Superior Court in Maricopa County
No. CV2013-003811
The Honorable Benjamin E. Vatz, Judge

AFFIRMED

COUNSEL

Bryan Cave, LLP, Phoenix
By Robert W. Shely, Rodney W. Ott
Counsel for Plaintiff/Appellee

Joyce J. Lubbers, Phoenix
By Joyce Lubbers
Defendant/Appellant Pro Per

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Patricia A. Orozco and Judge Maurice Portley joined.

H O W E, Judge:

¶1 Joyce Jelsma Lubbers appeals from the superior court's entry of default judgment in favor of Federal National Mortgage Association (FNMA) in this forcible entry and detainer (FED) action. Finding no error, the judgment is affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 FNMA filed an FED complaint alleging that Lubbers occupied and refused to surrender real property that FNMA had purchased at a trustee's sale. The court ordered Lubbers to appear and defend the FED action. In its order, the court warned Lubbers that if she failed to appear and defend within the applicable time, "judgment by default may be rendered against you for the relief demanded in the [FED] Complaint."

¶3 Before the FED hearing, Lubbers purportedly filed a document entitled, "Motion to Dismiss for Fraud in Complaint" (Motion to Dismiss). Lubbers sought sanctions against FNMA's attorneys, argued that jurisdiction was incorrect, contended that the trustee's deed was forged, accused FNMA and its attorneys of extortion, argued that the trustee's deed was a "false deed," alleged that the complaint and exhibits had an "incorrect form" and were never served, and contended that the complaint misstated facts and law. Lubbers also asserted that she was making a "Motion for: Change of Judge for BIAS by VATZ" and that she reserved a right to a jury trial "if [the] complaint is not dismissed." Finally, the Motion's cover page also stated: "2/14/13 **REMOVE FROM CALENDAR** . . . . Lubbers will only appear when written Ruling on Motion to Dismiss is received from Court."

¶4 Lubbers did not appear at the FED hearing. The court noted at the hearing that it had received a voicemail message from Lubbers in which she indicated that she had filed the Motion to Dismiss. But the court stated that it had neither received nor was aware of the Motion to Dismiss. FNMA then moved for default judgment against Lubbers. Finding that

Lubbers had been properly served yet failed to appear or otherwise defend against the FED complaint, the court granted FNMA's motion, with a writ of resolution to issue on or after February 20, 2013.

¶5 Lubbers then filed a notice of appeal. At a subsequent supersedeas bond hearing, Lubbers moved to vacate the default judgment. The court denied Lubbers' motion, finding that Lubbers' notice of appeal divested the superior court of jurisdiction over the matter.

DISCUSSION

¶6 At the outset, we note that Lubbers' opening brief does not comply with ARCAP 13(a). Most importantly, the brief does not contain any relevant legal argument or citation to authority, nor does it articulate the proper standard of review. *See* ARCAP 13(a)–6 (stating that the opening brief shall contain argument with "citations to the authorities, statutes and parts of the record relied on" and identify "the proper standard of review on appeal"). Appellant's failure to comply with these rules limits our ability to evaluate her arguments or otherwise address her claims. *See*, *e.g.*, *In re U.S. Currency in Amount of $26,980.00*, 199 Ariz. 291, 299 ¶ 28, 18 P.3d 85, 93 (App. 2000) (refusing to consider bald assertions offered without elaboration or citation to legal authority); *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, 93 ¶ 50, 977 P.2d 807, 815 (App. 1998) (rejecting assertions made without supporting argument or citation to authority).

¶7 Although Lubbers is a non-lawyer representing herself, she is held to the same standards as a qualified attorney. *See, e.g.*, *Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985). Nevertheless, because we prefer to decide cases on the merits, in the exercise of our discretion, we will attempt to discern and address the substance of Lubbers' argument. *See Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966).

¶8 A party cannot appeal from a default judgment unless a question exists regarding (1) personal jurisdiction, (2) subject matter jurisdiction, or (3) the validity of the default judgment. *Kline v. Kline*, 221 Ariz. 564, 568 ¶ 11, 212 P.3d 902, 906 (App. 2009). A party can, however, appeal an order setting aside—or refusing to set aside—a default judgment. *Id.* Because Lubbers never moved to vacate or set aside the default judgment, and does not challenge the court's jurisdiction over her or the FED action, we only consider whether the court erred in entering a default

judgment against her.[1] We review the superior court's interpretation of statutes and court rules related to default de novo. *Valerie M. v. Ariz. Dep't of Econ. Sec.*, 219 Ariz. 331, 334 ¶ 10, 198 P.3d 1203, 1206 (2009).

¶9 Arizona Rule of Procedure for Eviction Actions (RPEA) 13 prescribes the requirements for an entry of default in eviction actions. Before entering a default judgment in non-stipulated eviction actions, the court shall determine whether:

(1) the service of the summons and FED complaint was proper, timely, and contained sufficient information;

(2) the tenant of the premises received proper termination notice if one was necessary and was afforded any applicable opportunity to cure the eviction action;

(3) the facts alleged prove that plaintiff has a right of superior possession due to a material breach of the lease agreement or for any other basis in law; and

(4) the landlord waived right to bring an FED action by accepting a partial payment in a case claiming nonpayment of rent.

RPEA 13(a)(1)–(4). After determining the conditions of RPEA 13(a)(1)–(4) have been satisfied, the court shall enter a default judgment against the defendant if the defendant fails to appear in person or through counsel and no continuance has been granted. RPEA (13)(b)(3)(A).

¶10 The superior court properly entered a default judgment. The court determined that Lubbers was properly served, the information contained in the FED complaint was correct, and that FNMA was entitled to possession of the property. Finally, no evidence suggests—and Lubbers does not argue—that FNMA waived their right to bring an FED action. Thus, when Lubbers failed to appear at the FED hearing or request a continuance, the superior court had authority pursuant to RPEA (13)(b)(3)(A) to enter a default judgment against her.

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[1] Lubbers contends—among other issues—that she was entitled to a jury trial and change of judge for bias. We do not consider these arguments because they are outside the scope of whether the superior court properly entered the default judgment.

¶11 Lubbers contends, however, that the default judgment should be "voided for prior written appearance by [Lubbers] requesting a continuance of the first hearing by duly filed [Motion to Dismiss]." But RPEA 9(b) provides that "[t]he filing of motions . . . shall not delay the times set by statute for proceeding with an eviction action, except for continuances granted for good cause shown or by stipulation of the parties." Lubbers never moved for a continuance, and the parties never stipulated to one. Even if Lubbers' Motion to Dismiss was to be construed as a request for a continuance, neither the superior court nor FNMA ever received her motion. Accordingly, the superior court did not err by entering a default judgment against Lubbers.

CONCLUSION

¶12 For the foregoing reasons, the judgment is affirmed.

Ruth A. Willingham · Clerk of the Court
FILED: gsh