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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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In the Matter of the:

GAINES FAMILY LIVING TRUST, dated August 12, 1994.

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SHIELDA GOOCH and PATRICIA LEONARD-TEAGUE,  
*Petitioners/Appellees,*

*v.*

DOUGLAS BEATY and NANCY BEATY, aka NANCY BENITEZ, aka,  
NANCY HARRELL, *Respondents/Appellees.*

No. 1 CA-CV 15-0163  
FILED 4-28-2016

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Appeal from the Superior Court in Maricopa County  
No. CV2007-001990  
PB2007-050741  
(Consolidated)  
The Honorable Kerstin G. LeMaire, Judge

**AFFIRMED**

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APPEARANCES

Fennemore Craig, P.C., Phoenix  
By Roger T. Hargrove  
*Counsel for Petitioner/Appellee*

Douglas Beaty, Wasilla, AK  
*Respondent/Appellant*

Nancy Dorene Beaty, Peoria, AZ  
*Respondent/Appellant*

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## MEMORANDUM DECISION

Presiding Judge Andrew W. Gould delivered the decision of the Court, in which Judge John C. Gemmill and Judge Margaret H. Downie joined.

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**G O U L D**, Judge:

¶1 This case involving the Gaines Family Living Trust (“Trust”) is before us on appeal for the third time.<sup>1</sup> In this most recent appeal, Appellants Douglas Beaty and Nancy Beaty challenge the trial court’s judgment ordering them to deposit certain Trust funds with the clerk of the court. For the reasons set forth below, we affirm the trial court’s judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

¶2 The lengthy history of this case is set forth in our two earlier decisions. As relevant here, in 2008, the trial court granted Appellants’ motion for summary judgment (1) declaring they were beneficiaries under the Trust, and (2) appointing Douglas as successor trustee of the Trust. Following this ruling, Douglas, as trustee, took possession of the Trust assets.

¶3 However, on appeal we reversed the trial court’s judgment, determining that Appellees were validly appointed as the Trust beneficiaries by means of Lois Gaines Smith’s “Second Exercise of Power of Appointment.” (“Second Exercise”).<sup>2</sup> *Gaines I*, 2009 WL 1830721, at \*4-5, ¶

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<sup>1</sup> *In re Gaines Family Living Trust*, Case No. 1 CA-CV 08-0564, 2009 WL 1830721 (App. June 25, 2009) (“*Gaines I*”); *In re Gaines Family Living Trust*, Case No. 1 CA-CV 10-0832, 2012 WL 1795228 (App. May 17, 2012) (“*Gaines II*”).

<sup>2</sup> Pursuant to the Second Exercise, Edward Smith, now deceased, was also designated as a beneficiary and successor trustee of the Trust.

GOOCH v. BEATY  
Decision of the Court

21-22. We remanded the case for a determination of whether two specific assets belonged to the Trust. *Id.*, at \*5, ¶ 22.

¶4 On remand, the trial court determined that both disputed assets were Trust assets. The trial court also entered two separate orders directing Douglas to transfer all Trust assets to the Maricopa County Clerk; the assets were to be held on deposit until the court resolved the parties' disputes regarding their beneficial interests in the Trust. Douglas refused, instead filing two "promissory notes" in which he purported to grant Nancy and himself interest-free loans from the Trust totaling \$870,000. The trial court removed Douglas as Trustee, issued a fiduciary arrest warrant against him, and ordered Nancy to remit all funds the Trust purportedly lent to her to the Clerk.

¶5 While the above orders were pending, Appellants filed a second appeal. *Gaines II*, 2012 WL 1795228, at \*1, ¶ 6. In the second appeal, Appellants sought to reverse our determination in *Gaines I* that the Second Exercise was valid. *Gaines II*, at \*2, ¶¶ 7-9. However, we affirmed our decision in *Gaines I* as the law of the case and remanded "for a determination of the value of the estate" and "any other remaining issues." *Id.* at \*2-3, ¶ 7-9, 16.

¶6 Following remand, Appellees petitioned to recover the Trust assets from Appellants or, alternatively, for monetary judgments against Appellants representing the value of the assets. Appellants acknowledged they still held the assets, but contended that our remand order in *Gaines II* prioritized the valuation of the Trust over all other issues, including the court's orders directing Appellants to deposit the Trust assets with the Clerk. Appellants also continued to argue the Second Exercise was invalid, and that all of the Trust assets belonged to them as the "rightful heirs and beneficiaries."

¶7 Following an evidentiary hearing, the trial court granted Appellees' petition and entered monetary judgments of \$800,000 against Douglas and \$320,000 against Nancy. Appellants timely appealed.

## DISCUSSION

### I. *Gaines II* Remand.

¶8 Appellants first contend the judgments against them are invalid because our remand order in *Gaines II* required the trial court to determine the value of the estate before addressing any other issues. Trial courts must strictly follow an appellate mandate on remand. *In re Marriage*

GOOCH v. BEATY  
Decision of the Court

of *Molloy*, 181 Ariz. 146, 149 (App. 1994). We review whether the court followed our mandate *de novo*. *Id.*

¶9 Our remand in *Gaines II*, by its express terms, does not require the trial court to address the estate's past value before addressing any other issues relevant to the case. 2012 WL 1795228, at \*3, ¶ 16. Clearly, the trial court had discretion, on remand, to address Appellants' continuing refusal to turn over the Trust assets. We will not substitute our judgment for that of the trial court in its management of this case. *Findlay v. Lewis*, 172 Ariz. 343, 346 (1992).

## II. *Gaines I* Ruling.

¶10 Once again, Appellants ask us to reverse our decision in *Gaines I* regarding the validity of the Second Exercise. As we stated in *Gaines II*, it is law of the case and is final. 2012 WL 1795228, at \*2, ¶ 7. We did not reconsider it in *Gaines II* and will not reconsider it now. *See Center Bay Gardens, L.L.C. v. City of Tempe City Council*, 214 Ariz. 353, 356, ¶ 17 (App. 2007) ("[T]he decision of an appellate court in a case is the law of that case on the points presented throughout all the subsequent proceedings in the case in both the trial and appellate courts, provided the facts and issues are substantially the same as those on which the first decision rested.") (quoting *Ziegler v. Superior Court*, 134 Ariz. 390, 393 (App. 1982)).

¶11 Appellants cite *Dancing Sunshines Lounge v. Indus. Comm'n*, 149 Ariz. 480, 483 (1986) for the proposition that there are exceptions to the law of the case doctrine. We agree, however, apart from reiterating that *Gaines I* was wrongly decided and making general accusations that Appellee's counsel has engaged in misconduct, Appellants do not present any evidence or arguments as to how their appeal fits within any of these exceptions. We therefore deem this argument waived. Arizona Rule of Civil Appellate Procedure ("ARCAP") 13(a)(7); *Jones v. Burk*, 164 Ariz. 595, 597 (App. 1990).

## III. Alleged Attorney Misconduct.

¶12 The remainder of Appellants' briefing involves allegations of misconduct mostly directed at Appellees' counsel. These claims are conclusory and not supported by the record. We find no error.

GOOCH v. BEATY  
Decision of the Court

**CONCLUSION**

¶13 We affirm the trial court's monetary judgments against Appellants and award Appellees their costs incurred on appeal contingent upon their compliance with ARCAP 21.



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