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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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RICK ALTON FOLEY, *Plaintiff/Appellant*,

*v.*

TRINITY CORPORATION, *Defendant/Appellee*.

No. 1 CA-CV 16-0472  
FILED 2-23-2017

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Appeal from the Superior Court in Maricopa County  
No. CV2016-091328  
The Honorable Robert H. Oberbillig, Judge

**AFFIRMED**

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COUNSEL

Rick Alton Foley, Florence  
*Plaintiff/Appellant Pro Se*

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By Sharon S. Moyer  
*Counsel for Defendant/Appellee*

McCarter & English LLP, Boston  
By Gregory D. Cote *Admitted Pro Hac Vice*  
*Counsel for Defendant/Appellee*

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**MEMORANDUM DECISION**

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

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**H O W E**, Judge:

¶1 Rick Alton Foley appeals the trial court’s order dismissing his request for injunctive relief against Trinity Services Group, Inc. Foley argues that the trial court erred by dismissing his complaint with prejudice and that the trial court was biased. For the following reasons, we affirm.

**FACTS AND PRECEDURAL HISTORY**

¶2 Foley is incarcerated at the Arizona State Prison Complex–Eyman (“Eyman Complex”). In 1999, Foley applied for and received approval for a religious diet exemption. Foley requested an “ovo-lacto vegetarian diet with garlic cloves” and the senior chaplain approved an ovo-lacto vegetarian diet. Foley received the diet until May 2008 when the Arizona Department of Corrections (“ADOC”) modified its religious diet menu to remove the ovo-lacto vegetarian diet. All inmates on the ovo-lacto vegetarian diet, including Foley, were given the lacto vegetarian diet. In February 2011, Foley’s religious diet card expired and he failed to sign the necessary paperwork to renew his diet.

¶3 Foley submitted inmate grievances after his religious diet card expired. Foley argued during the grievance process that religious diet cards do not expire and his religious diet exemption was improperly canceled. ADOC personnel informed Foley that religious diet cards have expiration dates and that because he failed to follow the steps to renew his diet card, ADOC canceled his religious diet exemption. Without his diet card, Trinity, the company that provides food to inmates, stopped serving Foley his religious diet.

¶4 Trinity is under contract with ADOC to provide food for inmates. For inmates with authorized religious diet exemptions, Trinity ensures that the food complies with ADOC standards. Trinity does not determine who qualifies for a religious diet exemption or evaluate the propriety of an inmate’s dietary restrictions. ADOC maintains exclusive control over the process by which inmates apply for and receive religious

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diet exemptions. Trinity's only involvement with the process is distributing the physical diet card to the inmate after ADOC approves the request.

¶5 To receive a religious diet card, an inmate must first send a religious diet exemption request to an ADOC chaplain. Upon approval, the chaplain transcribes the religious diet authorization onto a Restricted Diet Order form, which is then sent to ADOC's Institutional Food Service Liaison for review and filing. The liaison then sends the order and a laminated diet card to Trinity for distribution to the inmate. Each week Trinity receives a weekly diet roster with the names of inmates who receive diet accommodations. To receive a restricted diet meal, an inmate must have an active religious request and appear on ADOC's weekly diet roster, have the physical diet card, and have received a food ticket from a prison guard. If an inmate does not appear on the weekly diet roster or fails to provide a diet card to a Trinity employee, Trinity is not permitted to serve the inmate a restricted diet meal.

¶6 In February 2016, Foley moved for a temporary restraining order, a permanent injunction, and an order to show cause against Trinity. Foley requested that the trial court order Trinity to provide him an "ovo-lacto vegetarian diet with garlic clove." Foley alleged that Trinity violated its contract with the State by failing to honor his religious diet and that as a third-party beneficiary to the contract, he could bring his complaint. Foley argued that under ADOC procedures, his religious diet card could be revoked only if he missed a certain number of meals or if he specifically requested its cancellation. According to Foley, because neither of those incidences occurred, Trinity was required to continue serving him his religious diet.

¶7 Trinity moved to dismiss or in the alternative for summary judgment. Trinity argued that ADOC was exclusively responsible for authorizing religious diets, that Foley's failure to comply with ADOC's procedures caused his religious diet to expire, and that prisoners were not third-party beneficiaries to the contract. Trinity further argued that even if Foley constituted a third-party beneficiary, he was not authorized to receive a religious diet of any kind. Trinity supported its motion with an affidavit from the food service director for Trinity at the Eyman Complex. The director's affidavit outlined Trinity's contractual relationship with ADOC and Trinity's involvement with religious diet cards. The director noted that "[Foley] nor any other inmate is a party to the contract or specifically identified anywhere in the contract. Nor does the contract contain any provisions indicating that [Foley] or any other inmate is directly owed anything under the contract." The director also stated that ADOC

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maintained exclusive control over the religious diet process. Trinity attached as exhibits ADOC's procedures that Foley referred to in his request for injunctive relief. The ADOC Diet Reference Manual stated that religious diet cards may be written for a period up to one year and that "[religious] diets may be canceled at any time by [the] Senior Chaplain by notification to the [ADOC] Food Service Liaison."

¶8 Foley did not respond to Trinity's motion or refute Trinity's alleged facts. Instead, Foley moved for an extension of time so that he could conduct discovery and file a cross-motion for summary judgment. In his motion, Foley stated that he needed to review the contract between Trinity and ADOC and also needed to obtain his "legal boxes" from his previous place of incarceration. Foley did not describe how information in his "legal boxes" would rebut any of Trinity's alleged facts. After reviewing the pleadings and Trinity's affidavit and exhibits, the trial court found that Foley's religious diet issues were between him and ADOC, not Trinity. The trial court granted Trinity's motion and dismissed the case with prejudice. Foley timely appealed.

**DISCUSSION**

**1. Motion for Summary Judgment**

¶9 Foley argues that the trial court erred by granting summary judgment in Trinity's favor because Trinity provided "false[] and fabricated material" to the trial court. Trinity attached exhibits to its motion to dismiss or in the alternative for summary judgment and the record indicates that the trial court considered the exhibits in its ruling, thus we treat Trinity's motion as a motion for summary judgment. *See Drew. v. Prescott Unified Sch. Dist.*, 233 Ariz. 522, 524 ¶ 7, 314 P.3d 1277, 1279 (App. 2013). Summary judgment is appropriate if no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Orme Sch. v. Reeves*, 166 Ariz. 301, 305, 802 P.2d 1000, 1004 (1990). "We review the grant of summary judgment de novo to determine whether any genuine issue of material fact exists, and we view the evidence and all reasonable inferences in favor of the non-moving party." *Russell Piccoli P.L.C. v. O'Donnell*, 237 Ariz. 43, 46-47 ¶ 10, 344 P.3d 345, 348-49 (App. 2015). Summary judgment should be granted when the "facts produced in support of [a] claim . . . have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim . . ." *Orme Sch.*, 166 Ariz. at 309, 802 P.2d at 1008.

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¶10 Further, “[w]here the party moving for summary judgment makes a prima facie showing that no genuine issue of material fact exists, the burden shifts to the opposing party to produce sufficient competent evidence to show that there is an issue.” *GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 5, 795 P.2d 827, 831 (App. 1990). When the party opposing summary judgment fails to controvert the facts alleged in the moving party’s affidavit, those facts may be considered true. *Modular Mining Sys., Inc. v. Jigsaw Techs., Inc.*, 221 Ariz. 515, 517 ¶ 2, 212 P.3d 853, 855 (App. 2009). If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against that party. Ariz. R. Civ. P. 56(e).

¶11 Trinity supported its motion with the food director’s affidavit, ADOC’s Food Service System Department Order 912, ADOC’s Food Service Technical Manual, and ADOC’s Diet Reference Manual. The food service director’s affidavit verified the process inmates must go through to receive a religious diet card. The affidavit also described the contractual relationship between Trinity and ADOC. The director provided that ADOC had exclusive control over the religious diet process and that ADOC alone had the authority to add and remove inmates from the religious diet roster. Additionally, the ADOC Diet Reference Manual confirmed that religious diet cards could be canceled at any time. These facts, taken together, satisfy Trinity’s burden of showing that no genuine issue of material fact existed.

¶12 Although Foley requested an extension of time to respond to Trinity’s motion, he did not controvert any of Trinity’s alleged facts. Foley merely stated that he needed to view the contract between Trinity and ADOC and needed his “legal boxes” before he could respond to Trinity’s motion. All of the pertinent exhibits that Foley needed were attached to Trinity’s motion, however. ADOC’s food manuals specifically set out how the religious diet exemption process worked and how ADOC supervised the process. Additionally, Foley knew that ADOC removed him from the religious diet roster because he went through the grievance process to reinstate his religious diet exemption. ADOC personnel informed Foley that his religious diet card had expired and was inactive. ADOC personnel did not tell Foley that Trinity removed his religious diet card because Trinity did not have the authority to unilaterally remove inmates from their religious diet exemption. Foley failed to satisfy his burden of showing that an issue of material fact existed.

¶13 The trial court noted that it had read all the pleadings and found Foley’s claims to be misdirected at Trinity. Considering only the evidence presented to the trial court, no genuine issue of any material facts exists and the trial court did not err by granting summary judgment for

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Trinity. See *Phx Baptist Hosp. & Med. Ctr., Inc. v. Aiken*, 179 Ariz. 289, 292, 877 P.2d 1345, 1348 (App. 1994) (“We review the grant of summary judgment on the basis of the record made in the trial court[.]”).

**2. Alleged Judicial Bias**

¶14 Foley next contends that the trial judge was biased solely because the court dismissed his case. In reviewing this claim, judges are “presumed to be free of bias and prejudice [and a] party must show by a preponderance of the evidence that the judge was, in fact, biased.” *Cook v. Losnegard*, 228 Ariz. 202, 206 ¶ 22, 265 P.3d 384, 388 (App. 2011). Nothing in the trial court’s ruling shows partiality or bias and “[j]udicial rulings alone do not support a finding of bias or partiality without a showing of an extrajudicial source of bias[.]” See *Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562, 568 ¶ 21, 307 P.3d 989, 995 (App. 2013). Foley’s only contention of bias is that judges try to “close out unfavorable cases” and that the judge was biased against him because he is an inmate and poor. Foley’s argument lacks any support in the record or the court’s ruling. Thus, Foley has not rebutted the presumption that judges are presumed to be free of bias.

**CONCLUSION**

¶15 For the foregoing reasons, we affirm.



AMY M. WOOD • Clerk of the Court  
FILED: AA