IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MARK SCHNIZLEIN, *Plaintiff/Appellant*,

v.

DAVID P. TINSLEY, et al., *Defendants/Appellees*.

No. 1 CA-CV 17-0172
FILED 10-31-2017

Appeal from the Superior Court in Maricopa County
No. CV2013-093206
The Honorable David M. Talamante, Judge

AFFIRMED

COUNSEL

Mark Schnizlein, Scottsdale
Plaintiff/Appellant

MEMORANDUM DECISION

Presiding Judge Lawrence F. Winthrop delivered the decision of the Court, in which Judge Diane M. Johnsen and Judge Maria Elena Cruz joined.

W I N T H R O P, Presiding Judge:

¶1 Mark Schnizlein ("Schnizlein") appeals the superior court's dismissal with prejudice of his complaint against David P. Tinsley, Maria Mejia Mejia, Karla Mendez Mejia, and Jandira Mendez Mejia (collectively, "Defendants"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The limited record before this court indicates that Schnizlein, a landlord, filed several *pro se* legal actions in justice court against Defendants for past-due rent and property damage. During the third action, the justice of the peace allegedly told Schnizlein that he accepted Schnizlein's position on total damages (approximately $24,000), but that he could only award $10,000, the jurisdictional limit of justice court.

¶3 Schnizlein then proceeded to file a complaint—on behalf of himself and purportedly on behalf of Christy Schnizlein ("Christy"), his ex-wife—in superior court against Defendants, seeking an additional $14,890. In his May 2013 complaint, Schnizlein alleged he had been "[un]able to obtain proper restitution through the Justice courts due to their $10,000 limitation."

¶4 The case was administratively dismissed without prejudice for lack of prosecution in July 2014, but was later reinstated and transferred to arbitration. After a December 2015 hearing, the arbitrator dismissed Schnizlein's claims, relying on *Peterson v. Newton*, 232 Ariz. 593 (App. 2013), to conclude the claims were barred by the doctrine of claim preclusion.

¶5 Schnizlein appealed the arbitration award, and on June 10, 2016, the superior court (1) set trial for January 17, 2017, (2) directed the parties to file a Joint Pretrial Statement by December 12, 2016, and (3) set a telephonic Trial Management Conference for December 15, 2016. The court's minute entry order also warned: "Self-represented litigants are [] required to participate. . . . Failure of any trial counsel or any self-represented litigant to participate in the telephonic Trial Management Conference may result in sanctions." Schnizlein was present at the June 10 hearing.

¶6 Nothing was filed by either party on December 12, however, and Schnizlein failed to appear at the December 15 Trial Management Conference. The superior court at that time dismissed the matter with

prejudice absent a showing of good cause to maintain the matter on the calendar. On December 19 and 27, 2016, Schnizlein filed letters entitled "I WAS NOT NOTICED IN TIME FOR THE December 15, 2016 HEARING," claiming in part that he had not received a letter noticing the hearing until December 14, and had not opened that letter until after the scheduled time for the December 15 hearing. Schnizlein filed similar letters on January 30 and February 6, 2017, arguing that "[t]he audio copy of the Judge's directive clearly shows that he asked [Christy's counsel] to do the proper notifications on a timely basis."

¶7 The court found no good cause for reinstating the matter and affirmed the dismissal, explaining its ruling as follows:

> On June 10, 2016, [Schnizlein] was present when the Court set this matter for Trial . . . and a Trial Management Conference [] scheduled for December 15, 2016 at 9:00 a.m. . . . Additionally, the parties were directed at that hearing to file a Joint Pretrial Statement no later than 5:00 p.m. on December 12, 2016. Nothing was filed by either party. The Minute Entry also reflects that the parties were provided with notice and a mailing of that Minute Entry at their address of record.
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> . . . [A]nd [] the Arbitrator found that [Schnizlein] had already secured a judgment against the named Defendants in Justice Court[. T]he Arbitrator found that [Schnizlein's] claim against Defendants was barred by the doctrine of claim preclusion.

¶8 Schnizlein timely appealed, and we have jurisdiction under Arizona Revised Statutes sections 12-2101(A)(1) (2016) and 12-120.21(A)(1) (2016).

ANALYSIS

¶9 Schnizlein argues the superior court erred in dismissing his case.

¶10 When a party or attorney fails to obey a scheduling or pretrial order, fails to appear at a Trial Management Conference, or fails to participate in good faith in the preparation of a Joint Pretrial Statement, the superior court must enter such orders as are just, including among others, and except on a showing of good cause, dismissal of the action. *See* Ariz. R. Civ. P. 16(i)(1)(A), (B), (E); 37(b)(2)(A)(v). Generally, a court has broad

discretion in imposing sanctions for violations of its orders; however, when a court imposes a severe sanction, such as dismissal, "its discretion 'is more limited than when it employs lesser sanctions.'" *In re Estate of Lewis*, 229 Ariz. 316, 323, ¶ 18 (App. 2012) (citations omitted).

¶11 Here, the record indicates Schnizlein was present at the June 10 hearing, at which the court directed the parties to file a Joint Pretrial Statement by December 12 and appear for the December 15 Trial Management Conference. Schnizlein did neither, and he presented no explanation for the failure to file a Joint Pretrial Statement. Further, his explanation for his failure to attend the Trial Management Conference was his unsupported claim that he had not received a letter noticing the hearing until the day before the hearing and had not opened that letter until after the hearing. The superior court did not abuse its discretion in determining Schnizlein's explanation failed to constitute good cause for reinstating the matter. Moreover, we agree with the arbitrator and the superior court that Schnizlein's claims in superior court were precluded because he had already voluntarily sought and obtained a judgment on the merits on those same claims against the same Defendants in justice court. *See generally Peterson*, 232 Ariz. at 597-98, ¶ 17 (concluding that claim preclusion applied to claims first adjudicated in small claims court and then brought again in superior court). Accordingly, the superior court did not err in dismissing Schnizlein's claims on this basis as well.[1]

[1] Schnizlein also asserts that Judge Talamante, the superior court judge who dismissed this case, told Schnizlein at the June 10, 2016 hearing that he would "[n]ever let [Schnizlein] win this case," implying possible bias on the part of Judge Talamante. Although the superior court's June 10, 2016 minute entry indicates "[a] record of the proceedings [wa]s made digitally in lieu of a court reporter," Schnizlein has not provided this court with a transcript of the June 10 hearing, and nothing else in the record supports his assertion. As the appellant, it was Schnizlein's duty to provide this court with a complete record, including any relevant transcripts. *See* ARCAP 11(b)(2), (c)(1)(A). Because Schnizlein has failed to provide a transcript, any meaningful review is limited, and on the record provided, we find no error. *See Romero v. Sw. Ambulance & Rural/Metro Corp.*, 211 Ariz. 200, 203, ¶ 4 (App. 2005).

CONCLUSION

¶12 The superior court's dismissal with prejudice is affirmed.

AMY M. WOOD • Clerk of the Court
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