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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MAJED ALASSADI, *Plaintiff/Appellee*,

v.

KNIGHTBROOK INSURANCE COMPANY, *Defendant/Appellee*,

GOLDBERG & OSBORNE, LLP, *Intervenor/Appellant*,

GOLDBERG & OSBORNE, LLP, *Plaintiff/Appellant/Cross-Appellee*,

v.

KNIGHTBROOK INSURANCE COMPANY, *Defendant/Appellee/Cross-Appellant*.

No. 1 CA-CV 17-0378; 1 CA-CV 18-0203
(Consolidated)
FILED 6-19-2018

Appeal from the Superior Court in Maricopa County

No. CV2016-093102

No. CV2017-091025

The Honorable David King Udall, Judge

The Honorable Joshua D. Rogers, Judge

AFFIRMED IN PART; VACATED IN PART; REMANDED

COUNSEL

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MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge James B. Morse Jr. joined.

J O N E S, Judge:

¶1 In this consolidated appeal, we address whether a trial court may deny a motion to intervene, and then enter a second ruling upon the merits of a proposed intervenor's underlying claims. For the following reasons, we affirm in part, vacate in part, and remand for further consideration.

FACTS AND PROCEDURAL HISTORY

I. Appeal from Denial of Motion to Intervene

¶2 In August 2016, Majed Alassadi, through his counsel, Intervenor/Appellant Goldberg & Osborne, LLP (G&O), filed a complaint against KnightBrook Insurance Company (KnightBrook), alleging breach of contract and bad faith associated with the nonpayment of underinsured motorist benefits. After several months of negotiations, Alassadi instructed G&O to accept a settlement offer from KnightBrook. Once the parties agreed to settle, but before KnightBrook had issued the funds, Alassadi fired G&O and contacted KnightBrook directly to finalize the payment.

¶3 G&O informed KnightBrook that Alassadi had fired the firm and that it was asserting an attorney lien on the settlement proceeds. G&O asked KnightBrook to make both Alassadi and G&O co-payees on the check and, according to G&O, KnightBrook agreed. Instead, KnightBrook made

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Alassadi the sole payee. KnightBrook then filed a notice of settlement, and the trial court placed the case on the dismissal calendar.

¶4 G&O then filed a motion to intervene pursuant to Arizona Rule of Civil Procedure 24(a), claiming an interest in the settlement proceeds. As required by Rule 24(c), G&O attached a proposed complaint in intervention against KnightBrook, which asserted both its attorney lien and a claim against KnightBrook for intentional interference with contract.

¶5 KnightBrook opposed G&O's motion to intervene by arguing each claim in the proposed complaint in intervention was unsupported by law or fact – a filing, in substance, akin to a motion to dismiss. G&O objected to KnightBrook's proposed form of order, which contained language addressing the merits of G&O's underlying claims. The trial court denied G&O's motion to intervene and signed KnightBrook's proposed form of order, which stated:

The Court, having received [G&O's] Motion to Intervene, and Defendant's Response, and for good cause appearing;

IT IS HEREBY ORDERED, that [G&O's] Motion to Intervene is denied.

IT IS FURTHER ORDERED, that [Alassadi's action against Knightbrook] be immediately dismissed with prejudice, and *that Defendant KnightBrook and its counsel have no further obligations with regard to any lien against Plaintiff Majed Alassadi.*

(Emphasis added). After an unsuccessful motion for reconsideration, requesting the court omit the emphasized language, G&O timely appealed the order.

II. Appeal from Summary Judgment; Cross-Appeal from Denial of Attorneys' Fees

¶6 Meanwhile, G&O filed a separate civil action against KnightBrook, making nearly identical claims to those within the proposed complaint in intervention. After G&O was denied intervention, KnightBrook moved for summary judgment in this second action, arguing G&O's claims were barred by the doctrine of *res judicata* because G&O's claims had already been "litigated to conclusion" in the first action. The trial court granted the motion but denied KnightBrook's request for an award of attorneys' fees pursuant to Arizona Revised Statutes (A.R.S.) § 12-

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349.¹ G&O timely appealed the summary judgment, and KnightBrook timely cross-appealed the denial of attorneys' fees.

¶7 Upon our own motion, we consolidated G&O's two appeals and KnightBrook's cross-appeal. We have jurisdiction over the appeals pursuant to A.R.S. §§ 12-120.21(A)(1) and -2101(A)(1), (3).

DISCUSSION

¶8 G&O does not appeal the denial of intervention; rather, it contends the trial court erred by including the language: "and that Defendant KnightBrook and its counsel have no further obligations with regard to any lien against Plaintiff Majed Alassadi" within its order denying the motion. We review the interpretation and application of the Arizona Rules of Civil Procedure *de novo*. See *Stafford v. Burns*, 241 Ariz. 474, 483, ¶ 35 (App. 2017) (citing *Duckstein v. Wolf*, 230 Ariz. 227, 231, ¶ 8 (App. 2012)).

¶9 To prevail on a motion to intervene as of right pursuant to Rule 24(a):

(1) the motion must be timely; (2) the applicant must assert an interest relating to the property or transaction which is the subject of the action; (3) the applicant must show that disposition of the action may impair or impede its ability to protect its interest; and (4) the applicant must show that the other parties would not adequately represent its interests.

Woodbridge Structured Funding, L.L.C. v. Ariz. Lottery, 235 Ariz. 25, 28, ¶ 13 (App. 2014) (citing *Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians & Gynecologists*, 227 Ariz. 262, 280, ¶ 60 (App. 2011)); see Ariz. R. Civ. P. 24(a)(2) (requiring the court to "permit anyone to intervene who . . . claims an interest relating to the subject of the action, and is so situated that disposing of the action in the person's absence may as a practical matter impair or impede the person's ability to protect that interest, unless existing parties adequately represent that interest"). The movant must also "attach as an exhibit to the motion a copy of the proposed pleading in intervention that sets out the claim or defense for which intervention is sought." Ariz. R. Civ. P. 24(c)(1)(B).

¹ Absent material changes from the relevant date, we cite a statute's current version.

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¶10 “It is a fundamental tenet of American law that a non-party is simply not bound by a judgment in an action to which it was not a party.” See *State ex rel. Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, 386, ¶ 17 (2000) (Martone, J. concurring). Because “a movant denied intervention is simultaneously denied party status,” *Bechtel v. Rose*, 150 Ariz. 68, 71 (1986), disposition of the prospective intervenor’s underlying claims is best left to another forum or action. Here, the trial court’s order first denied the motion to intervene, rendering G&O a non-party, but then entered a second ruling on the merits of G&O’s proposed complaint in intervention. This second ruling was in error because, by virtue of the first, G&O was not a party to the action.

¶11 KnightBrook requests this Court adopt the Restatement (Second) of Judgments § 13 cmt. d (1982), which states:

A judgment denying an application for intervention does not preclude assertion after intervenor’s claim in a subsequent action unless the denial was on grounds having a preclusive effect, for example, that the intervenor’s application failed to state a claim upon which relief might be granted.

KnightBrook also directs us to 18A Charles Alan Wright, *et al.*, *Federal Practice and Procedure* § 4438 (2d ed. 2018), which suggests a similar rule. But because the trial court did not state its grounds for denying intervention, preclusive or otherwise, neither proposition applies.

CONCLUSION

¶12 We vacate that portion of the trial court’s order stating: “and that Defendant KnightBrook and its counsel have no further obligations with regard to any lien against Plaintiff Majed Alassadi.” The denial of intervention and dismissal of the first action with prejudice are affirmed.

¶13 Because the summary judgment granted in KnightBrook’s favor in the second action was based solely upon the vacated language, that order is vacated and remanded for further proceedings consistent with this decision. In doing so, we take no position as to the merits of G&O’s claims.

¶14 Finally, we affirm the denial of KnightBrook’s request for attorneys’ fees pursuant to A.R.S. § 12-349. KnightBrook’s request was premised upon the notion that the second action was without substantial justification because G&O knew the order denying intervention precluded a second action. Because we hold otherwise, we find no abuse of discretion.

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However, nothing in this decision prevents the court from considering future requests for attorneys' fees on remand.



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