

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JACKIE CORRIGAN, *Plaintiff/Appellant*,

v.

THE ESTATE OF CHARLES CORRIGAN, et al., *Defendants/Appellees*.

No. 1 CA-CV 17-0482
FILED 5-22-2018

Appeal from the Superior Court in Maricopa County
No. CV2016-094950
The Honorable David M. Talamante, Judge

AFFIRMED

COUNSEL

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Co-Counsel for Plaintiff/Appellant

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MEMORANDUM DECISION

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge Jennifer B. Campbell joined.

B E E N E, Judge:

¶1 Jackie Corrigan (“Jackie”) appeals the superior court’s dismissal of her claims against the Estate of Charles Corrigan (the “Estate”); the Charles E. Corrigan Revocable Trust dated July 19, 2012 (the “2012 Trust”); the Charles E. Corrigan Revocable Trust as amended May 22, 2013 (the “2013 Trust”); and trustees Kim Marie Harty and Michael G. Harty (“Hartys”) (collectively, the “Defendants”). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Before their marriage in 1989, Jackie and Charles Corrigan (“Charles”) signed an antenuptial agreement which specified in relevant part that each party’s assets, debts, and sources of income prior to marriage would remain sole and separate property. In 2012, Charles created a trust, named the Hartys, his daughter and son-in-law, as successor trustees, and executed a power of attorney naming them as his agents.

¶3 In May 2013, Charles executed a trust amendment that removed the Hartys as successor trustees of the 2012 trust. In July 2013, the Hartys petitioned the probate court to set aside the 2013 Trust claiming that Charles lacked testamentary capacity. Jackie counterclaimed arguing that the Hartys (1) wrongfully interfered with her rights to community property, (2) wrongfully interfered with her rights under the antenuptial agreement, (3) breached their duties as both agents for Charles and as trustees under trusts established by Charles, and (4) breached duties they owed to Jackie.

¶4 After a trial, the probate court concluded that the 2013 Trust was invalid because Charles lacked testamentary capacity and reinstated the Hartys as successor trustees of the 2012 Trust. The court entered a final judgment denying with prejudice Jackie’s counterclaims against the Hartys. Jackie appealed the probate court’s judgment, but later withdrew her appeal. Charles died soon after the probate court’s judgment.

¶5 Jackie then filed a complaint in the superior court against the Defendants in which she brought similar claims as in the probate court suit, including breach of contract, breach of good faith and fair dealing, and fraud. The Defendants moved to dismiss the complaint on grounds that the probate court's judgment barred Jackie's complaint on *res judicata* grounds because she relied on the same evidence as in the probate court litigation, and the probate court had dismissed her claims with prejudice. The Defendants' motion also argued that no probate estate had been opened, no personal representative had been appointed, Jackie had not alleged fraud with particularity, and any fraud claims were barred by the statute of limitations.

¶6 After a hearing, the court dismissed with prejudice Jackie's claims against the 2012 Trust and the Hartys both individually and as trustees of the 2012 Trust on grounds of *res judicata*, collateral estoppel, and the statute of limitations. The court likewise dismissed without prejudice Jackie's claim for breach of contract against the Estate, finding that it lacked personal jurisdiction over the Estate because a personal representative had not been appointed. Jackie timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) and -2101(A)(1).

DISCUSSION

¶7 Jackie argues that the superior court erred and abused its discretion¹ when it entered an order stripping the personal representative of authority granted by statute, the 2012 Trust, and Charles's will to pay allowed claims after the court had already found it lacked personal jurisdiction over the personal representative.

I. The Superior Court Did Not Err in Its Ruling

¶8 We review a ruling on a motion to dismiss *de novo*. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). "We assume the well-pleaded facts alleged in the complaint are true and will affirm the dismissal only if

¹ Jackie argues that the superior court abused its discretion by granting the Defendants' motion to dismiss. However, the correct standard of appellate review on a motion to dismiss is *de novo* and not for an abuse of discretion. See *Coleman v. City of Mesa*, 230 Ariz. 352, 355-56, ¶ 7 (2012) ("Dismissal of a complaint under Rule 12(b)(6) is reviewed *de novo*. We clarify the standard of appellate review here because our past statements have been inconsistent."). Therefore, we do not consider this argument.

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the plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof.” *Zubia v. Shapiro*, 243 Ariz. 412, __, ¶ 13 (2018) (internal quotation and citation omitted).

¶9 Jackie argues that the superior court erred by dismissing the personal representative, “a party over whom it had no personal jurisdiction,” and stripping the personal representative “of rights and duties” that limit the personal representative’s “authority to act” and “effectuate the intent of the Settlor.”

¶10 Jackie’s argument misses the mark. Here, the superior court did not err as the court’s ruling did not pertain to the personal representative of the Estate. Indeed, the court’s order does not limit the personal representative’s authority to pursue any claims on behalf of the Estate. Instead, the court’s order specifically limits Jackie’s ability to bring claims against the Defendants. Specifically, the June 20, 2017 order stated,

IT IS ORDERED dismissing with prejudice all claims presented in the Complaint, including collections arising therefrom against other parties, against THE CHARLES E. CORRIGAN REVOCABLE TRUST, dated July 19, 2012, and KIM MARIE HARTY and MICHAEL G. HARTY, individually and as Trustees of THE CHARLES E. CORRIGAN REVOCABLE TRUST, dated July 19, 2012.

[...] Any damages shall not be collectable against THE CHARLES E. CORRIGAN REVOCABLE TRUST, dated July 19, 2012, or KIM MARIE HARTY and MICHAEL G. HARTY, individually and as trustees of THE CHARLES E. CORRIGAN REVOCABLE TRUST, dated July 19, 2012.

¶11 Jackie does not argue on appeal that the court erred in ruling on *her* claims against the Defendants, and Jackie has no standing to bring claims on behalf of the personal representative of the Estate. Even assuming that the allegations of Jackie’s complaint were true, her appeal is unreasonable because it fails to address the court’s ruling, and she would “not be entitled to relief under any interpretation of the facts susceptible of proof.” *Zubia*, 243 Ariz. at __, ¶ 13. Therefore, we affirm the court’s grant of the motion to dismiss.

II. Attorneys’ Fees

¶12 We deny Jackie’s request for attorneys’ fees and costs on appeal. The Defendants request attorneys’ fees under ARCAP 21 and

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A.R.S. §§ 12-341.01, 12-349, 14-1105, and 14-11004(B). A.R.S. § 12-349 allows for a party to recover attorneys' fees if a claim is brought without substantial justification, meaning "that the claim or defense is groundless and is not made in good faith." A.R.S. § 12-349(F). A.R.S. § 14-1105 authorizes an award of attorneys' fees and expenses to an estate when an opposing party has engaged in "unreasonable conduct." A.R.S. § 14-1105(A).

¶13 Here, Jackie's claims were brought without substantial justification, and Jackie's attorneys have engaged in unreasonable conduct by arguing claims on appeal that are not related to the superior court's ruling. It was improper for Jackie's attorneys to present arguments on behalf of a personal representative who has not been appointed and is not a party to this suit. The court's ruling clearly pertained to Jackie and not a personal representative. A.R.S. § 14-11004(B) permits us to "order that a party's reasonable fees, expenses and disbursements . . . be paid by any other party or the trust that is the subject of the judicial proceeding."

¶14 For the reasons set forth in this decision, Jackie's claims were brought without substantial justification and Jackie and her attorneys' conduct was unreasonable. We therefore award the Hartys their reasonable taxable costs and reasonable attorneys' fees upon compliance with ARCAP 21. Moreover, we grant the Defendants' request that Jackie and her attorneys be held jointly and severally liable to pay Defendants' fees and costs. A.R.S. § 14-11004(B).

CONCLUSION

¶15 For the foregoing reasons, we affirm.



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