IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MIKE SPRINKLE, *Plaintiff/Appellant*,

v.

CADBURY COMMONS COMMUNITY

ASSOCIATION INC., *Defendant/Appellee*.

No. 1 CA-CV 17-0614
FILED 9-20-2018

Appeal from the Superior Court in Maricopa County
No. CV 2014-051027
The Honorable Aimee L. Anderson, Judge (Retired)

AFFIRMED

COUNSEL

Sandoval Law, PLLC, Phoenix
By David J. Sandoval
Counsel for Plaintiff/Appellant

Hill Hall & DeCiancio, PLC, Phoenix
By R. Corey Hill, Ginette M. Hill, Christopher Robbins
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Presiding Judge Jennifer B. Campbell delivered the decision of the Court, in which Judge Maria Elena Cruz and Judge Diane M. Johnsen joined.

C A M P B E L L, Judge:

¶1 Mike Sprinkle appeals the superior court's judgment ordering him to pay the attorney fees and taxable costs of Cadbury Commons Community Association, Inc. ("Cadbury") based on Arizona Revised Statutes ("A.R.S") § 12-341.01. For the following reasons, we affirm.

BACKGROUND

¶2 Mike Sprinkle resided in a home on Marshall Avenue in Phoenix (the "Property"). The Property was owned by MMM Diversified, LLC ("MMM"), of which Sprinkle was the managing member. Pursuant to a recorded Declaration of Covenants, Conditions and Restrictions, Cadbury was responsible for the maintenance and repair of any landscaping improvements in a common area adjacent to the Property.

¶3 In June 2014, Sprinkle and MMM together sued Cadbury for allegedly failing to maintain and repair a sprinkler system near the Property. Their complaint alleged that the "unrelenting water spray" from the sprinkler system caused exterior damage to the Property as well as "toxic mold contamination" that caused Sprinkle and his wife adverse health effects, which forced them to leave the Property and diminished its value. The complaint included one claim of negligence and one claim of breach of contract, alleging that Sprinkle was an intended third-party beneficiary of the contract between MMM and Cadbury.

¶4 Cadbury filed a motion for partial summary judgment against Sprinkle in July 2016, arguing that (1) Cadbury owed no contractual duties to Sprinkle, either directly or as a third-party beneficiary, and (2) the claims of toxic-mold "ouster" and diminution in value were legally and factually deficient. Sprinkle did not file any response, and the superior court granted partial summary judgment in favor of Cadbury on Sprinkle's claims.

¶5 Cadbury filed an application for attorney fees, and Sprinkle responded. The superior court awarded Cadbury the full amount of fees it sought and entered judgment pursuant to Arizona Rule of Civil Procedure

54(b) against Sprinkle in the amount of $23,134.90, plus taxable costs of $819.35 pursuant to A.R.S. § 12-341.01.

DISCUSSION

¶6 Sprinkle contends the superior court abused its discretion by ordering him to pay all of Cadbury's attorney fees, rather than apportioning the award to reflect only the fees Cadbury incurred defending specifically against his personal breach of contract claim. Because his various arguments in support of this contention are either waived or unpersuasive, we reject them.

¶7 "In any contested action arising out of a contract, . . . the court may award the successful party reasonable attorney fees." A.R.S. § 12-341.01(A). Such an award of reasonable attorney fees "should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense." A.R.S. § 12-341.01(B). We review an award of attorney fees under A.R.S. § 12-341.01 for an abuse of discretion and may affirm the award if it has any reasonable basis. *Peterson v. City of Surprise*, 244 Ariz. 247, 253, ¶ 25 (App. 2018).

¶8 After Cadbury filed its application for attorney fees under A.R.S. § 12-341.01, Sprinkle filed a response making only two objections: (1) Cadbury had not yet prevailed over MMM, making an award of attorney fees under A.R.S. § 12-341.01 premature,[1] and (2) the "attorney fees and costs [Cadbury] now seeks in its pending Application are the same costs and fees that were necessarily incurred in defense of the claims brought by MMM," making it "unjust" to order Sprinkle alone to pay all of Cadbury's fees and costs.

¶9 On appeal, Sprinkle first argues the superior court abused its discretion by failing to apportion Cadbury's fees between those it incurred in defense of his negligence claim and those it incurred in defense of his contract claim within the meaning of A.R.S. § 12-341.01.

¶10 It is well-established that a successful party on a contract claim may recover attorney fees expended on "interwoven" contract and tort claims. *Ramsey Air Meds, L.L.C. v. Cutter Aviation, Inc.*, 198 Ariz. 10, 13, ¶ 17 (App. 2000) (citation omitted). When such claims are factually

[1] Sprinkle does not reassert this argument on appeal, and has therefore waived it. *See Schabel v. Deer Valley Unified School Dist. No. 97*, 186 Ariz. 161, 167 (App. 1996) ("Issues not clearly raised and argued in a party's appellate brief are waived.").

interwoven, there is no mandate requiring the superior court to apportion the fees incurred in defending the contract claim from those incurred in defending the tort claim under A.R.S. § 12-341.01. Whether the contract and tort claims in Sprinkle and MMM's suit were sufficiently distinct—i.e., not interwoven—so as to require apportionment is an issue that Sprinkle did not argue in the superior court. Because Sprinkle raises this argument for the first time on appeal, we decline to address it. *See Odom v. Farmers Ins. Co. of Ariz.*, 216 Ariz. 530, 535, ¶ 18 (App. 2007) ("Generally, arguments raised for the first time on appeal are untimely and deemed waived.").

¶11 Sprinkle next argues it was an abuse of discretion for the superior court to order him to pay fees Cadbury incurred in defending against MMM's claims, and asserts that "[t]he time records submitted in support of Cadbury's application show that virtually all the time and costs expended were focused on Cadbury's development of defenses to [MMM's] claims." Both Sprinkle's and MMM's claims, however, proceeded from the same factual premise: that Cadbury allegedly failed to maintain and repair the sprinkler system, causing it to spray the house and leading to the development of mold. The superior court has broad discretion to award and determine the amount of attorney fees under A.R.S. § 12-341.01. *Vortex Corp. v. Denkewicz*, 235 Ariz. 551, 562, ¶ 39 (App. 2014). Sprinkle has not shown that the superior court exceeded its authority by ordering him to pay Cadbury's fees, and we detect no abuse of discretion.

¶12 Sprinkle further argues, without citation to authority, that the superior court abused its discretion with its "dilatory ruling" that "summarily and without explanation disregarded the distinction between these claims." We disagree. The superior court is not required to set forth detailed factual bases for fee awards, and "[a]s long as the record reflects a reasonable basis for the award, we will uphold it." *Orfaly v. Tucson Symphony Soc'y*, 209 Ariz. 260, 267, ¶ 25 (App. 2004).

CONCLUSION

¶13 For the foregoing reasons, we affirm. Cadbury requests an award of attorney fees on appeal under A.R.S. § 12-341.01(A). We decline to award fees on appeal, but as the prevailing party, we award Cadbury its costs on appeal upon compliance with Arizona Rule of Civil Appellate Procedure 21.

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