

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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NATIONAL SIGN FABRICATIONS, INC., et al., *Plaintiffs/Appellees*,

*v.*

AARON J. MILLER, et al., *Defendants/Appellants*.

No. 1 CA-CV 19-0439

FILED 3-24-2020

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Appeal from the Superior Court in Maricopa County

No. CV2018-010819

The Honorable Daniel G. Martin, Judge

**AFFIRMED**

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COUNSEL

Iannitelli Marcolini, P.C., Phoenix  
By Claudio E. Iannitelli, Jason K. Thomas  
*Counsel for Plaintiffs/Appellees*

Holden & Armer, P.C., Phoenix  
By Nathan S. Ryan  
*Counsel for Defendants/Appellants*

**MEMORANDUM DECISION**

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge James B. Morse Jr. joined.

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**P E R K I N S**, Judge:

¶1 Aaron and Alicia Miller (“Appellants”) appeal from the trial court’s denial of their motion for new trial and summary judgment for National Sign Fabricators, Inc. and Bonas Investments LLC (“Appellees”). We affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Appellees sued Appellants for two counts of breach of contract. About two months later, Appellants filed their answer in *propria persona*. Appellees moved for summary judgment the following month, arguing that the facts admitted in the answer left no genuine dispute as to liability. Appellants responded, conceding liability but disputing the amount of damages. Appellees replied, arguing they properly established the amount of damages.

¶3 The trial court set oral argument on the motion for summary judgment. Appellants did not appear and the court proceeded in their absence, finding no genuine issue of material fact on either liability or damages.

¶4 Counsel then appeared for Appellants and moved for a new trial and relief from judgment under Arizona Rules of Civil Procedure 59 and 60. Appellants claimed that “[w]hile no attorney appeared on behalf of [Appellants] prior to summary judgment, an attorney was reviewing, analyzing, and ghost-writing for [Appellants] all submissions in the case.” Appellants claimed their “ghost-writing” counsel was responsible for the failures which resulted in summary judgment for Appellees. Appellees responded that Appellants’ claims were “unsubstantiated and unsupported” by “any affidavit or other supporting documents[.]” Appellants replied with affidavits that explained the role of prior shadow counsel and attributed their absence at oral argument to a family medical emergency. While the trial court explained that it was “not unsympathetic to [Appellants’] position[.]” it nevertheless concluded that Appellants

“failed to demonstrate that proper legal grounds exist upon which to grant relief under Rules 59 and 60.” The trial court entered final judgment, and Appellants timely appealed.

## DISCUSSION

¶5 We review the trial court’s denial of the motion for new trial for an abuse of discretion. *Herberman v. Bergstrom*, 168 Ariz. 587, 590 (App. 1991). Appellants contend the trial court abused its discretion by failing to consider affidavits attached to Appellants’ reply in support of their new trial motion, and by failing to set aside summary judgment based on the actions of their prior counsel. We disagree.

¶6 The reply brief is not a mechanism for parties to offer proof, hoping to cure the evidentiary holes in their motion. *See Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 215 n.3 (App. 2012) (noting that a deficient summary judgment motion was not properly remedied by attaching new evidence to the reply brief). That said, the record does not even show the trial court ignored the affidavits. The court’s minute entry demonstrates that it saw the affidavits and knew that they contained some alleged evidence of excusable neglect. Assuming that the court did not consider the contents of the affidavits, it did not abuse its discretion.

¶7 Appellants’ remaining argument hinges on an apparent belief that the trial court granted summary judgment as a sanction and did not reach a decision on the merits. Appellants believe that the trial court should have granted a new trial once confronted with the specific facts of their alleged shadow counsel’s actions.

¶8 But Appellants conceded liability in the trial court and here, leaving only the amount of damages at issue. The parties fully addressed damages in the summary judgment pleadings thus providing the trial court sufficient grounds to grant summary judgment on the merits. *See* Ariz. R. Civ. P. 56(a) (“The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.”).

¶9 Appellants argue the trial court abused its discretion by failing to analyze their argument under Rule 59(a)(1)(A), which allows trial courts to grant a new trial for “any irregularity in the proceedings or abuse of discretion depriving the party of a fair trial.” Appellants also do not develop an argument for excusable neglect under Rule 60.

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¶10 The record shows the trial court considered and rejected these arguments—it specifically held that “[Appellants] have failed to demonstrate that proper legal grounds exist upon which to grant relief under Rules 59 and 60.” Appellants cite no contrary authority and we find none. *See King v. Superior Court*, 138 Ariz. 147, 151 (1983) (“While attorney misconduct can be a basis for the granting of a new trial, . . . a party’s mere dissatisfaction with his own counsel or allegations of his own counsel’s neglect, inadvertence, or mistake do not justify the granting of a new trial in civil cases.”) (internal citations omitted). We find no abuse of discretion.

**CONCLUSION**

¶11 We affirm. Appellees request their attorney fees and costs on appeal pursuant to the terms of their written contracts with Appellants. Appellees are the successful party; they may recover reasonable attorney fees and taxable costs upon compliance with ARCAP 21.



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