

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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LAY ALLEN GERDES, *Plaintiff/Appellant*,

*v.*

AT&T MOBILITY, LLC, *Defendant/Appellee*.

No. 1 CA-CV 21-0112  
FILED 9-30-2021

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Appeal from the Superior Court in Maricopa County  
No. CV 2020-006585  
The Honorable James D. Smith, Judge

**AFFIRMED**

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APPEARANCES

Lay Allen Gerdes, Tempe  
*Plaintiff/Appellant*

Lake & Cobb, P.L.C., Tempe  
By Richard L. Cobb, Hank E. Pearson  
*Counsel for Defendant/Appellee*

**MEMORANDUM DECISION**

Presiding Judge D. Steven Williams delivered the decision of the Court, in which Judge David B. Gass and Judge James B. Morse Jr. joined.

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**WILLIAMS**, Judge:

¶1 Lay Allen Gerdes appeals the superior court's grant of summary judgment for his wireless cell phone carrier, AT&T Mobility, LLC ("AT&T"). For reasons that follow, we affirm.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 This matter arises out of a dispute between Gerdes and AT&T. In 2017, Gerdes responded to an AT&T advertisement offering same-day delivery of a cell phone. When Gerdes contacted AT&T about the advertisement, he was told that if he purchased the phone his monthly bill would increase by \$10.00 per month. Gerdes placed an order, but the phone wasn't delivered until two days later, and his monthly bill increased by nearly \$100.00 per month. In 2019, Gerdes contacted AT&T disputing the additional charges, as well as the two-day delay in receiving the cell phone. To resolve the matter, Gerdes and AT&T entered into a settlement agreement.

¶3 In relevant part, the agreement provided:

1. AT&T agrees to apply a one-time **\$2,025.00** Service Credit to the [a]ccount, as a courtesy. This credit is equivalent to a year and a half (18 months) of service. Any additional compensation is unwarranted;
2. Both [Gerdes] and AT&T agree that this Agreement shall remain confidential and that neither party shall disclose the terms to any third party unless compelled to do so under [a court] order . . . ;
3. [Gerdes] does hereby fully and forever waive, release, extinguish and forever discharge AT&T . . . from any and all claims, costs, and expenses, including attorneys' fees, demands or suits . . . which [Gerdes] may have or claim to have against AT&T relating in any way to [Gerdes']

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wireless service with AT&T, including but not limited to, claims related to charges on [Gerdes'] account and claims arising from or related to [this] [d]ispute . . . ;

4. [Gerdes] agree[s] not to proceed with litigation, including but not limited to arbitration or small claims action, as the issues raised in [this] Dispute are resolved between the parties . . . [.]

¶4 Within two weeks, AT&T credited Gerdes' account in two installments of \$1,500.00 and \$550.00. When Gerdes requested additional compensation, AT&T refused. Gerdes then sued AT&T claiming breach of contract, arguing, in part, that he anticipated the \$2,025.00 would be given to him in the form of cash, and that he did not anticipate he would continue to be charged a monthly service fee for his ongoing cellular service. AT&T moved for summary judgment claiming it was undisputed that AT&T provided Gerdes the credit agreed to under the settlement agreement and that Gerdes could not establish a breach of contract. Following oral argument, the court issued an under advisement ruling granting summary judgment for AT&T.

¶5 Gerdes moved for reconsideration, which the court denied, and then timely appealed once the court issued an order with Arizona Rule of Civil Procedure 54(c) finality language. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and A.R.S. § 12-2101(A).

### DISCUSSION

¶6 Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). On appeal, we review a grant of summary judgment de novo, *Dreamland Villa Cmty. Club, Inc. v. Raimey*, 224 Ariz. 42, 46, ¶ 16 (App. 2010), "view[ing] the facts and reasonable inferences in the light most favorable to the non-prevailing party," *Rasor v. Nw. Hosp., LLC*, 243 Ariz. 160, 163, ¶ 11 (2017).

¶7 Gerdes makes a variety of arguments, including that the superior court failed to consider all the evidence he provided, and that AT&T breached the settlement agreement. However, we decline to address these arguments because Gerdes has failed to provide record citations in his written briefs and does not support his contentions with citations to any legal authority. See ARCAP 13(a)(7) (requiring arguments on appeal to contain supporting reasons, citations to legal authorities, relevant references to the record, and applicable standard of appellate review); *In re*

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*Aubuchon*, 233 Ariz. 62, 64–65, ¶ 6 (2013) (“[A]rguments not supported by adequate explanation, citations to the record, or authority” are waived.).

¶8 Further, the terms of the settlement agreement are clear on its face, as is the record that AT&T made good in crediting Gerdes’ account. *See Nat’l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 115, ¶12 (App. 2008) (once the moving party shows there are no genuine issues of material fact, the party opposing the summary judgment must come forward with evidence to the contrary). Thus, there is no genuine dispute of material fact and the court appropriately ruled for AT&T based upon the language of the settlement agreement.

¶9 Gerdes also challenges the superior court’s award of attorneys’ fees and costs to AT&T. Gerdes did not respond or object to AT&T’s request in the superior court and only challenged it after the court had awarded fees and costs. Thus, Gerdes cannot contest the award on appeal. *See MacMillan v. Schwartz*, 226 Ariz. 584, 592, ¶39 (App. 2011) (providing that a failure to object in the superior court “constitutes waiver”).

¶10 AT&T requests attorneys’ fees and costs on appeal under A.R.S. § 12-341.01. In our discretion, we award AT&T its reasonable attorneys’ fees on appeal. Upon compliance with ARCAP 21, AT&T is also awarded its costs.

CONCLUSION

¶11 For the foregoing reasons, we affirm the superior court’s grant of summary judgment for AT&T.



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