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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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PAULA BOURNE, et al., *Plaintiffs/Appellants*,

*v.*

BANNER UNIVERSITY MEDICAL CENTER PHOENIX, LLC,  
*Defendant/Appellee.*

No. 1 CA-CV 22-0588  
FILED 6-29-2023

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Appeal from the Superior Court in Maricopa County  
No. CV2019-052683  
The Honorable Melissa Iyer Julian, Judge

**AFFIRMED**

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COUNSEL

Paula Bourne and Douglas Bourne, Dewey  
*Plaintiffs/Appellants*

Slattery Petersen PLLC, Phoenix  
By Elizabeth A. Petersen, Bradley W. Petersen  
*Counsel for Defendant/Appellee*

**MEMORANDUM DECISION**

Judge Anni Hill Foster delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Randall M. Howe joined.

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**F O S T E R**, Judge:

¶1 Plaintiffs Paula and Douglas Bourne appeal the superior court’s dismissal with prejudice of their medical malpractice action. For the following reasons, the superior court’s decision is affirmed.

**FACTS AND PROCEDURAL HISTORY**

¶2 In February 2019, the Bournes sued Banner University Medical Center Phoenix, LLC (“Banner”) for medical malpractice. The suit stemmed from care provided to Paula after a knee surgery where a resident physician ordered an inappropriate dosage of narcotic pain medication. The Bournes alleged negligence and vicarious liability claiming that the dosage caused respiratory failure, impaired vision and other complications. The Bournes were initially represented by an attorney who withdrew, stating he was unable to locate or retain an expert that could support causation and differing opinions on case strategy. The Bournes then pursued their case as self-represented parties.

¶3 From the start, the Bournes failed to follow court procedures for prosecuting their case. They emailed letters directly to the superior court accusing their former attorney of unethical and unprofessional conduct. At one point, the Bournes attached email exchanges to a motion for protective order that contained vile, inappropriate, demeaning and insulting communications that Douglas directed at defense counsel. They accused Banner of criminally falsifying its medical records because the records did not contain the same information shared by medical personnel and recorded by Douglas during Paula’s hospitalization. Another time, the Bournes interfered with the deposition of a third-party witness, manufactured a discovery problem that did not exist and accused the witness, her employer, Banner and defense counsel of perjury and suppressing evidence favorable to the Bournes.

¶4 Even after being instructed by the superior court on the proper process for filing documents with the court, the Bournes repeatedly

BOURNE, et al. v. BANNER UNIVERSITY  
Decision of the Court

filed motions, replies, improper “notices” or “letters” and included exhibits that were: (1) already part of the record (and sometimes hundreds of page) (2) irrelevant to the underlying motions; and (3) prohibited by the Arizona Rules of Civil Procedure (“Rule” or “Rules”). The Bournes also repeatedly filed discovery documents with the court rather than simply serving them on the opposing party, as required by the Rules.

¶5 Further, the Bournes accused the superior court of interfering in an alleged criminal investigation at the Arizona Attorney General’s Office and claimed the court was biased, prejudiced and would not give them a fair trial, because of the judge’s prior employment. The Bournes threatened to file a federal civil rights lawsuit unless the court ruled in their favor. During one oral argument, the Bournes became visibly upset and interrupted defense counsel’s presentation to the point that the superior court had to reschedule the hearing. After years of escalating misconduct, the superior court *sua sponte* scheduled a hearing to determine whether the Bournes should be subject to sanctions for their behavior and whether they should be declared vexatious litigants. The Bournes’ misconduct, including a refusal to cooperate in preparing a joint statement of discovery dispute and a declaration by the Bournes that they would no longer participate in the discovery process, severely hampered the ability to resolve the case.

¶6 Following this order, Banner moved to declare the Bournes vexatious litigants and requested sanctions. On May 18, 2021, the superior court held a six-hour evidentiary hearing at which Douglas admitted he would not allow Paula to be examined under Rule 35 until Banner admitted that it was negligent. Douglas also admitted he had failed to provide requested documents and audio recordings. The Bournes further stated they would not participate in discovery, and it was also revealed that Douglas sent copies of medical records to either a third-party witness or her attorney before her deposition in direct contravention of the Rules.

¶7 After the evidentiary hearing, in a detailed 38-page ruling, the superior court outlined approximately two years of escalating misconduct by the Bournes that resulted in the superior court’s finding that they obstructed and delayed the discovery process and the case. The court declared the Bournes vexatious litigants under A.R.S. § 12-3201 and imposed sanctions due to repeated violations of the Rules but stopped short of dismissing the case. The court required the Bournes to: (1) seek leave before making filings; (2) to cease accusing Banner, its counsel, witnesses, or the court of being liars or any other pejorative descriptions; (3) to limit objections at deposition to “form” or “foundation;” and (4) permitted Banner to seek further relief from the court if the Bournes failed to appear

BOURNE, et al. v. BANNER UNIVERSITY  
Decision of the Court

for deposition. The court admonished the Bournes and warned that if they violated the order the court could impose further sanctions, including dismissal of their complaint with prejudice.

¶8 In the wake of the vexatious-litigant ruling, the Bournes' failure to comply with the Rules and the court's orders continued. After being fully briefed, the court denied the Bournes' motion for summary judgment, concluding there were genuine issues of material fact yet to be resolved. Around this same time, Banner moved for the sanction of dismissal, alleging the Bournes again refused to sit for depositions and refused to allow their experts to be deposed. At oral argument on the motion, Douglas repeatedly attempted to argue the previously denied summary-judgment motion, which was not at issue. To provide the Bournes with the opportunity to pursue their case on the merits, the court granted the Bournes' request to expand the time for oral argument and permitted both parties to submit simultaneous supplemental briefing.

¶9 The Bournes, though, took this opportunity to file a brief that included a 128-slide PowerPoint presentation, as an exhibit, that was narrated by Douglas and lasted 3 hours and 48 minutes. Many of the slides focused on the merits of the claims against Banner, which were not at issue, repeated arguments and pointed out evidence already brought to the superior court's attention on previous occasions. The slides also continued personal attacks against defense counsel. Additionally, in advance of an evidentiary hearing on Banner's motion for sanctions, the Bournes filed applications seeking leave to file: (1) a request for court enforcement to "deny" Banner's exhibits, contending they were criminally falsified; and (2) an objection to the upcoming evidentiary hearing. The Bournes accused Banner, its counsel, and her colleagues of committing "potentially a very serious Cybercrime" by "crashing" the Bournes' Dropbox account.

¶10 The day before the scheduled evidentiary hearing, Douglas contacted the court, yelled at court staff to cancel the hearing and then hung up. The Bournes then filed a "notice cancellation" of the evidentiary hearing, argued their position regarding the motion for sanctions, accused defense counsel of committing criminal acts, including threatening them and demanded criminal prosecution. The Bournes declared the hearing cancelled, demanded Banner's alleged criminal falsification of medical records be addressed, and asked that the Department of Justice, Federal Bureau of Investigation and Phoenix Police Department move forward with a joint criminal investigation.

BOURNE, et al. v. BANNER UNIVERSITY  
Decision of the Court

¶11 Despite having filed their notice of “canceling” the hearing, the Bournes appeared at the evidentiary hearing. The superior court admonished the Bournes to comport themselves in a professional manner with staff. Douglas admitted the failure to timely disclose exhibits to defense counsel. The court reviewed exhibits demonstrating the Bournes had not yet been deposed and would not cooperate in scheduling depositions. The court also learned that the Bournes refused to follow court orders at expert depositions and demonstrate basic, civil comportment by refraining from name-calling and personal attacks.

¶12 During the hearing, the Bournes repeated personal attacks against defense counsel. The court noted that it had attempted to move the case forward to trial and had set a jury trial date, but that the Bournes had “continued to obstruct the path towards trial and foment conflict.” The court concluded that based on the Bournes’ willful disregard for the Rules, court orders and refusal to litigate in good faith, sanctions lesser than dismissal had been ineffective. The superior court also found that the Bournes’ refusal to focus on discrete issues permeated their filings and that presentation at hearings had made “conducting the business of the Court and adjudicating [the] case on the merits virtually impossible.”

¶13 Ultimately, the superior court dismissed the Bournes’ complaint with prejudice as a sanction for discovery violations under Rule 37. The 33-page ruling again meticulously detailed the conduct warranting imposition of the sanction of dismissal. The court entered final judgment for Banner and ordered the Bournes to pay Banner’s taxable costs.

¶14 This Court has jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

## DISCUSSION

¶15 A trial court’s order for dismissal based on discovery violations is reviewed for an abuse of discretion. *Rivers v. Solley*, 217 Ariz. 528, 530, ¶ 11 (App. 2008).

¶16 Preliminarily, it is noted the Bournes violated appellate court rules by failing to set forth relevant facts, identify discernible issues, develop arguments and cite authorities or relevant parts of the record in their briefs. *See* Ariz. R. Civ. App. P. 13(a)(5)-(7). This Court has attempted to discern their arguments as best it can and considers only adequately supported arguments. *See In re Aubuchon*, 233 Ariz. 62, 64-65, ¶ 6 (2013). Arguments unsupported by law and fact are waived. *Id.*

**I. This Court lacks jurisdiction over the denial of summary judgment.**

¶17 The Bournes argue the superior court erred in denying their motion for summary judgment. An order denying a motion for summary judgment is not appealable and generally is not subject to review from an appeal from a final judgment. *Fernandez v. Garza*, 93 Ariz. 318, 320 (1963); *Navajo Freight Lines, Inc. v. Liberty Mut. Ins. Co.*, 12 Ariz. App. 424, 427-28 (1970). When an appellate court grants review of a denial of summary judgment, it does so when the superior court has denied the motion on a point of law. *See Strojnik v. Gen. Ins. Co. of Am.*, 201 Ariz. 430, 433, ¶ 11 (App. 2001).

¶18 Here, the superior court denied the Bournes' motion for summary judgment because it found a genuine factual dispute whether Banner's treatment fell below the standard of care. Because the superior court did not deny the motion on a point of law this Court lacks jurisdiction to review the denial of summary judgment. *Id.*

**II. The vexatious-litigant ruling was supported by the record.**

¶19 The Bournes state the superior court erred in declaring them vexatious litigants. The superior court may designate a litigant vexatious under A.R.S. § 12-3201 and through its inherent authority. *See Madison v. Groseth*, 230 Ariz. 8, 14, ¶ 17 (App. 2012). Under A.R.S. § 12-3201, a self-represented litigant may be designated a vexatious litigant if the court finds he engaged in vexatious conduct. A.R.S. § 12-3201(C). Vexatious conduct includes conduct that unreasonably expands or delays proceedings, abuses discovery, and involves the "[r]epeated filing of documents or requests for relief that have been the subject of previous rulings by the court in the same litigation." A.R.S. § 12-3201(E). Once declared vexatious, a self-represented litigant may not file pleadings, motions, or the like without previous court approval. A.R.S. § 12-3201(B).

¶20 Aside from the conclusory statement that the vexatious-litigant ruling is unconstitutional, the Bournes fail to develop any argument providing a basis to vacate the ruling. For this reason, this argument is waived. *In re Aubuchon*, 233 Ariz. at 64-65, ¶ 6. Notwithstanding waiver, the Bournes seem to believe that because the superior court at one point early in the litigation stated that Plaintiffs "prosecuted this case to the best of their abilities," they were not—and could not be—vexatious litigants. The Bournes' belief ignores the conduct they engaged in after the court made this statement, conduct that provided the basis for the later vexatious-

BOURNE, et al. v. BANNER UNIVERSITY  
Decision of the Court

litigant ruling. Also, it ignores repeated direction and caution from the court on their behavior and conduct in prosecuting the case. The court meticulously documented the conduct it considered vexatious in its ruling, including the Bournes' unreasonable expansion of the proceedings, discovery abuses, repeated filing of the same documents, and requests for relief that the court had already ruled on. The superior court's ruling acknowledged that the Bournes were given too much leeway and this Court agrees. The record supports the court's ruling.

**III. The Bournes presented no basis to vacate the dismissal order.**

¶21 The Bournes assert the superior court erred in dismissing their complaint out of retaliation for filing several complaints with the Arizona Commission on Judicial Conduct and because the judge who entered the dismissal order had an alleged conflict of interest. The court, however, expressly stated that it was not sanctioning the Bournes for any contact they had with law enforcement or other disciplinary authorities or entities, such as the State Bar or the Arizona Commission on Judicial Conduct. The Bournes have made no factual showing to the contrary. Moreover, the record amply supports the court's ruling.

¶22 The record clearly supports the superior court's dismissal of the complaint as a sanction under Rule 37, which permits dismissal for the failure to comply with discovery orders and the failure to provide timely disclosures. Ariz. R. Civ. P. 37(b)(2)(A)(v), 37(c)(3)(C). Dismissal as a sanction requires due process, including an evidentiary hearing when indicated. *Rivers*, 217 Ariz. at 531, ¶ 13. The court must make an express finding that a party has obstructed discovery and the court must consider and reject lesser sanctions. *Id.*

¶23 Here, before dismissing the Bournes' claims, the record shows the superior court held two evidentiary hearings on sanctions. It initially imposed lesser sanctions to allow the Bournes to pursue their case. But, in short order, the Bournes continued the behavior that resulted in sanctions, willfully disobeyed the superior court's orders and willfully obstructed discovery. The court did not abuse its discretion by dismissing the complaint under these circumstances.

¶24 On the allegation of conflict of interest, the Bournes fail to develop any viable argument and thus waive the allegation; however, this Court will address the issue because our citizens deserve confidence in the integrity of the judiciary. *In re Aubuchon*, 233 Ariz. at 64-65, ¶ 6. Baseless personal attacks do not constitute evidence. Courts deal with facts and law,

BOURNE, et al. v. BANNER UNIVERSITY  
Decision of the Court

both of which have been absent in the Bournes' prosecution of their case. Instead, the Bournes have largely relied on unsupported allegations, invective, insults and manipulation to achieve the result they desire. These tactics have no place in the courts or justice system.

¶25 The Bournes were provided every opportunity—over and above that normally provided—to have their dispute heard in a court of law. They squandered that opportunity and instead focused on baseless allegations against every person involved in this case. They provided no facts or law to support their allegations. For these reasons there is no basis to vacate the dismissal order.

**IV. The judgment of costs was appropriate.**

¶26 Finally, the Bournes contend the superior court erred in granting Banner judgment and awarding Banner costs, arguing the judgment is “null and void” because it is based on the previous dismissal order entered by a judge who allegedly had an unconstitutional judicial conflict of interest. The Bournes fail to develop any argument providing a basis to overturn the judgment or award of taxable costs and thus waive the same. *Id.* Costs to the prevailing party are mandatory under A.R.S. § 12-341.

**CONCLUSION**

¶27 For the foregoing reasons, the superior court's ruling is affirmed. Costs and fees are awarded to Banner upon compliance with Ariz. R. Civ. App. P. 21.



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