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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 05-04-2010  
PHILIP G. URRY, CLERK  
BY: DN

MARICOPA COUNTY SHERIFF'S ) 1 CA-CV 09-0255  
OFFICE, )  
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Plaintiff/Appellee, )  
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) DEPARTMENT E  
)  
) **MEMORANDUM DECISION**  
)  
)  
v. )  
)  
)  
LORETTA ANN GREER, ) Not for Publication -  
) (Rule 28, Arizona Rules  
) of Civil Appellate Procedure)  
Defendant/Appellant. )  
)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV 2008-012337

The Honorable Mark F. Aceto, Judge  
The Honorable Thomas Dunevant, III, Judge

**AFFIRMED**

Loretta Ann Greer,  
*In Propria Persona* Defendant/Appellant

Goodyear

Bonnett Fairbourn Friedman & Balint, P.C.  
By William G. Fairbourn  
William F. King  
Attorneys for Plaintiff/Appellee

Phoenix

G E M M I L L, Judge

¶1 Appellant Loretta Greer appeals from the trial court's judgment finding she is a vexatious litigant. She contends the

court erred when it awarded Appellee Maricopa County Sheriff's Office (MCSO) its costs, dismissed her cross-complaint, failed to appoint her a guardian ad litem, and failed to grant her request for an emergency injunction. For the following reasons, we affirm.

#### **FACTS AND PROCEDURAL HISTORY**

¶12 Greer is an inmate in the Arizona Department of Corrections' ("ADOC") facility in Perrysville. In June 2008, MCSO filed a complaint alleging she is a vexatious litigant and, since her incarceration in 1999, has been a plaintiff in sixteen lawsuits that have all ended in dismissal or judgment for the defendants. The complaint sought a judgment declaring Greer is required to seek court approval before filing any future lawsuits using MCSO resources.

¶13 On September 4, 2008, Greer filed a motion requesting she be appointed a guardian ad litem because she is incompetent, has a low IQ, and has an "organic brain disorder." Attached to her motion was a document, apparently a court order from her earlier criminal case, which substantiated her claims to a low IQ and organic brain disorder, and also indicated she had at some time been prescribed "psychotropic medicines." The trial court denied Greer's request on the ground it was a matter for the Probate Division.

¶14 On the same day Greer filed her request for a guardian

ad litem, she also filed a cross-complaint against the State of Arizona and others. She alleged she had been raped and sexually assaulted by ADOC employees and other inmates while she was incarcerated and had been physically assaulted by two inmates at the direction of ADOC employees. MCSO moved to strike all of Greer's filings, including her cross-complaint, pursuant to Rule 12(f) of the Arizona Rules of Civil Procedure.

¶15 The trial court denied MCSO's motion to strike, but it also treated the motion as a Rule 12(c) motion for judgment on the pleadings, which it granted. The court found that Greer's answer failed to present a defense to the claims in the complaint and that MCSO was therefore entitled to judgment in its favor. The court referred the matter to the presiding judge of the Civil Department because it is the prerogative of the presiding judge alone to issue an order restricting an individual's access to the courts.

¶16 In January 2009, the presiding judge ruled as follows:

Under certain circumstances, the Court may place limitations on a litigant who has established a pattern of abusing her right of access to the Court. However, there is no legal authority for the proposition that a court "must" issue an order imposing such limitations. Rather, the power of the Court to impose such limitations is discretionary. *As to Plaintiff's request for issuance of orders that would impact on other cases, the Court declines to issue such orders in the context of this case.*

(Emphasis added.) The presiding judge reserved the right to issue such an order in the future.

¶17 The trial court then issued an unsigned minute entry finding that Greer is a vexatious litigant "*in this cause number*" and that MCSO is entitled to relief, including judgment on the pleadings and entry of declaratory judgment, "*in this cause number only.*" (Emphasis in original.) The court also found, "to the extent the 'Cross-Claim' complies with Rule 20(a), the grant of judgment on the pleadings constitutes an implicit judgment that it is vexatious and without merit; to the extent it falls outside Rule 20(a), it is improper in any event."

¶18 In March 2009, the court entered a signed, final judgment that states: "[I]n the context of this case, which is the only context in which this division may act, Plaintiff has demonstrated that Defendant Greer is a vexatious litigant." The court further ordered that MCSO is entitled to its costs as the prevailing party in the litigation. Greer filed a timely notice of appeal, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(B) (2003).

## **ANALYSIS**

### **Recovery of Costs**

¶19 The trial court awarded MCSO its costs after finding MCSO was the "prevailing party in this litigation." Greer

challenges this ruling on appeal.<sup>1</sup> MCSO did not submit an answering brief. Although we recognize the general principle that "when an appellant raises a debatable issue, the court, in its discretion, may find that an appellee's failure to file an answering brief constitutes a confession of error," *McDougall v. Superior Court*, 174 Ariz. 450, 452, 850 P.2d 688, 690 (App. 1993), we choose to reach the merits of the issues presented here.

¶10 Under A.R.S. § 12-341 (2003), the successful party to a lawsuit "shall recover from his adversary all costs expended or incurred therein." The determination of who is the successful party is initially entrusted to the discretion of the trial court. *Bishop v. Pecanicj*, 193 Ariz. 524, 530, ¶ 26, 975 P.2d 114, 120 (App. 1998). Once that determination is made, an award of costs is mandatory. *Multari v. Gress*, 214 Ariz. 557, 560, ¶ 21, 560, 155 P.3d 1081, 1084 (App. 2007). Generally, the successful party is the party who "wins" the lawsuit, who obtains judgment in his favor. *McEvoy v. Aerotek, Inc.*, 201 Ariz. 300, 302, ¶ 10, 34 P.3d 979, 981 (App. 2001).

¶11 Here, MCSO sought the following relief in its complaint:

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<sup>1</sup> In her opening brief, Greer contends the court erred by awarding MCSO its "fees." The trial court did not award MCSO its attorneys' fee, however, and we treat her assertion as a challenge to the trial court's award of costs.

That all pending and future filings or requests for service of filings and/or subpoenas by Ms. Greer in her capacity as a Plaintiff be reviewed by this Court and accompanied with a motion to show cause explaining the validity and circumstances of the requested filing(s) or request(s) for service by MCSO before MCSO is lawfully required to file and/or serve legal documents on behalf of Ms. Greer.

The presiding judge, in his minute entry, explicitly refused to grant MCSO this relief, stating that the court "declines to issue such orders in the context of this case."

¶12 Accordingly, the relief sought by MCSO was denied by the civil case presiding judge. We therefore see no basis for finding MCSO was the prevailing party in this lawsuit. A party need not obtain all the relief sought to be considered the prevailing party under § 12-341, *Ocean W. Contractors, Inc. v. Halec Constr. Co.*, 123 Ariz. 470, 473, 600 P.2d 1102, 1105 (1979), but it must obtain at least some relief. MCSO did successfully move to have Greer's cross-complaint dismissed, but on the whole it obtained no more relief than Greer obtained. See *Watson Constr. Co. v. Amfac Mortg. Corp.*, 124 Ariz. 570, 584-85606 P.2d 421, 435-36 (App. 1979) (when counterclaim involved, plaintiff is successful if he obtains judgment in excess of counterclaimant). Because MCSO did not obtain any of the relief requested in its complaint, and Greer's access to the courts remains unchanged, the trial court erred in determining

MCSO was the prevailing party and in awarding MCSO its costs.

¶13 We note that the trial court did find, "in the context of this case, which is the only context in which this division may act, Plaintiff has demonstrated that Defendant Greer is a vexatious litigant." A party that obtains a judgment such as this, however, which brings the party only "moral satisfaction," is not the prevailing party for purposes of § 12-341. See *Corley v. Arizona Bd. of Pardons and Paroles*, 160 Ariz. 611, 614, 775 P.2d 539, 542 (App. 1989).

¶14 Although the court erroneously determined MCSO was the prevailing party, Greer was not prejudiced by this error. MCSO did not file a statement of its costs below, and the deadline for it to do so under Rule 54(f) has long ago passed. Because Greer has not been adversely affected, we find no basis for disturbing the judgment. See *Ariz. R. Civ. P. 61; Ariz. Dep't of Econ. Sec. v. Valentine*, 190 Ariz. 107, 110, 945 P.2d 828, 831 (App. 1997) (court of appeals will reverse only if trial error prejudicial to appellant).

#### **Guardian Ad Litem**

¶15 Throughout the proceedings below Greer repeatedly requested that the trial court appoint her a guardian ad litem. She asserted she is incompetent and suffers from a variety of mental defects. The court denied her requests on the grounds the appointment of a guardian ad litem is a matter for the

Probate Division and an indigent civil litigant has no right to appointed counsel.

¶16 In Arizona, an "incompetent" person is one who is unable to understand the nature and object of the proceedings or to assist in her defense. See *Kelly R. v. Arizona Dep't of Econ. Sec.*, 213 Ariz. 17, 22, ¶ 28, 137 P.3d 973, 978 (App. 2006). An incompetent person may sue and be sued, but her incapacity requires that she be represented by someone who will adequately protect her rights. *Cubbison v. Cubbison*, 45 Ariz. 14, 20, 40 P.2d 86, 88 (1935).

¶17 Under Rule 17(g), Arizona Rules of Civil Procedure, trial courts are empowered to take the necessary steps to ensure that incompetent persons are capable of defending actions brought against them. *Montano v. Browning*, 202 Ariz. 544, 548, ¶ 9, 48 P.3d 494, 498 (App. 2002). That rule provides in relevant part:

The court shall appoint a guardian ad litem for an . . . incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the . . . incompetent person.

Ariz. R. Civ. P. 17(g). When there is a serious question as to a party's competence, a trial court must direct further inquiry into the matter. *Smith v. Rabb*, 95 Ariz. 49, 56-57, 386 P.2d 649, 654 (1963). In the absence of allegations or facts which



indicate that a hearing might be in order, however, "the trial judge is entitled to gauge a party's competence by [her] personal conduct in court." *Id.*

¶18 Here, there may have been a serious question whether Greer understood the nature or object of the proceedings, and under Rule 17(g) the court may have had the responsibility to inquire further into whether she was in fact competent. In a motion filed early in the case, Greer alleged she was incompetent and requested appointment of a guardian ad litem. Attached to her motion was a document that appears to be a court order from her criminal sentencing hearing. The order states that Greer sufficiently proved, presumably for purposes of her sentencing, that she has a low IQ and an organic brain disorder and that she had previously been treated with psychotropic medication. On the other hand, because she was convicted and sentenced in the criminal case, she presumably was found competent to stand trial in that matter.

¶19 Greer's pleadings throughout these proceedings may support her assertion she is incompetent - they largely had no relation to MCSO's complaint. In separate minute entries, the trial court described her pleadings as "perplex[ing]," "extremely difficult to discern," and "multiplicitous, confusing, unintelligible, and often bizarre." Without providing an account of Greer's pleadings, we agree with the

court's assessment. She did not cite relevant court rules or case law or make a reasoned argument against MCSO's complaint. Because it is difficult to understand her pleadings, it is unclear whether she truly understood the nature or object of the proceedings.<sup>2</sup>

¶20 We need not, however, determine if the trial court erred by not making further inquiry into whether Greer is incompetent, because she was not prejudiced by any such potential error. The court did not grant MCSO's request to limit Greer's access to the courts, and she is in no worse position following the final judgment than she was before. We again, therefore, find no basis for disturbing the judgment. See Ariz. R. Civ. P. 61; *Valentine*, 190 Ariz. at 110, 945 P.2d at 831 (court of appeals will reverse only if trial error prejudicial to appellant).

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<sup>2</sup> In its Motion for Entry of Judgment Without Hearing, made pursuant to Rule 55(b), Ariz. R. Civ. P., MCSO asserted Greer was neither "an infant nor incompetent." It appears the motion recited this phrase found in Rule 55(b), but this assertion did not affirmatively establish Greer's competence. Nor does the fact she was found competent to stand trial during her criminal trial. The trial court also noted in a minute entry that Greer's mental retardation did not prevent her meaningful access to the courts in violation of the Americans with Disabilities Act ("ADA"), as she had claimed in one of her pleadings. Greer's rights under the ADA are a separate issue from whether she is incompetent and entitled to a guardian ad litem under Rule 17(g). We note that the trial court, in its minute entries and orders throughout the proceedings, did not mention Rule 17(g) or its obligations under that rule.

### **Greer's Cross-Complaint**

¶21 Greer filed a cross-complaint against the State of Arizona and one hundred sixty-seven other defendants alleging she had been assaulted while incarcerated. She contends the court erred when it dismissed her cross-complaint. We find no error.

¶22 The claims in her cross-complaint did not arise out of the same transaction or occurrence that is the basis of MCSO's complaint, and her cross-complaint does not name MCSO as a defendant. The cross-complaint is therefore not a permitted pleading under the Arizona Rules of Civil Procedure. See Ariz. R. Civ. P. 13 and 14. Additionally, the court did not err when it found that judgment on the pleadings was proper under Rule 12(b) in light of its ruling that Greer is a vexatious litigant for purposes of this case.

### **Preliminary Injunction**

¶23 Last, Greer contends the court erroneously denied her request for a preliminary injunction. She has not cited the portion of the record where she made her request or where the trial court denied it. In a pleading filed in December 2008, Greer mentions a preliminary injunction and also requests that she be transferred to a prison in Florida, New York, or Washington. On this record, we find no error in the trial court's refusal to issue a preliminary injunction.

**CONCLUSION**

¶24 For the foregoing reasons, we affirm the judgment.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge

CONCURRING:

\_\_\_\_\_/s/\_\_\_\_\_  
SHELDON H. WEISBERG, Presiding Judge

\_\_\_\_\_/s/\_\_\_\_\_  
PHILIP HALL, Judge