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



DIVISION ONE
FILED: 01/20/2011
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

RHONDA S. SEBASTIAN, an) No. 1 CA-CV 09-0693
unmarried woman,)
) DEPARTMENT E
Plaintiff/Appellee,)
) **MEMORANDUM DECISION**
v.) (Not for Publication -
) Rule 28, Arizona Rules of
CLAUDE STUART BRACKEEN, an) Civil Appellate Procedure)
unmarried man,)
)
Defendant/Appellant.)
)
_____)

Appeal from the Superior Court in Mohave County

Cause No. CV2006-1652

The Honorable Lee F. Jantzen, Judge

AFFIRMED

Law Office of Thomas E. Price, P.C.
by Thomas E. Price
Attorneys for Plaintiff/Appellee

Kingman

Claude Stuart Brackeen
Defendant/Appellant *in propria persona*

Hinkley, CA

I R V I N E, Judge

¶1 Claude Stuart Brackeen ("Brackeen") appeals from the trial court's judgment awarding attorneys' fees to Rhonda S.

Sebastian ("Sebastian") in her action for partition of real property. Brackeen contends that this Court's ruling in a prior decision denying Sebastian attorneys' fees constitutes res judicata and precludes the award of fees in the trial court. For the following reasons, we disagree and therefore affirm.

FACTS AND PROCEDURAL HISTORY

¶12 Sebastian filed a petition for partition of real property against Brackeen, seeking the sale of real property she owned with him. Brackeen answered the complaint, asserting that the parties had an existing written contract that addressed the dispute. On March 4, 2008, the trial court entered an order finding that the document was not an enforceable contract and ordered the property sold and the proceeds split equally between the parties.¹ The order also directed that Sebastian be reimbursed for costs in the amount of \$470 and attorneys' fees in the amount of \$10,000 from Brackeen's share of the proceeds from the sale. The order further stated that the court held "in abeyance any ruling on future attorneys' fees that may be incurred in this matter, until this case is closed."

¶13 Brackeen appealed the trial court's finding that his agreement with Sebastian was not an enforceable contract. In a prior decision, we affirmed the trial court's ruling. *Sebastian*

¹ In the alternative, the trial court ordered that the parties could agree on an amount Brackeen would pay Sebastian for her share of the property.

v. *Brackeen*, 1 CA-CV 08-0244 (Ariz. App. Mar. 5, 2009) (mem. decision). In our discretion, we denied Sebastian's request for an award of attorneys' fees on appeal pursuant to Arizona Revised Statutes ("A.R.S.") section 12-341.01(A) (2003), while noting that she could recover her costs associated with the appeal.

¶14 Sebastian subsequently filed a petition in the trial court to appoint an appraiser and a realtor, asserting that Brackeen was not cooperating in selling the property as ordered by the court. Sebastian asked the court to order that the property be listed for sale and that Brackeen be ordered to pay all of her attorneys' fees incurred since the March 4 order.

¶15 After oral argument, the court ordered the property listed for sale and set sale parameters, restated its earlier rulings awarding costs of \$470 and attorneys' fees of \$10,000 to Sebastian from Brackeen's share of the sale proceeds, and awarded Sebastian an additional \$1000 in attorneys' fees incurred since its earlier order. Brackeen timely appealed.

DISCUSSION

¶16 Brackeen argues that our decision in the prior appeal denying Sebastian's request for attorneys' fees is *res judicata* and therefore precluded the trial court from awarding attorneys' fees to Sebastian on remand.

¶17 Res judicata precludes parties from relitigating an issue that has been previously adjudicated. *Armstrong v. Aramco Servs. Co.*, 155 Ariz. 345, 347, 746 P.2d 917, 919 (App. 1987). Res judicata applies only when the issue decided in the prior action is identical to the instant issue, the prior ruling is a final judgment on the merits, and the party against whom res judicata is asserted was a party or in privity with a party in the prior adjudication. *Id.* Res judicata does not apply because the issue in our prior decision is not the same issue before us now on appeal.

¶18 Brackeen's argument may be more appropriately characterized as based on the "law of the case" doctrine. Under this doctrine, a decision by an appellate court on an issue presented to it is the law of the case for subsequent proceedings in that case, where the facts and issues are the same as those on which the appellate court's decision was made. *Ctr. Bay Gardens, L.L.C. v. City of Tempe City Council*, 214 Ariz. 353, 356, ¶ 17, 153 P.3d 374, 377 (App. 2007). The doctrine applies only to those issues actually decided by the appellate court. *Id.* at 357, ¶ 17, 153 P.3d at 378.

¶19 Our prior decision clearly indicated that the "sole issue" we considered on appeal from the trial court was "whether the trial court erred by finding that a document signed by both parties does not constitute a partition agreement." *Sebastian*, 1

