

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 10/25/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

ARTHUR CHARLES GALLEGOS, ) No. 1 CA-CV 11-0135  
)  
Plaintiff/Appellant, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
)  
HONORABLE RONALD S. REINSTEIN; ) (Not for Publication -  
COMMISSIONER JOANN M. SINCLAIR; ) Rule 28, Arizona Rules of  
COMMISSIONER BARBARA A. HAMNER; ) Civil Appellate Procedure)  
MANNY ATHANS; LUIGI PATRUNO; )  
SHERIFF J.P. CONNELL, )  
)  
Defendants/Appellees. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. LC2009-000805-001 DT

The Honorable Richard T. Lynch, Judge *Pro Tempore*

**AFFIRMED**

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Arthur Charles Gallegos Appellant <i>In Propria Persona</i>	Phoenix
Thomas C. Horne, Attorney General By Kelley J. Morrissey, Assistant Attorney General Attorneys for Defendants/Appellees	Phoenix
William G. Montgomery, Maricopa County Attorney By James W. Fritz, Deputy County Attorney Attorneys for Defendant/Appellee Connell	Phoenix

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**T I M M E R**, Presiding Judge

¶1 On November 6, 2009, appellant Arthur Gallegos filed a special action petition in superior court against a number of judges, probation officers, and law enforcement officials in connection with his arrest, plea of no contest, and conviction on three counts of manslaughter in 1989. On May 6, 2010, the court dismissed Gallegos' petition explaining it lacked jurisdiction to review other superior court rulings. This timely appeal followed.<sup>1</sup> For the following reasons, we affirm.

#### **DISCUSSION**

¶2 Because the superior court declined jurisdiction of Gallegos' special action petition, the sole issue on appeal is whether the court abused its discretion in doing so. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 956, 969 (App. 1979). An abuse of discretion is discretion exercised in a

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<sup>1</sup> Gallegos' notice of appeal states he seeks review of an order ruling in favor of his own motion to withdraw a motion to amend his complaint pursuant to Arizona Rule of Civil Procedure 52(b). Although Gallegos purports to appeal from a non-appealable order, it is clear he is attempting to appeal the order of dismissal. This court liberally construes notices of appeal and disfavors ruling on hypertechnical defects. See *Schwab v. Ames Constr.*, 207 Ariz. 56, 59, ¶ 11, 83 P.3d 56, 59 (App. 2004). "In the absence of prejudice to the appellee, we will proceed . . . 'on the theory that [Gallegos] intended and in good faith attempted to appeal" from the dismissal order. *McKillip v. Smitty's Super Valu, Inc.*, 190 Ariz. 61, 64, 945 P.2d 372, 375 (App. 1997). Appellees have not raised any objections or asserted any prejudice. We therefore consider Gallegos' appeal as one from the superior court's May 6, 2010 order dismissing his complaint for special action relief.

manner that is manifestly unreasonable or based on untenable grounds or untenable reasons. *Quigley v. City Court of Tucson*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982).

¶13 The superior court did not err by refusing to accept jurisdiction over Gallegos' petition for special action. Although, as the superior court correctly noted, the rules governing special actions do not expressly address whether the contested action underlying a special action petition must arise from an inferior tribunal, a review of case law mandates this conclusion.

¶14 Our appellate courts have repeatedly held that a superior court judge lacks jurisdiction to review final judgments entered by other superior court judges. See *Fraternal Order of Police v. Superior Court*, 122 Ariz. 563, 566, 596 P.2d 701, 704 (1979) (explaining that a superior court judge lacked jurisdiction to "review, alter, or change the judgments of a judge with the same jurisdiction" because the challenge was "nothing more than a collateral attack" barred by res judicata); *Costa v. Mackey*, 613 Ariz. Adv. Rep. 48 n.7, ¶ 13 (App. July 26, 2011) (concluding superior court presiding judge did not have authority to overrule another judge's bail ruling); *Davis v. Davis*, 195 Ariz. 158, 161, 985 P.2d 643, 646 (App. 1999) (holding "a superior court judge has no jurisdiction to review or change the judgment of another superior court judge when the

judgment has become 'final.'"). Permitting such review would undercut principles of finality and appellate review as disgruntled litigants could readily skirt the established appellate process by using a special action petition to seek a different outcome before another judge at the superior court level.

¶15 Our decision in *Green v. Thompson*, 17 Ariz. App. 587, 499 P.2d 715 (App. 1972), guides our decision. In *Green*, this court addressed a superior court judge's ability to review a court commissioner's ruling via a special action petition. *Id.* After equating the role of a commissioner to that of a judge, we held that because the superior court lacks appellate jurisdiction over superior court judgments, see Ariz. Const. art. 6, § 16, Ariz. Rev. Stat. ("A.R.S.") § 12-124(A) (2003),<sup>2</sup> "that power should not be created through the use of special action proceedings." *Id.* at 591, 499 P.2d at 719.

¶16 Based on the foregoing, we decide the superior court lacked jurisdiction to consider Gallegos' special action complaint. The court therefore did not err by declining

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<sup>2</sup> Article 6, Section 16, of the Arizona Constitution limits the appellate jurisdiction of superior courts to "cases arising in justice and other courts inferior to the superior court as may be provided by law." Similarly, the appellate jurisdiction of superior courts is limited by statute to "all actions appealed from justices of the peace, inferior courts, boards and officers." A.R.S. § 12-124(A).

jurisdiction and dismissing the petition. In light of our decision, we do not address the merits of Gallegos' complaint.

#### **Pending Motions**

¶7 Gallegos has multiple motions pending before this court, which we rule upon in turn.

¶8 Gallegos applies for an award of attorneys' fees and out-of-pocket expenses incurred in his criminal case. Gallegos seeks fees due to the alleged deficient representation by his defense attorney. Neither the attorney nor the sufficiency of his representation is before this court, however. We therefore deny the application. We deny as moot Gallegos' related motion to enlarge the time to file his application for fees and costs.

¶9 The "Motion for Relief from Order Denying Withdraw Plea of Guilt No Contest" effectively asks us to reconsider an order filed by this court on August 18, 2011, denying Gallegos' request to withdraw his plea of no contest in his 1989 conviction. Gallegos has not provided any reason to reconsider that ruling, and we decline to do so. We therefore deny this motion.

¶10 Gallegos' "Motion to Correct Clerical Error [Pursuant to Ariz. R. Civ. P. Rule 60(a)]" appears to be a motion to reconsider two orders entered by this court on June 8, 2011, and

May 19, 2011, respectively.<sup>3</sup> Essentially, Gallegos again asks that we disallow appellee Sheriff J.P. Connell's answering brief and joinders in that brief by other appellees. As stated in the order filed May 19, 2011, however, appellee Connell's answering brief was filed in a timely manner. Moreover, Gallegos has confused appellees' "Notice of Joinder in Appellee Connell's Answering Brief" with the doctrine of joinder under Arizona Rule of Civil Procedure 20(a). Appellees utilize the term "joinder" to indicate they adopt the arguments made in Connell's brief - not to join Sheriff Connell as plaintiffs in a new action. We deny this motion, as well.

¶11 Lastly, Gallegos has filed an "Application for Award of Paralegal Fees and Out-Pocket [sic] Expenses" pursuant to Arizona Rule of Procedure for Special Action 4(g). This rule is not applicable on appeal and Gallegos should have filed under Arizona Rule of Civil Appellate Procedure 21(c). Even if he had, Rule 21(c) presumes that the party has been successful on appeal. As no decision has been rendered in Gallegos' favor, he

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<sup>3</sup> Gallegos' motion refers to an order filed on May 11, 2011, but the order filed that date simply orders the superior court to transmit the record on appeal. The substance of Gallegos' motion appears to concern the order filed May 19, 2011 denying the relief requested in Gallegos' "Answer to Appellee's Notice of Non-filing Answer Brief."

is not entitled to fees under Rule 21(c). We deny his application.<sup>4</sup>

**CONCLUSION**

¶12 For the foregoing reasons, we affirm the judgment of the superior court dismissing the special action petition for lack of jurisdiction. We deny Gallegos' motions pending before this court.

/s/  
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/  
Patrick Irvine, Judge

/s/  
Daniel A. Barker, Judge

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<sup>4</sup> In a second response to Appellant's request for various costs and fees, Appellees request an award of attorneys' fees pursuant to A.R.S. § 12-349 (2003). That statute requires a finding that "the claim or defense constitutes harassment, is groundless and is not made in good faith." *Id.* Although we understand Appellees' frustration with Gallegos' prolific filing practices, we conclude his conduct has not met the § 12-349 threshold. Accordingly, we deny the request.