**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: 02/09/2012
RUTH A. WILLINGHAM, CLERK
BY: DLL

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

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| EDWARD GEORGE GOLDWATER, | No. 1 CA-CV 10-0631 |
| | 1 CA-CV 11-0029 |
| Plaintiff/Appellant, | (Consolidated) |
| v. | DEPARTMENT C |
| CHARLES RYAN; JAN BREWER, | **MEMORANDUM DECISION** |
| Defendants/Appellees. | (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure) |

Appeal from the Superior Court in Maricopa County

Cause No. CV2009-010741

The Honorable Joseph B. Heilman, Judge (Retired)

**AFFIRMED**

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Edward George Goldwater, Buckeye
Plaintiff/Appellant *in propria persona*

Thomas C. Horne, Arizona Attorney General Phoenix
By Kelley J. Morrissey, Assistant Attorney General
Attorneys for Defendants/Appellees

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**D O W N I E**, Judge

**¶1** Edward George Goldwater appeals from the superior court's dismissal of his amended complaint against Arizona

Governor Jan Brewer and Arizona Department of Corrections ("ADOC") Director Charles Ryan (collectively, "Defendants"). For the reasons that follow, we affirm.

## FACTS AND PROCEDURAL HISTORY

**¶2** Goldwater is an ADOC inmate. On March 30, 2009, he filed a complaint against Brewer's and Ryan's predecessors (Governor Janet Napolitano and ADOC Director Dora Schriro), alleging various claims arising from a purported misappropriation of federal funds and medical supplies, and the "theft" of property belonging to Goldwater.[1] On September 16, 2009, Goldwater filed an amended complaint, substituting Brewer and Ryan as the named defendants and adding an additional allegation. Specifically, the amended complaint set forth the following seven counts:

1. Theft, Conversion, Trespass to Chattels;
2. Constitutional Violations;
3. Negligence per se;
4. Nuisance;
5. Breach of Contract;
6. Fraud/Corruption; and
7. Civil Conspiracy.

[1] These items included a United State Supreme Court brief prepared for Goldwater by a "doctor friend in Florida" and Goldwater's subscription to "Prison Legal News."

Goldwater demanded a jury trial and sought $60 million in damages and $120 million in punitive damages.

**¶3** On November 25, 2009, Ryan was personally served with the amended complaint. In an apparent effort to serve Brewer, the Arizona Attorney General was served on November 16, 2009. On December 14, 2009, Ryan moved to extend his time to file a responsive pleading to January 29, 2010. The court granted Ryan's motion. Meanwhile, on December 24, 2009, Goldwater filed a "Motion for Entry of Default Judgment by [R]es Judicata – Expedited" and a "Notice of Default."[2] Defendants responded, arguing Goldwater was not entitled to a default judgment because: (1) Ryan timely appeared by requesting an extension of time; and (2) although the Attorney General was served, which would effectuate service against the State, Brewer herself had not been served.

**¶4** On January 26, 2010, Ryan moved to dismiss all claims against him. Goldwater did not contest the substantive basis set forth in the motion to dismiss, though he continued to argue he was entitled to a default judgment. The court granted Ryan's motion, and Goldwater filed a premature notice of appeal. Brewer subsequently moved to dismiss all claims against her

[2] Goldwater's default filings reflect that he mistakenly believed Ryan and Brewer had only 10 days to file an answer. *See* Ariz. R. Civ. P. ("Rule") 12(a)(1)(A) (subject to exceptions not applicable here, defendants have 20 days after service to file an answer).

based on Rule 4(i), Arizona Rules of Civil Procedure ("Rule") arguing Goldwater had failed to serve her within 120 days of filing the amended complaint. The court granted Brewer's motion and entered judgment on December 1, 2010. Goldwater appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1). *See Hill v. City of Phoenix*, 193 Ariz. 570, 573-74, ¶¶ 15-16, 975 P.2d 700, 703-04 (1999) (a judgment lacking Rule 54(b) language becomes final upon entry of final judgment on remaining claims); *Barassi v. Matisson*, 130 Ariz. 418, 422, 636 P.2d 1200, 1204 (1981) (a premature appeal need not be dismissed where subsequent final judgment is entered over which jurisdiction may be exercised).

**DISCUSSION**

**¶5** Goldwater argues he was entitled to a default judgment because Defendants did not file timely answers to the amended complaint. We disagree.

**¶6** Ryan timely appeared by moving to extend the time to respond and then filing a motion to dismiss within the enlarged time period. *See* Rule 6(b), 12(b), 55(a). Ryan had no obligation to file an answer unless, and until, the court denied his motion to dismiss.[3] *See* Rule 12(a)(3)(A).

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[3] Goldwater does not argue the superior court substantively erred by granting the Defendants' respective motions to dismiss.

**¶7** Goldwater incorrectly asserts that service on the Attorney General constituted valid service on Brewer. Pursuant to Rule 4.1(h), service on the State may be effectuated by serving the Attorney General. Goldwater, though, did not sue the State. He named Ryan and Brewer as defendants. Thus, he was required to serve Brewer personally. *See* Rule 4.1(b), (d). Because he failed to do so, the court properly granted Brewer's motion to dismiss. *See* Rule 4(i).

**¶8** Goldwater next contends the court committed some unspecified constitutional violations and denied him "meaningful access to the court." Goldwater merely posits statements of law and reasserts his conclusory and unsubstantiated allegations from the amended complaint that Defendants stole his "legal mail." We do not address this undeveloped argument. *See* ARCAP 13(a)(6) (appellate briefs must present significant arguments, set forth positions on issues raised, and include citations to relevant authorities, statutes and portions of the record); *Ace Auto. Prods. Inc. v. Van Duyne*, 156 Ariz. 140, 143, 750 P.2d 898, 901 (App. 1987) ("It is not incumbent upon the court to develop an argument for a party."); *State v. Moody*, 208 Ariz. 424, 452 n.9, ¶ 101, 94 P.3d 1119, 1147 n.9 (2004) (failure to present an argument in this manner usually constitutes abandonment and a waiver of that issue); *see also Higgins v. Higgins*, 194 Ariz. 266, 270, ¶ 12, 981 P.2d 134, 138 (App. 1999)

(holding a *pro per* litigant to the same standard as an attorney) (citations omitted).

**¶9** Finally, Goldwater claims the superior court judge was biased against him, asserting that "Judge Joseph Heilman had it in for Pet. from the start [and] claimed that Pet was a 'vexas [sic] litigant'[4] . . . [and] Judge Heilman sua sponte dismissed Brewer w/o a defense motion or any input[] from Pet."

**¶10** We begin with the presumption that a judge is free of bias and prejudice. *See State v. Rossi*, 154 Ariz. 245, 247, 741 P.2d 1223, 1225 (1987) (citation omitted). As the party asserting bias, Goldwater bears the burden of rebutting that presumption and establishing a disqualifying interest. *See Pavlik v. Chinle Unified Sch. Dist. No. 24*, 195 Ariz. 148, 152, ¶ 11, 985 P.2d 633, 637 (App. 1999) (citations omitted). "[T]he bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done . . . in the case." *Smith v. Smith*, 115 Ariz. 299, 303, 564 P.2d 1266, 1270 (App. 1977) (citation omitted).

**¶11** Goldwater states no extra-judicial source of alleged bias by the trial judge. He merely refers to the court's rulings and actions taken in response to "what the judge learned

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[4] Judge Heilman did not "claim" Goldwater was a vexatious litigant; he instead referred the case to the presiding civil judge to make that determination. The presiding judge found Goldwater did not "come[] within the definition of a 'vexatious litigant.'"

from his participation in the case." *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966) (citation omitted). Even an erroneous ruling does not establish bias toward a litigant. *State v. Hill*, 174 Ariz. 313, 324, 848 P.2d 1375, 1386 (1993). Our review of the record discloses no evidence of judicial bias or prejudice.

**CONCLUSION**

**¶12** We affirm the judgments of the superior court. As the successful parties on appeal, Brewer and Ryan are entitled to recover their appellate costs upon compliance with ARCAP 21.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
PATRICIA K. NORRIS, Presiding Judge

/s/
MICHAEL J. BROWN, Judge