IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

DIVISION ONE
FILED: 12/06/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

MATTHEW JOE FARRELL, Plaintiff/Appellant, v. HITCHIN' POST TRAILER RANCH; LEE SMITH; MIKE SMITH; ROGER KOHLER; LYNN NIXON, Defendants/Appellees.	)	1 CA-CV 11-0011 DEPARTMENT B **MEMORANDUM DECISION** (Not for Publication – Rule 28, Arizona Rules of Civil Appellate Procedure)

Appeal from the Superior Court in Mohave County

Cause No. CV 2010-04124

The Honorable Lee Frank Jantzen

AFFIRMED

Matthew Joe Farrell — Bullhead City
In *Propria Persona*

Kelley, Moss & Holden, P.L.L.C. — Bullhead City
By Steven C. Moss
Michele Holden
Attorneys for Defendants/Appellees

D O W N I E, Judge

¶1 Matthew J. Farrell appeals from an order dismissing his complaint against Hitchin' Post Trailer Ranch, Lee Smith, Mike Smith, Roger Kohler, and Lynn Nixon (collectively, "Hitchin' Post" or "defendants"). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Farrell bought a mobile home that was permanently embedded on property owned by Hitchin' Post Trailer Ranch, a mobile home park. In 2006, Farrell sued Hitchin' Post due to problems with his electrical and water service. He later voluntarily dismissed that lawsuit.

¶3 In 2008, Farrell gave Hitchin' Post a money order for September rent. He stated that Hitchin' Post could not cash the money order until it fixed his water problems. Hitchin' Post returned the money order to Farrell and filed a forcible entry and detainer action against him in justice court ("FED action"). Judgment was entered against Farrell in the FED action, resulting in Farrell's eviction.

¶4 Farrell appealed to the Mohave County Superior Court. The superior court affirmed the order of eviction. It explained that the Arizona Mobile Home Parks Residential Landlord and Tenant Act ("the Act") dictates the remedies available to a tenant who believes a landlord has not complied with obligations

under the Act. *See, e.g.*, Ariz. Rev. Stat. ("A.R.S.") §§ 33-1471 to -1475. Under the Act, withholding rent is not an available remedy. A.R.S. § 33-1476(e). The superior court ruled that Farrell's conditional tender of rent was not the same as payment of the rent.

¶5 Farrell thereafter filed an "Emergency Request," which the superior court denied. Farrell next filed a "Motion for Rehearing." Explaining that the motion for rehearing "further re-argues issues that have been argued before the Justice Court, as well as this Court on appeal," the superior court denied the motion. Farrell then returned to the justice court, where he filed a "Motion to Vacate Judgment" in the FED action. The justice court denied the motion, stating that Farrell "was lawfully evicted from the property in question by the Justice Court, which decision was upheld on appeal by the Superior Court."

¶6 Farrell then filed the instant lawsuit against Hitchin' Post, alleging malicious prosecution and slander. In his complaint, Farrell explained his belief that he was wrongfully evicted. Hitchin' Post filed a motion to dismiss and a motion for sanctions, arguing: (1) the doctrine of *res judicata* barred Farrell's claims; (2) the complaint failed to state a claim upon which relief could be granted; and (3)

Farrell failed to have a summons issued or to otherwise properly serve defendants. After a hearing, the trial court granted the motion for "each of the alternate and independent reasons set forth within Defendants' Motion to Dismiss." Farrell timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1).

DISCUSSION[1]

I. Standard of Review

¶7 In reviewing the dismissal of a complaint for failure to state a claim under Arizona Rule Of Civil Procedure ("Rule") 12(b)(6), we accept as true the facts alleged in the complaint and will affirm the dismissal only if the plaintiff would not be entitled to relief under any interpretation of the facts susceptible of proof. *Fidelity Sec. Life Ins. Co. v. State*, 191 Ariz. 222, 224, ¶ 4, 954 P.3d 580, 582 (1998). We resolve all reasonable inferences in favor of the plaintiff. *McDonald v. City of Prescott*, 197 Ariz. 566, 567, ¶ 5, 5 P.2d 900, 901 (App. 2000). We review the grant of a motion to dismiss for an abuse of discretion, but consider issues of law *de novo*. *Dressler v.*

[1] Farrell's statement of the issues presented for review identifies matters beyond the dismissal of his complaint. We consider only those issues raised by the notice of appeal. ARCAP 8(c) (requiring appellant to designate the judgment from which he appeals); *Lee v. Lee*, 133 Ariz. 118, 124, 649 P.2d 997, 1003 (App. 1982) (appellate court has no jurisdiction to review matters not identified in the notice of appeal).

Morrison, 212 Ariz. 279, 281, ¶ 11, 130 P.3d 978, 980 (2006). We will affirm the trial court if it is correct for any reason. *City of Tempe v. Outdoor Sys., Inc*., 201 Ariz. 106, 111, ¶ 14, 32 P.3d 31, 36 (App. 2001).

II. Malicious Prosecution

¶8 To prevail on a malicious prosecution claim, a plaintiff must prove that the defendant instituted a civil action that was motivated by malice, begun without probable cause, and terminated in favor of the plaintiff. *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 362, ¶ 12, 988 P.2d 143, 147 (App. 1999). Farrell was thus required to allege, and ultimately prove, that he prevailed in the FED action. He pled the opposite -– that judgment in that case was entered in favor of Hitchin' Post; he therefore failed to state a claim for malicious prosecution upon which relief could be granted.

III. Slander

¶9 The elements of a defamation claim are: (1) defendant made a false defamatory statement about plaintiff, (2) defendant published the statement to a third party, and (3) defendant knew the statement was false, acted in reckless disregard of whether the statement was true or false, or negligently failed to ascertain the truth or falsity of the statement. *Peagler v. Phoenix Newspapers, Inc.*, 114 Ariz. 309, 315, 560 P.2d 1216,

1222 (1977). Read liberally, Farrell alleged that Hitchin' Post defamed him by stating he had been evicted for failure to pay rent.[2]

¶10 The slander claim was properly dismissed because the complaint itself contained detailed allegations demonstrating that the statement Farrell characterized as "false" was actually true. Farrell admits that Hitchin' Post evicted him, and the courts in the FED action ruled he had failed to tender rent payments as required. Truth is an absolute defense to a slander claim. *Turner v. Devlin*, 174 Ariz. 201, 205, 848 P.2d 286, 290 (1993). Any claim that the eviction was wrongful is irrelevant because it does not make the fact that Farrell was evicted due to non-payment of rent any less true.

¶11 Affirmative defenses may be raised and determined in connection with a motion to dismiss where the facts constituting the defense appear, as here, on the face of the complaint. *Indus. Comm'n v. Superior Court (Frey)*, 5 Ariz. App. 100, 103, 423 P.2d 375, 378 (1967). Based on the allegations of Farrell's

[2] Farrell's exact words were: "Being fined with an Eviction, especially when it was groundless was malicious, and goes against my credit report. It is a false statement about me." Farrell characterizes this as a "false" statement because, notwithstanding the five rulings against him in the FED case and the appeal therefrom, he does not believe grounds existed to evict him.

own complaint, the superior court properly dismissed his slander claim under Rule 12(b)(6).

IV. Attorneys' Fees

¶12 Hitchin' Post requested an award of attorneys' fees in the trial court pursuant to A.R.S. §§ 12-341.01 and -349, and Rule 11(e). The trial court awarded fees but did not state the basis for the award. We will uphold the award if a reasonable basis for it exists in the record. *See Wheel Estate Corp. v. Webb*, 139 Ariz. 506, 508, 679 P.2d 529, 531 (App. 1983).

¶13 We conclude the fee award was appropriate under Rule 11 and thus do not address the alternative bases for the award. A litigant violates Rule 11 "by the filing of a pleading when the party or counsel knew, or should have known by such investigation of fact and law as was reasonable and feasible under all the circumstances, that the claim or defense was insubstantial, groundless, frivolous, or otherwise unjustified." *Boone v. Superior Court (Riddel)*, 145 Ariz. 235, 241, 700 P.2d 1335, 1341 (1985). Farrell's statements in the court below indicate that his objective in filing the instant lawsuit was to relitigate his eviction. It is also clear that Farrell had no understanding of what he was required to allege (or prove) to state claims for malicious prosecution or slander. According to

the trial court, the impetus for the litigation was Farrell's belief he did not get a "fair shot" in the FED case.

¶14 The trial court explained that, before filing his complaint, Farrell failed to determine the applicable law or the facts needed to allege viable claims. Indeed, as we discussed *supra*, Farrell's own admissions in the complaint negated his substantive claims. Under these circumstances, the trial court properly awarded fees to Hitchin' Post. Farrell failed to make reasonable inquiry into either the factual or legal bases for his claims to ensure they were not insubstantial, groundless, frivolous, or unjustified.

¶15 For similar reasons, we grant defendants' request for attorneys' fees incurred on appeal pursuant to ARCAP 25. That rule authorizes a fee award if an appeal is frivolous. An appeal is frivolous when any reasonable attorney would agree that the appeal is totally and completely without merit. *Price v. Price*, 134 Ariz. 112, 114, 654 P.2d 46, 48 (App. 1982) (citation omitted). Parties who handle cases *in propria persona* "are held to the same familiarity with required procedures and the same notice of statutes and local rules as would be attributed to a duly qualified member of the bar." *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963). The "orderly

and efficient administration of justice" depends on such a rule. *Id*.

¶16 We have no difficulty concluding that Farrell has filed a frivolous appeal that is "totally and completely without merit." *Willow Creek Leasing, Inc. v. Bartzen*, 154 Ariz. 339, 342-43, 742 P.2d 840, 843-44 (App. 1987). We therefore award Hitchin' Post its attorneys' fees and costs upon compliance with ARCAP 21.

CONCLUSION

¶17 The judgment of the superior court is affirmed.

/s/
MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/
PETER B. SWANN, Judge

/s/
DONN KESSLER, Judge