

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

FILED BY CLERK

FEB -8 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JANET M. HOPKINS,)	2 CA-CV 2012-0044
)	DEPARTMENT B
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
STATE OF ARIZONA BOARD OF)	Appellate Procedure
REGENTS; MARTIN J. RAMIREZ and)	
JANE DOE RAMIREZ, husband and wife,)	
)	
Defendants/Appellees.)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20086484

Honorable Richard E. Gordon, Judge

AFFIRMED

Hopkins Way PLLC
By Edward C. Hopkins, Jr.

Denver, CO
Attorneys for Plaintiff/Appellant

Thomas C. Horne, Arizona Attorney General
By Paul Correa

Tucson
Attorneys for Defendants/Appellees

K E L L Y, Judge.

¶1 Janet Hopkins appeals from the trial court’s denial of her motion for a new trial and motion to set aside the judgment.¹ She argues the court erred by finding her motion for a new trial untimely and by failing to set aside the judgment when she had not received notice of the filed judgment and extraordinary circumstances existed. We affirm.

Factual and Procedural Background

¶2 “We view the facts in the light most favorable to upholding the trial court’s ruling.” *Hammoudeh v. Jada*, 222 Ariz. 570, ¶ 2, 218 P.3d 1027, 1028 (App. 2009). Hopkins filed a complaint against the State of Arizona Board of Regents and Martin Ramirez (Board) alleging defamation and tortious interference with contract. On June 8, 2011, the jury rendered its verdicts in favor of the Board, and the court asked the parties if it was “okay” to “enter a judgment today and sign the minute entry in lieu of a formal verdict.” The Board agreed, and Hopkins did not object. The following day, the court filed a minute entry “entering the verdicts of the Jury in favor of the Defendants and against the plaintiff on all claims” and signed it “in lieu of a formal judgment.” The minute entry also ordered Hopkins to pay jury fees.

¶3 On July 7, Hopkins filed a motion for a new trial pursuant to Rule 59, Ariz. R. Civ. P. At the hearing on the motion in December 2011, the state argued it had been filed untimely, but the court rejected the argument by stating the June 9 order “was not

¹Hopkins also purports to appeal from the trial court’s judgment of June 9, 2011. However, because she did not file a timely notice of appeal following entry of that judgment, *see* Ariz. R. Civ. App. P. 9(a), we limit our review to the rulings on the post-judgment motions from which Hopkins has timely appealed.

meant to be final judgment and preclude motions for a new trial” because it had entered final judgment only “as to the jury fees.” The court took the motion under advisement and, before it ruled, the Board filed a motion asking the court to reconsider its initial determination of timeliness. The court noted “[a] close look at the [June 9] minute entry reveal[ed]” it had entered verdicts against Hopkins on all claims and had signed the minute entry “in lieu of a formal judgment” on June 9. Therefore, it denied Hopkins’s motion for a new trial as untimely. It also “decline[d] in its discretion . . . to grant [Hopkins] an enlargement of time under Rule 6(b)(2).”

¶4 Hopkins filed a motion to set aside the judgment pursuant to Rule 60(c)(6), Ariz. R. Civ. P., which the trial court denied. This appeal followed.

Discussion

Motion for a New Trial

¶5 Hopkins argues the trial court erred by denying her Rule 59, Ariz. R. Civ. P., motion for a new trial as untimely. She argues the court had not entered final judgment before the motion was filed or, alternatively, that the court was required to grant an enlargement of the time to file the motion.² We review the court’s denial of the motion for an abuse of discretion. *See Jackson v. Nationwide Mut. Ins. Co.*, 228 Ariz. 197, ¶ 8, 265 P.3d 379, 381 (App. 2011). We review the interpretation of court rules de novo, *Star Publ’g Co. v. Bernini*, 228 Ariz. 490, ¶ 6, 268 P.3d 1147, 1150 (App. 2012),

²Because Hopkins’s related argument that the trial court impliedly did enlarge the time to file relies on her contention that the court was required to grant an enlargement of time based on the facts, we do not address the argument separately.

but defer to the court's factual determinations "unless they are clearly erroneous or unsupported by any credible evidence," *Federoff v. Pioneer Title & Trust Co. of Ariz.*, 166 Ariz. 383, 388, 803 P.2d 104, 109 (1990).

¶6 Rule 59(d) provides "[a] motion for new trial shall be filed not later than 15 days after entry of the judgment." As Hopkins concedes, the trial court was permitted to enter final judgment "in the form of a minute entry." *See* Ariz. R. Civ. P. 58(e). And she does not dispute that the motion was filed more than fifteen days after the June 9 minute entry was filed.

¶7 However, she argues the trial court erred by determining the June 9 minute entry constituted "entry of judgment" because the court was bound by its statement in December that the ruling "was not meant to be final judgment." She maintains that "[o]nce [the] court interprets its minute entry's meaning, its interpretation cannot be disturbed." However, she has not adequately supported her contention the court lacked the power to revisit its initial characterization of the minute entry. The court had not yet ruled on Hopkins's motion when it reconsidered its earlier statement and, regardless, a court may reconsider its earlier rulings. *See Hall v. Smith*, 214 Ariz. 309, ¶ 28, 152 P.3d 1192, 1200 (App. 2007) ("A court does not lack the power to change a ruling simply because it ruled on the question at an earlier stage."), *quoting Love v. Farmers Ins. Grp.*, 121 Ariz. 71, 73, 588 P.2d 364, 366 (App. 1978); *United Cal. Bank v. Prudential Ins. Co. of Am.*, 140 Ariz. 238, 308, 681 P.2d 390, 460 (App. 1983) ("Appeals lie from . . . judgments, not from ruminations of the trial judge.").

¶8 Hopkins argues “[t]he trial court had no reasonable grounds” upon which to reconsider its initial statement regarding timeliness because the Board had attached a transcript of the June 8 proceedings to its motion to reconsider and, therefore, the “only evidence supporting” the court’s reconsideration of the timeliness issue was “impermissible parole evidence.” *In re Marriage of Zale*, which Hopkins cites as the sole support for her argument, held that a judgment may not be attacked by “[p]robing the mental processes of a trial judge, that are not apparent on the record of the trial proceedings.” 193 Ariz. 246, ¶ 14, 972 P.2d 230, 234 (1999), quoting *Hyden v. Law Firm of McCormick*, 848 P.2d 1086, 1092 (N.M. Ct. App. 1993). But in this case, the court did not alter a judgment based on matters outside the record. Rather, it found judgment had been entered, citing “a close look” at the minute entry and a portion of the record transcript that was consistent with the minute entry’s language. Therefore, *Zale* does not apply.

¶9 Hopkins argues alternatively that her motion was timely because the trial court was required to enlarge the filing period pursuant to Rule 6(b), Ariz. R. Civ. P. That rule provides a court may extend the time for filing a Rule 59(d) or 60(c) motion only if it finds: “(a) that a party entitled to notice of the entry of judgment or order did not receive such notice from the clerk or any party within 21 days of its entry, and (b) that no party would be prejudiced.”

¶10 Hopkins argues the “criteria for a Rule 6(b)(2) enlargement were met” because her counsel had not “informed her” they had received a copy of the minute entry and, after her counsel had withdrawn, she had talked with the judge’s law clerk who told

her a final judgment had not been entered and she had filed a brief in which she stated “[t]he Court has not published a Rule 58, Ariz. [R. Civ. P.], entry of judgment for this matter.” She contends the trial court therefore “had received undisputed evidence that Hopkins did not receive notice of a final entry of judgment.”

¶11 However, even assuming Hopkins’s actions were sufficient to constitute a motion for enlargement pursuant to Rule 6(b),³ the record supports the trial court’s conclusion that Hopkins had received notice of the entry of judgment within twenty-one days of its entry. As the court noted in its ruling on the Board’s motion for reconsideration, Hopkins and her counsel were present on June 8 when the verdicts had been entered in open court, and did not object when the court asked the parties if it could sign the minute entry in lieu of a formal judgment. And the minute entry filed on June 9 reflects that copies were distributed to her counsel while she was still represented, supporting the court’s determination that “[Hopkins’s] attorney received a copy of the minute entry from the Clerk of Court” and that the requirements to enlarge time under Rule 6(b) therefore were not met.⁴ *See Hackin v. First Nat’l Bank of Ariz.*, 5 Ariz. App.

³The trial court also found Hopkins’s request for an enlargement untimely, presumably because she did not explicitly mention Rule 6(b) until December. Therefore, the court rejected Hopkins’s suggestion that her earlier actions had constituted an implied “motion filed within thirty days after the expiration of the period originally prescribed,” as required by Rule 6(b). Because we agree with the court’s determination that the motion for enlargement failed on its merits, we need not determine whether the motion was timely.

⁴Hopkins critiques at length the trial court’s statement that it had “entered” judgment in her presence at the June 8 proceeding because “entry” technically is not accomplished until the judgment is filed with the clerk. *See Ariz. R. Civ. P. 58(a)*. However, the minute entry’s record of distribution also provides sufficient evidence to

379, 385, 427 P.2d 360, 366 (1967) (client normally bound by knowledge of attorney). Accordingly, the court did not err by denying Hopkins's motion for a new trial as untimely or by refusing to enlarge the time for filing. *See Federoff*, 166 Ariz. at 388, 803 P.2d at 109.

Motion to Set Aside

¶12 Hopkins alternatively argues the trial court erred by denying her motion to set aside the judgment pursuant to Rule 60(c)(6), Ariz. R. Civ. P. The motion alleged she had not received notice of the final judgment before filing her motion for a new trial, the court had or should have granted her an enlargement of time to file her motion for a new trial, and she had justifiably relied on the representations of the court and its agents regarding whether a final judgment had been entered. A court's order granting or denying relief under Rule 60(c) is reviewed for an abuse of discretion. *City of Phx. v. Geyler*, 144 Ariz. 323, 328, 697 P.2d 1073, 1078 (1985); *see also Maher v. Urman*, 211 Ariz. 543, ¶ 21, 124 P.3d 770, 777 (App. 2005).

¶13 Rule 60(c)(6) provides "the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for . . . any . . . reason justifying relief from the operation of the judgment." The Rule can be used to vacate and reenter a judgment when the "aggrieved party establishes lack of knowledge that judgment has been entered, and asserts additional reasons that are so extraordinary as to justify relief." *Park v. Strick*, 137 Ariz. 100, 104, 669 P.2d 78, 82 (1983). Whether a

support the court's determination. The fact that Hopkins was present when the court informed her it would sign that day's minute entry in lieu of formal judgment remains relevant as some evidence she knew the minute entry would constitute judgment.

particular set of circumstances is so extraordinary as to justify relief is a determination “left to the sound discretion of our trial courts.” *Id.* at 105, 669 P.2d at 83.

¶14 As discussed above, the record supports the trial court’s determination that Hopkins had not established a lack of notice. Although Hopkins argues “the trial court never confirmed that [her] trial counsel actually received a copy” of the minute entry, the June 9 minute entry indicates that copies were distributed to her counsel pursuant to court rule. *See* Ariz. R. Civ. P. 58(e) (clerk shall distribute notice of entry of judgment immediately to all parties and make record of distribution; notice may be accomplished by minute entry). It is the aggrieved party’s burden to establish a lack of notice, *see Park*, 137 Ariz. at 104, 669 P.2d at 82, and Hopkins has neither alleged nor provided any evidence that her counsel did not receive the minute entry.

¶15 Moreover, we cannot say the trial court abused its broad discretion in concluding Hopkins had not shown extraordinary circumstances justifying relief. *Id.* at 105, 669 P.2d at 83. In addition to alleging lack of notice of the judgment’s entry, Hopkins’s only other argument in this regard is that she “acted as diligently” as the appellant who was entitled to relief in *Davis v. Davis*, 143 Ariz. 54, 691 P.2d 1082 (1984). Although Hopkins provided evidence that she, like the appellant in *Davis*, had inquired at the court about the existence of a judgment, the clerk in *Davis* did not send either party’s attorney notice of entry of judgment and, once the *Davis* appellee discovered judgment had been signed, he “decided not to inform his opponent.” *Id.* at 56-57, 691 P.2d at 1084-85. *Davis* reiterated that there are no “hard-and-fast rules” to the discretionary determination of whether extraordinary circumstances exist, *id.* at 59, 691

P.2d at 1087, and we cannot conclude the circumstances here are so indistinguishable from those in *Davis* that the court was required to grant Hopkins relief.

¶16 Because we have determined the trial court did not abuse its discretion by denying Hopkins’s post-judgment motions based on timeliness, we do not reach her arguments regarding the motions’ merits.

Disposition

¶17 For the foregoing reasons, the trial court’s orders are affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge