

**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

AUG 14 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

GLENN LOCKERBY,)
)
Plaintiff/Appellant,)

v.)

2 CA-CV 2013-0017

CITY OF TUCSON, a municipal corporation;)
EMILY NOTTINGHAM, previous Director)
of Code Enforcement of Housing and)
Community Development; ALBERT ELIAS,)
present Director of Code Enforcement of)
Tucson Housing and Community)
Development, and SARAH ELIAS, husband)
and wife; JAMES HURD, Code Enforcement)
Inspector for the City of Tucson Community)
Services Department, and DEBORA HURD,)
husband and wife; ERNEST DUARTE,)
Director of Planning and Development and)
Zoning Administration, and JANE DUARTE,)
husband and wife; and TERESA WILLIAMS,)
Code Enforcement Administrator,)
)
Defendants/Appellees.)

GLENN LOCKERBY,)
)
Plaintiff/Appellant,)

v.)

2 CA-CV 2013-0021
(Consolidated)
DEPARTMENT B

CITY OF TUCSON, a municipal corporation;)
JAMES HURD, Code Enforcement Inspector)
for the City of Tucson Community Services)
Department, and DEBORA HURD, husband)
and wife,)

MEMORANDUM DECISION
Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

Defendants/Appellees.)

)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. C20121596 and C20121558

Honorable Jan E. Kearney, Judge

Honorable Ted B. Borek, Judge

AFFIRMED

Glenn Lockerby

Tucson
In Propria Persona

Michael G. Rankin, Tucson City Attorney

By Michael W.L. McCrory

Tucson
Attorneys for Defendants/Appellees

ECKERSTROM, Judge.

¶1 In this consolidated appeal, plaintiff/appellant Glenn Lockerby challenges trial court rulings that disposed of two actions he had brought against defendants/appellees City of Tucson and its employees (collectively “the city”). We affirm.

Factual and Procedural Background

¶2 Before commencing the present actions, Lockerby was involved in a dispute with the City of Tucson concerning two alleged land use code violations. The enforcement action ultimately terminated in his favor after Lockerby appealed to the superior court. He then initiated two civil actions against the city.

¶3 In an amended pro se complaint filed in C20121596, Lockerby alleged the city had committed various torts against him during “a 27-year pattern of harassment” that had deprived him of his constitutional rights as well as the “quiet enjoyment of his properties.” The city filed a motion for judgment on the pleadings or, alternatively, for dismissal. After a hearing on the motion, Judge Kearney found the complaint to be “of the ‘kitchen sink’ variety,” meaning it was “difficult to ascertain with any certainty just what legal claims are intended.” She consequently dismissed the complaint on the ground that it did not comply with Rule 8(a), Ariz. R. Civ. P., by stating clear and concise legal claims.

¶4 Alternatively, Judge Kearney determined that all but one of Lockerby’s claims were barred by applicable statutes of limitation. The remaining claim—one for malicious prosecution based on a citation issued for motor homes that had been kept on Lockerby’s property—concerned the earlier city court judgment that had been appealed to the superior court. Judge Kearney determined that the enforcement action had been supported by probable cause; hence, the elements of the malicious prosecution claim could not be met as a matter of law. Accordingly, because the complaint’s deficiencies could not be cured by further pleading, she dismissed the amended complaint without allowing additional amendments.

¶5 In the other cause of action, C20121558, Lockerby filed an amended complaint alleging claims of trover, conversion, and conspiracy, and seeking damages resulting from the city’s prior enforcement action. Specifically, he sought to recover damages for the loss of his jungle gym and motor home. Judge Borek granted the city’s

motion for judgment on the pleadings. He determined that conspiracy is not a cognizable tort and that Lockerby's trover and conversion claims similarly were not cognizable because he did not allege that the city had exercised control over his property.

Jurisdiction

¶6 Although Judge Kearney's signed order did not expressly dismiss Lockerby's complaint with prejudice, the order nonetheless was an involuntary dismissal that operated as an adjudication on the merits. *See* Ariz. R. Civ. P. 41(b). We therefore have jurisdiction over Lockerby's appeal from this order pursuant to A.R.S. § 12-2101(A)(1) or (3). *Compare Thiele v. City of Phoenix*, 232 Ariz. 40, ¶¶ 8-9, 301 P.3d 206, 208 (App. 2013) (dismissal with prejudice appealable as final judgment), *with Tripati v. Tucker*, 222 Ariz. 372, ¶ 2, 214 P.3d 1013, 1014 (App. 2009) (dismissal with prejudice appealable under former A.R.S. § 12-2101(D), now subsection (A)(3), as order determining action and preventing final judgment); *see also Flynn v. Johnson*, 3 Ariz. App. 369, 373, 414 P.2d 757, 761 (App. 1966) (noting dismissal order may be appealed if trial court expressly denies leave to amend). We have jurisdiction over the appeal from Judge Borek's judgment on the pleadings pursuant to § 12-2101(A)(1). *See Delci v. Gutierrez Trucking Co.*, 229 Ariz. 333, ¶¶ 4-5, 275 P.3d 632, 634 (App. 2012).

Discussion

C20121596

¶7 Lockerby challenges Judge Kearney's dismissal order, asserting that his claims were timely under A.R.S. § 12-504. This savings statute extends the limitations period for certain actions that are "commenced within the time limited for the action"

then dismissed after the expiration of that time. § 12-504(A). Prior to Judge Kearney's final order, Lockerby's causes of action in C20121596 never had been dismissed or otherwise "terminated" without "a final judgment on the merits." *Id.* The statute is thus inapplicable. Lockerby's argument to the contrary is based on a misunderstanding of the law and of the enforcement action that took place in the city court. Furthermore, because Lockerby has failed to present any argument as to the dismissal of his complaint under Rule 8, we independently affirm Judge Kearney's order on this basis. *See State v. Aleman*, 210 Ariz. 232, ¶¶ 8-10, 109 P.3d 571, 575 (App. 2005) (failing to address alternative grounds for ruling in opening brief may result in waiver); *Guirey, Srnka & Arnold, Architects v. City of Phoenix*, 9 Ariz. App. 70, 71, 449 P.2d 306, 307 (1969) (appellant has burden to show trial court erred).

C20121558

¶8 In regard to Judge Borek's grant of judgment on the pleadings, Lockerby has failed to present an argument challenging any of the judge's legal determinations. Rule 13(a)(6), Ariz. R. Civ. App. P., requires that arguments in opening briefs "contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on." "Parties who choose to represent themselves 'are entitled to no more consideration than if they had been represented by counsel' and are held to the same standards as attorneys with respect to 'familiarity with required procedures and . . . notice of statutes and local rules.'" *In re Marriage of Williams*, 219 Ariz. 546, ¶ 13, 200 P.3d 1043, 1046 (App. 2008), quoting *Smith v. Rabb*, 95 Ariz. 49, 53, 386 P.2d 649, 652 (1963) (alteration in

Williams). In the absence of a developed legal argument showing Judge Borek erred in ruling on the city's motion, we find the issue waived. *See Lohmeier v. Hammer*, 214 Ariz. 57, n.5, 148 P.3d 101, 108 n.5 (App. 2006).

¶9 Lockerby nevertheless asserts “the Trial Court was duty bound in law to accept the findings of the City Court” that he “was entitled to a quantum of damages in monetary relief.” We find this argument waived due to Lockerby's failure to support it with any legal authority. *See In re \$26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 28, 18 P.3d 85, 93 (App. 2000) (declining to consider party's “bald assertion[s] . . . offered without elaboration or citation to any . . . legal authority”). And in any event, we agree with Judge Borek that Lockerby's “position i[n] this case appears to stem f[ro]m a grave misunderstanding” of comments made by the city court during the enforcement action.

Disposition

¶10 For the foregoing reasons, we affirm the dismissal order entered in C20121596 and the judgment entered in C20121558.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge