IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

GAIL COVINGTON MCBRIDE AND JAMES MCBRIDE, WIFE AND HUSBAND,
Plaintiffs/Appellees,

v.

THOMAS LINN AND BEVERLY J. KNAAK, HUSBAND AND WIFE,
Defendants/Appellants.

No. 2 CA-CV 2014-0027
Filed July 25, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c); Ariz. R. Civ. App. P. 28(c).

Appeal from the Superior Court in Cochise County
No. CV201200493
The Honorable Karl D. Elledge, Judge

AFFIRMED

COUNSEL

Gail Covington McBride and James McBride, Bisbee
In Propria Persona

Knapp & Roberts, P.C., Scottsdale
By David L. Abney
Counsel for Defendants/Appellants

MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Miller and Chief Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 Appellants Thomas Linn and Beverly Knaak challenge the trial court's denial of their Rule 60(c), Ariz. R. Civ. P., motion to set aside a judgment in favor of their neighbors, Appellees Gail and James McBride. They contend the court applied the wrong common-law rule to decide a dispute over a hedge that separates the parties' properties. Because Appellants have not demonstrated that the court abused its discretion, we affirm its ruling.

Factual and Procedural Background

¶2 "'When reviewing issues decided following a bench trial, we view the facts in the light most favorable to upholding the court's ruling.'" *Smith v. Beesley*, 226 Ariz. 313, ¶ 3, 247 P.3d 548, 550 (App. 2011), *quoting Bennett v. Baxter Grp., Inc.*, 223 Ariz. 414, ¶ 2, 224 P.3d 230, 233 (App. 2010). In July 2012, Gail McBride[1] filed a request for a temporary restraining order (TRO) to prevent Appellants from "cutting, digging, removing, [or using a] backhoe on the body or roots" of a hedge that marks the boundary between the parties' properties. That application was denied for failure to comply with the requirements of Rule 65(d), Ariz. R. Civ. P. But McBride's second application for a TRO, which she filed in conjunction with a motion for permanent injunction, resulted in the issuance of an order temporarily restraining Appellants from "removing the roots from the hedge between the parties' properties." A hearing was held on the matter, and the trial court later entered a preliminary injunction enjoining Appellants from "digging out or cutting the

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[1]Gail McBride and Linn were the only parties to this action at that time. James McBride and Knaak were joined as parties in November 2012.

roots or otherwise damaging the hedges between [their] property and [Appellees'] property."

¶3 After a two-day bench trial in February 2013, the court's preliminary injunction was made permanent, subject to two modifications involving Appellants' ability to trim the hedge to the boundary line and continue participating in a soil remediation program. No appeal was taken from that decision. Nearly six months later, Appellants moved to have the order set aside pursuant to subsections (1) and (6) of Rule 60(c), Ariz. R. Civ. P., based on alleged "legal error" concerning "the scope and meaning of the relevant common-law principles." The trial court denied the motion on the ground that Rule 60(c)(1) "does not encompass situations, other than void judgments, where a party merely asks the court to reconsider a previous legal ruling." It also rejected Appellants' motion for relief pursuant to Rule 60(c)(6). On appeal, Appellants challenge only the ruling denying relief pursuant to Rule 60(c)(1).[2] We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Discussion

¶4 We review a ruling on a Rule 60(c) motion for an abuse of discretion, *Maher v. Urman*, 211 Ariz. 543, ¶ 21, 124 P.3d 770, 777 (App. 2005), and will affirm if "any reasonable view of the facts and law might support the judgment of the trial court," *City of Phx. v. Geyler*, 144 Ariz. 323, 330, 697 P.2d 1073, 1080 (1985). When a Rule 60(c) determination involves the interpretation of court rules, however, our review is *de novo*. *Harper v. Canyon Land Dev., LLC*, 219 Ariz. 535, ¶ 4, 200 P.3d 1032, 1033 (App. 2008); *see also Porter v. Spader*, 225 Ariz. 424, ¶ 5, 239 P.3d 743, 745 (App. 2010).

¶5 Rule 60(c) sets forth various grounds for relief from final judgment including, in relevant part, "mistake, inadvertence,

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[2]Appellants have not renewed their argument that they are entitled to relief under Rule 60(c)(6) and appear to have abandoned this issue on appeal. *See* Ariz. R. Civ. App. P. 13(a)(6), (7); *State Farm Mut. Auto. Ins. Co. v. Tarantino*, 114 Ariz. 420, 422, 561 P.2d 744, 746 (1977).

surprise or excusable neglect." Ariz. R. Civ. P. 60(c)(1). As this court has previously stated, the rule "does not provide an alternative to appeal, or to other procedures for obtaining review of erroneous legal rulings, such as a motion for a new trial." *Tippit v. Lahr*, 132 Ariz. 406, 408, 646 P.2d 291, 293 (App. 1982) (citations omitted). While its "precise scope of . . . relief defies neat encapsulation, it is clear that the rule, except as it applies to void judgments, is primarily intended to allow relief from judgments that . . . cannot be remedied by legal review."[3] *Id.* at 408-09, 646 P.2d at 293-94.

¶6 Appellants contend they were entitled to relief under Rule 60(c)(1) because the trial court's erroneous application of the "common-hedge rule" constituted a "mistake of law." In arguing that this subsection provides an avenue for relief from substantive legal errors, they cite multiple federal decisions interpreting its federal analogue, Rule 60(b), Fed. R. Civ. P. *See Harper*, 219 Ariz. 535, ¶ 6, 200 P.3d at 1034.[4]

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[3]In certain circumstances, a party may employ Rule 60(c) to have a judgment vacated and reentered for the purposes of taking a delayed appeal. *Geyler*, 144 Ariz. at 328, 697 P.2d at 1078. Such relief is designed to remediate problems regarding notice of judgment, and requires a showing of "'extraordinary,' 'unique,' or 'compelling' circumstances." *Id.*, *quoting Park v. Strick*, 137 Ariz. 100, 103, 669 P.2d 78, 81 (1983). Appellants have not argued—nor would we likely find—that they are entitled to relief under the "stringent standards" adopted in *Geyler*. *See id.*

[4]While some federal circuits recognize a trial court's ability to correct its own legal error under federal Rule 60(b), the courts are not aligned on this issue—a point Appellants acknowledge. *See* 11 Wright et al., *Federal Practice & Procedure* § 2858.1 (3d ed.) (noting circuit split); *see also Ahmed v. Rosenblatt*, 118 F.3d 886, 891 (1st Cir. 1997) ("[I]n this circuit, wrongly deciding a point of law is not a 'mistake' as we have defined that term under Rule 60(b)(1)."); *Cash v. Ill. Div. of Mental Health*, 209 F.3d 695, 698 (7th Cir. 2000) (rule "is not an alternate route" for correcting legal errors). And the circuits that permit correction of legal error through Rule 60(b) also impose specific limitations to prevent circumvention of time limits for

¶7 We need not look to the federal approach on whether legal error may support a motion for relief from judgment, however, because the courts of this state have addressed this issue numerous times. *E.g., DeGryse v. DeGryse*, 135 Ariz. 335, 338, 661 P.2d 185, 188 (1983);[5] *Welch v. McClure*, 123 Ariz. 161, 165, 598 P.2d 980, 984 (1979); *Lopez-Hudson v. Schneider*, 188 Ariz. 407, 409-10, 937 P.2d 329, 331-32 (App. 1996). In declining to treat an untimely motion for new trial as a Rule 60(c) motion in *Welch*, our supreme court focused on whether the motion "set[] forth grounds for relief recognized by [R]ule 60(c)." 123 Ariz. at 165, 598 P.2d at 984. The court

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appeals. *See In re 310 Assocs.*, 346 F.3d 31, 35 (2d Cir. 2003) (motion based on mistake of law may not be brought after time for appeal has run); *Pierce v. United Mine Workers of America Welfare and Retirement Fund for 1950 and 1974*, 770 F.2d 449, 452 (6th Cir. 1985) (same); *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 578 (10th Cir. 1996) (same); *Selkridge v. United of Omaha Life Ins. Co.*, 360 F.3d 155, 173 (3d Cir. 2004) (legal error without more does not justify relief under Rule 60(b)); *Plotkin v. Pac. Tel. & Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982) (same); *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993) (rule may not be used as substitute for timely appeal); *Parks v. U.S. Life & Credit Corp.*, 677 F.2d 838, 840-41 (11th Cir. 1982) (same). Thus, even if viewed as instructive, these decisions would be unlikely to benefit Appellants, who have provided no explanation for their filing of a Rule 60(c), Ariz. R. Civ. P., motion nearly five months after the time for appeal had expired. *See* Ariz. R. Civ. App. P. 9(a).

[5]Appellants focus on the supreme court's statement in *DeGryse* that "[R]ule 60(c) does not encompass situations . . . where a party merely asks the court to reconsider a previous legal ruling." 135 Ariz. at 338, 661 P.2d at 188. They attempt to distinguish their own motion based on this language, arguing they "were not asking the trial court for mere reconsideration, but to recognize . . . a basic mistake of law and . . . correct that mistake." But they cite no authority for the proposition that a motion to "correct" an error of law is distinguishable from a motion to "reconsider" a legal analysis, and we conclude both are untenable under Rule 60(c).

determined that defendant's motion to eliminate the jury's punitive damages award was improper under Rule 60(c) because a motion brought pursuant to that rule "is not a device for weighing evidence or reviewing legal errors." *Id.*

¶8 This court reached a similar conclusion in *Lopez-Hudson*, in which we considered whether an untimely Rule 59 motion that had been granted by the trial court could be construed as a Rule 60(c) motion for relief from judgment. 188 Ariz. at 409-10, 937 P.2d at 331-32. After determining the court lacked authority to extend the time for a Rule 59 motion, we considered whether the party's request for relief could be addressed under Rule 60(c). *Id.* Citing *Welch*, we declined to consider appellant's claims of legal error and ultimately concluded that none of the issues raised in appellant's Rule 59 motion were proper bases for relief under Rule 60(c). *Id.*

¶9 Likewise in *Tippit*, we determined that a trial court's decision to modify a divorce decree was improper under Rule 60(c) because, assuming the modification was unlawful, it "was, at worst, an error of law," and Rule 60(c) "does not provide an alternative to appeal . . . or to other procedures for obtaining review of erroneous legal rulings." 132 Ariz. at 408, 646 P.2d at 293 (citations omitted). We held that "a motion under Rule 60(c) is not a device for reviewing or correcting legal errors that do not render the judgment void." *Id.* While Appellants portray these statements as "dicta," the facts of *Tippit* establish that this limitation on Rule 60(c)'s reach actually determined the outcome of that case. 132 Ariz. at 408-09, 646 P.2d at 293-94.

¶10 Thus, notwithstanding Appellants' effort to portray Rule 60(c)(1) as "one last meaningful opportunity to obtain relief from a judgment or other final order resulting from . . . factual or legal error," the weight of Arizona authority is clear: a claim of legal error is not the type of "mistake" that entitles a litigant to relief from judgment pursuant to Rule 60(c)(1), Ariz. R. Civ. P. To the extent Appellants believed the trial court's legal analysis was in error, their proper course of action was to move for a new trial or file a notice of appeal within the time frames specified by the rules of procedure. *See* Ariz. R. Civ. P. 59; Ariz. R. Civ. App. P. 9. Accordingly, we agree

with the court's analysis and conclude there was no abuse of discretion in its application of Rule 60(c).

Disposition

¶11 For the foregoing reasons, the trial court's denial of Appellants motion for relief from judgment is affirmed, and Appellees are awarded their costs on appeal pursuant to A.R.S. § 12-341.