

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE \$170.00 U.S. CURRENCY;
2012 HARLEY DAVIDSON MOTORCYCLE, REG. AZ/JGMC3Z

No. 2 CA-CV 2014-0086
Filed January 21, 2015

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NOT FOR PUBLICATION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)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV201300064
The Honorable Karen J. Stillwell, Judge Pro Tempore

AFFIRMED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Craig Cameron, Deputy County Attorney, Florence
Counsel for Petitioner/Appellee

Gregan & Associates, Mesa
By David Gregan
Counsel for Respondent/Appellant

MEMORANDUM DECISION

Presiding Judge Kelly authored the decision of the Court, in which
Judge Howard and Judge Vásquez concurred.

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K E L L Y, Presiding Judge:

¶1 Gregory Baker appeals from the trial court's grant of the state's motion for summary judgment and order forfeiting a Harley Davidson motorcycle. For the following reasons, we deem Baker's arguments waived and affirm the court's forfeiture order.

Factual and Procedural Background

¶2 In January 2013, the state initiated civil forfeiture proceedings against \$170 in U.S. currency and a 2012 Harley Davidson motorcycle. The state served a notice of pending uncontested forfeiture on Ty Leisure and Baker, the two interested parties. Baker filed a "Response to Forfeiture" and attached a copy of the title to the motorcycle, which showed that title was held by "Ty Rodger Leisure OR Gregory James Baker." The state filed a complaint, in which it alleged that Baker and Leisure "held title to the Motorcycle in an 'or' status," and each of them "had the capacity, and was empowered, to legally and equitably convey title to a bona fide purchaser for value." The complaint further alleged that Leisure had "used the motorcycle . . . to transport a dangerous drug for sale" and that Baker did not "meet the prerequisites of an exception to forfeiture under A.R.S. § 13-4304(4)(b)." Baker filed an answer to the complaint, in which he denied that Leisure "had the capacity or [was] empowered to legally and equitably convey title to a bona fide purchaser for value."

¶3 The state filed a motion for summary judgment, in which it argued that Baker could not prevail in proving an exception to forfeiture under A.R.S. § 13-4304. Following a hearing, the trial court granted the motion. In its ruling, the court determined that Baker and Leisure "obtained title and ownership to the 2012 Harley Davidson motorcycle in the 'or' legal status." The court further stated that, "[b]y holding title in this legal status, [Baker] 'empower[ed] [Leisure] . . . with legal or equitable power to convey the interest, as to a bona fide purchaser for value.'" Although the court noted that Baker "attempted to restrict Leisure's access to the motorcycle," it determined that "Leisure's ability to convey the interest without [Baker's] knowledge or permission was not

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affected.” The court concluded that Baker did not qualify for an exemption to forfeiture.

¶4 The state lodged a forfeiture order, to which Baker objected. Baker also filed a motion for reconsideration. The court denied his motion for reconsideration and signed the forfeiture order. This appeal followed. We determined the forfeiture order was not a final order as contemplated by and in compliance with Rule 54(c), Ariz. R. Civ. P. Accordingly, we stayed the appeal, pursuant to Rule 9.1, Ariz. R. Civ. App. P., and directed the court to prepare and transmit a final order, which it did on December 26, 2014.

Discussion

Grant of Summary Judgment and Forfeiture Order

¶5 Baker argues the trial court abused its discretion when it concluded that Baker did not qualify for an exemption from forfeiture under § 13-4304(4)(b).¹ Specifically, he contends the court erred when it determined Baker had, by holding title to the motorcycle jointly with Leisure, “empower[ed] [Leisure] . . . with legal or equitable power to convey the interest, as to a bona fide purchaser for value.” He also asserts the court abused its discretion by granting the state’s motion for summary judgment when there was a question of fact as to whether Baker rescinded the permission he gave Leisure to sell the motorcycle.

¶6 Baker has set forth factual assertions regarding the steps he took to prevent Leisure from accessing the motorcycle, which he claims establishes he did not “empower” Leisure within the meaning of § 13-4304(4)(b), but he does not cite the record to support those factual assertions. Baker’s brief therefore does not comply with the rules of appellate procedure, which require appellate briefs

¹Section 13-4304(4)(b), A.R.S., provides, in relevant part, “No owner’s or interest holder’s interest may be forfeited . . . if the owner or interest holder establishes . . . [h]e did not empower any person whose act or omission gives rise to forfeiture with legal or equitable power to convey the interest, as to a bona fide purchaser for value.”

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to set forth a statement of facts with citations to the record on appeal and arguments “contain[ing] 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.” *See* Ariz. R. Civ. App. P. 13(a)(4), (6).

¶7 Baker apparently testified at the hearing on the state’s motion for summary judgment regarding his efforts to prevent Leisure from accessing the motorcycle, but the transcript of that hearing is not part of the record on appeal. Baker, as the appellant, was responsible for ensuring the record on appeal contained any transcripts or other documents necessary for us to consider the arguments he raised on appeal. *See Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). Without support in the record for his factual assertions regarding the measures he took to rescind Leisure’s authority to convey the motorcycle, we cannot meaningfully review Baker’s arguments that the court erred by disregarding those facts.

¶8 When a party fails to comply with the rules of appellate procedure, we may deem that party’s argument waived, *see Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007), and lack of compliance is justification for our summary refusal to consider the argument, *see Rice v. Brakel*, 233 Ariz. 140, ¶ 28, 310 P.3d 16, 23 (App. 2013) (declining to consider argument where appellant neither cited to relevant portions of record nor addressed basis of court’s decision in granting summary judgment). Because Baker’s brief has failed to comply with our rules, thereby precluding our meaningful review, we deem his arguments waived.

Attorney Fees

¶9 The state requests its attorney fees on appeal pursuant to A.R.S. § 13-4314(F). Under that statute, a “claimant who fails to establish that his entire interest is exempt from forfeiture under § 13-4304” must pay “the state’s costs and expenses of the investigation and prosecution of the matter, including reasonable attorney fees.” We award the state its reasonable attorney fees upon its compliance with Rule 21, Ariz. R. Civ. App. P.

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Disposition

¶10 For the foregoing reasons, we affirm the trial court's order of forfeiture.