IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Plaintiff/Appellee,

v.

THOMAS L. ROAR JR.,
Defendant/Appellant.

No. 2 CA-CV 2016-0177
Filed March 21, 2016

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NOT FOR PUBLICATION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 Cochise County
No. S0200CV201600309
The Honorable Karl D. Elledge, Judge

AFFIRMED

Thomas L. Roar Jr., Sierra Vista
In Propria Persona

MEMORANDUM DECISION

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

V Á S Q U E Z, Judge:

¶1 In this forcible-detainer action, Thomas Roar Jr. appeals from the trial court's grant of summary judgment in favor of Federal National Mortgage Association (FNMA), ordering Roar to vacate his father's former property. On appeal, Roar argues that he had a statutory right to redeem and that his outstanding offer to purchase the property presented a genuine issue of material fact precluding summary judgment.[1] For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts and inferences drawn therefrom in the light most favorable to Roar, the party against whom summary judgment was entered. *Mousa v. Saba*, 222 Ariz. 581, ¶ 15, 218 P.3d 1038, 1042 (App. 2009). However, the relevant facts are undisputed. In April 2002, Roar's father, who has since passed away, executed a deed of trust on his residential real property in Sierra Vista to secure payment of a promissory note. After Roar's father defaulted on the promissory note, the trustee initiated a trustee sale, at which PHH Mortgage Corp. purchased the property and was issued a trustee's deed. PHH subsequently conveyed the property to FNMA by special warranty deed.

¶3 In May 2016, FNMA served Roar with a notice to vacate the property. When Roar failed to relinquish possession, FNMA initiated this forcible-detainer action. At the initial hearing, Roar informed the trial court that he had made an offer to purchase the property. The court therefore continued the hearing to "give [the parties] an opportunity to close." FNMA subsequently filed a motion for summary judgment, claiming that Roar had "no legal or equitable interest in the subject property" and that the parties "failed to find mutually agreeable terms and any discussions regarding

[1] FNMA did not file an answering brief with this court. Although the failure to file an answering brief may constitute a confession of error, we exercise our discretion to address the merits of Roar's appeal. *See Cardoso v. Soldo*, 230 Ariz. 614, n.1, 277 P.3d 811, 813 n.1 (App. 2012).

purchase of the subject property have concluded." The court granted the motion, and this appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Discussion

¶4 Roar argues the trial court erred in granting summary judgment because he had a "statutory right to redeem the subject property" and his "offer to redeem . . . , or alternatively [to] purchase the property[,] constitutes . . . a genuine issue of material fact."[2] Summary judgment is appropriate "if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Ariz. R. Civ. P. 56(a). "The moving party bears the burden of providing undisputed admissible evidence that would entitle it to judgment as a matter of law." *Watkins v. Arpaio*, 239 Ariz. 168, ¶ 7, 367 P.3d 72, 74 (App. 2016). We review de novo "whether there are genuine issues

[2]Citing Rule 55(a), Ariz. R. Civ. P., Roar also claims that the trial court should have disposed of the case by default, rather than summary judgment, because its decision was "ostensibly based on the uncontroverted averments in FNMA's [c]omplaint for possession." But default in a forcible-detainer action is proper "[i]f the defendant fails to appear in person or through counsel on the initial return date, and no continuance is granted." RPEA 13(b)(3)(A). Roar appeared at the initial hearing and each one thereafter. Thus, default would not have been proper. We additionally note that, although the rules governing eviction actions do not expressly authorize the entry of summary judgment, *see* RPEA 1 (Arizona Rules of Civil Procedure only apply when specifically incorporated), 13(b) (listing forms of judgment), an erroneously entered judgment over which the court had jurisdiction is not necessarily void, *see Cockerham v. Zikratch*, 127 Ariz. 230, 234, 619 P.2d 739, 743 (1980); *cf. State v. Espinoza*, 229 Ariz. 421, ¶ 26, 276 P.3d 55, 61 (App. 2012) (describing procedural error in context of the court's proper jurisdictional authority). And because Roar did not raise this issue below, it is waived. *See Cont'l Lighting & Contracting, Inc. v. Premier Grading & Utils., LLC*, 227 Ariz. 382, ¶ 12, 258 P.3d 200, 204 (App. 2011).

of material fact and whether the trial court erred in applying the law." *Preston v. Amadei*, 238 Ariz. 124, ¶ 9, 357 P.3d 159, 164 (App. 2015).

¶5 Relying on A.R.S. § 12-1281, Roar argues he had a statutory right to redeem or purchase the property. Roar asserts that he is the decedent trustor's "son, heir, and successor in interest," and he contends the statute permits a judgment debtor's "successor in interest in the whole or any part of the property" to redeem "[p]roperty sold subject to redemption." Although FNMA acknowledged below that Roar is the decedent trustor's son, nothing in the record supports Roar's assertion that he also is an heir or a successor in interest to the property. *See* Ariz. R. Civ. App. P. 13(a)(7) (opening brief shall contain argument with references to record); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) (appellant's duty to ensure record contains all transcripts and documents necessary to consider issues on appeal). The decedent trustor may have had a will leaving his property to others, in which case Roar would not be an heir. *See* A.R.S. §§ 14-2101 (modification by will of intestate succession), 14-2103 (describing heirs of intestate estate). And there is no document otherwise reflecting that Roar is the decedent's successor in interest.

¶6 Even assuming Roar is the successor in interest, however, he was not entitled to redeem the property after the trustee's sale. "In Arizona, non-judicial foreclosure sales, or trustees' sales, are governed by statute." *Hogan v. Wash. Mut. Bank, N.A.*, 230 Ariz. 584, ¶ 5, 277 P.3d 781, 782 (2012); *see* A.R.S. §§ 33-801 to 33-821. They "are meant to operate quickly and efficiently, 'outside of the judicial process.'" *Hogan*, 230 Ariz. 584, ¶ 12, 277 P.3d at 784, *quoting In re Vasquez,* 228 Ariz. 357, n.1, 266 P.3d 1053, 1055 n.1 (2011). Although there is a right of redemption after a judicial foreclosure, there is no corresponding right after a trustee's sale. *See Vasquez,* 228 Ariz. 357, n.1, 266 P.3d at 1055 n.1; *Chaparral Dev. v. RMED Int'l, Inc.*, 170 Ariz. 309, 312-13, 823 P.2d 1317, 1320-21 (App. 1991).

¶7 Because we conclude Roar did not have a statutory right of redemption, we need not address whether his offer to redeem the property created a genuine issue of material fact that

precluded summary judgment. As to his "offer to purchase" the property, Roar has cited no authority, and we are aware of none, for the proposition that his offer somehow negated FNMA's right to actual possession. *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62, 211 P.3d 1272, 1289 (App. 2009) (failure to support argument constitutes abandonment and waiver of that claim). The right to possession is the only issue to be determined in a forcible-detainer action. *See* A.R.S. § 12-1177(A); *Curtis v. Morris,* 186 Ariz. 534, 534-35, 925 P.2d 259, 259-60 (1996). The trial court therefore did not err by granting summary judgment. *See Preston*, 238 Ariz. 124, ¶ 9, 357 P.3d at 164.

Disposition

¶8 For the foregoing reasons, we affirm. We additionally deny Roar's request for attorney fees, costs, and sanctions because he is self-represented and failed to cite any legal authority for his request. *See* Ariz. R. Civ. App. P. 21(a) (party claiming attorney fees must provide authority for award); *Hunt Inv. Co. v. Eliot*, 154 Ariz. 357, 362, 742 P.2d 858, 863 (App. 1987) (self-represented litigant not entitled to attorney fees).