

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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DEUTSCHE BANK NATIONAL TRUST COMPANY, AS CERTIFICATE TRUSTEE ON  
BEHALF OF BOSCO CREDIT II TRUST SERIES 2010-1,  
*Plaintiff/Appellee,*

*v.*

JOE JACKSON AND TERILL ANN JACKSON,  
*Defendants/Appellants.*

No. 2 CA-CV 2017-0036  
Filed December 8, 2017

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pinal County  
No. CV201602169  
The Honorable Dwight P. Callahan, Judge

**AFFIRMED**

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COUNSEL

Wright, Finlay & Zak, LLP, Scottsdale  
By Kim R. Lepore and Jamin S. Neil  
*Counsel for Plaintiff/Appellee*

Branscomb Wilhite Law Firm, Laveen  
By Monique Wilhite  
*Counsel for Defendants/Appellants*

**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

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ESPINOSA, Judge:

¶1 Joe and Terill Jackson appeal a forcible eviction judgment entered against them, alleging it was obtained on “incompetent evidence” and in violation of their due process rights. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 On November 17, 2016, appellee Deutsche Bank purchased the Jacksons’ Gold Canyon home at a trustee’s sale. Later that month, the bank demanded that they vacate the property, and when the Jacksons remained, the bank initiated a forcible detainer action in Pinal County Superior Court. A process server personally served the summons and complaint on “Jane Doe, possibly Ms. Jackson—Occupant.” Before the hearing date, however, counsel for the Jacksons filed a notice of limited special appearance alleging they had not been properly served.

¶3 At the initial hearing, the Jacksons reiterated they were appearing specially to challenge jurisdiction based on deficient service, and counsel argued that, although she had not seen the affidavit of service, it was her “understanding” that the summons and complaint had been left on their doorstep. Counsel for the bank pointed out that the affidavit of service indicated that a woman at the residence had been personally served, which the trial court agreed was “proof of appropriate service.” The Jacksons countered that they “contest[ed] that,” but offered no further explanation to support their challenge.

¶4 Addressing the merits of the eviction action, the trial court noted the Jacksons had not answered the complaint, and inquired whether they had “a defense to announce.” The Jacksons alleged the foreclosure sale was “done in error” and thus they had “a superior right to possession of that home.” The bank, in turn, argued that the merits of title were beyond the limited scope of an eviction proceeding. The court found that the Jacksons had failed to identify a potential defense to the bank’s possession,

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denied their request for a trial, and granted the bank's motion for judgment on the pleadings. The Jacksons appealed; we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 12-2101(A)(1), and 12-1182. *Morgan v. Cont'l Mortg. Inv'rs*, 16 Ariz. App. 86, 91 (1971).

**Discussion**

¶5 The Jacksons first argue the trial court's denial of their request for a trial violated their fundamental due process rights. Procedural due process requires that a litigant be provided an opportunity to be heard "at a meaningful time and in a meaningful manner." *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); see also *Willie G. v. Ariz. Dep't Econ. Sec.*, 211 Ariz. 231, ¶ 18 (App. 2005) ("The essential requirements of procedural due process are reasonable notice and an opportunity to be heard.").

¶6 The Arizona Rules of Procedure for Eviction Actions ("RPEA") provide the specific procedural requirements in an eviction proceeding. RPEA 11(b)(1) states that when a defendant appears and challenges any of the factual or legal allegations in the complaint, the trial court "should determine whether there is a basis for a legal defense to the complaint either by reviewing [the] written answer . . . or by questioning the defendant in open court." In this case, the Jacksons filed a notice of special appearance challenging the sufficiency of service, but did not file an answer addressing the merits of the complaint. In accordance with RPEA 11(b)(1), the court offered the Jacksons' counsel an opportunity to assert a defense. As noted above, the court found that the Jacksons' challenge to the validity of title "d[id] not amount to a potential defense to the claim for possession by the [bank]" in the current proceeding, and granted the bank's request for judgment on the pleadings. That legal conclusion is subject to our de novo review. See *Motel 6 Operating Ltd. P'ship v. City of Flagstaff*, 195 Ariz. 569, ¶ 7 (App. 1999).

¶7 A forcible eviction action is intended to provide a summary, speedy remedy in order to gain possession of a premise. *Mason v. Cansino*, 195 Ariz. 465, ¶ 5 (App. 1999). To achieve this end, the action is limited in scope, with the only issue being the right to actual possession. *United Effort Plan Tr. v. Holm*, 209 Ariz. 347, ¶ 21 (App. 2004). "If no factual issues exist for the jury to determine, the matter shall proceed to a trial by the judge alone regarding any legal issues or may [be] disposed of by motion . . . ." RPEA 11(d). As the legislature has made clear, "the merits of title shall not be inquired into" at a forcible eviction proceeding. A.R.S. § 12-1177(A). Thus, to defeat a motion for judgment on the pleadings in such an eviction

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action, the defendant must deny the truth of a material allegation in the complaint, or assert a viable defense on the issue of preclusion.

¶8 On appeal, the Jacksons assert they “raised a valid defense of insufficient service of process,” and cite RPEA 13, which requires the trial court to determine, *inter alia*, “whether the service of the summons and complaint was proper and timely.” Their entire argument on this point is as follows:

As argued above . . . , the Jacksons contested that they had been served properly and the Affidavit was not clear as to whether Mrs. Jackson was served. Due process required the court to conduct a hearing to listen to testimony from both parties and confirm the identity of the person allegedly served, as well as determine if that person lived there.

But the Jacksons do not provide any authority for their argument, and they have failed to explain the basis for contesting the sufficiency of the service. As already noted, the affidavit in the record describes a woman, identified as an “[o]ccupant,” “possibly Ms. Jackson,” who was personally served at the subject property at 7:23 in the morning on December 28, 2016. The Jacksons have not denied, either in their motion noticing special appearance to contest the sufficiency of process, the hearing on that motion, or on appeal, that the description provided by the process server matches the description of Mrs. Jackson. Nor have the Jacksons ever denied they were served, always phrasing their position as “contesting” the sufficiency of service.

¶9 In this case, the only evidence presented indicates that service was proper. *See* RPEA 5(f). The Jacksons were provided a meaningful opportunity to challenge service of process at the initial hearing<sup>1</sup> but they presented neither any evidence supporting their claim, nor an offer of proof of what they would have produced had their request for a trial been granted. The trial court’s denial of their request for another opportunity to

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<sup>1</sup>In forcible eviction actions, the “[i]nitial return date” is defined as “the date scheduled for the first appearance by the defendant following service of the summons and complaint,” and used interchangeably with “the ‘initial appearance date,’ or the ‘trial date.’” RPEA 18(e).

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do so does not amount to a due process violation, and we reject the Jacksons' arguments to the contrary. *Willie G.*, 211 Ariz. 231, ¶ 18.

¶10 The Jacksons additionally raise a related claim, arguing the trial court erred in relying on a copy of the Trustee's Deed Upon Sale presented by the bank because it was not certified. At the initial hearing, the bank asked the court to take judicial notice of the Trustee's Deed Upon Sale, which had been recorded with the Pinal County Recorder's Office. Under Rule 201(b)(2), Ariz. R. Evid., a court may take judicial notice of a fact not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Because the Jacksons did not below dispute that the home was sold and the deed was recorded, nor have they done so on appeal, and because the existence of the recorded deed can be readily determined, we see no error in the trial court's decision to rely on the evidence of the deed in this case. *See Sitton v. Deutsche Bank Nat'l Tr. Co.*, 233 Ariz. 215, n.2 (App. 2013) (taking judicial notice of a trustee's deed upon sale not part of the record, noting its availability in county recorder's records).

**Disposition**

¶11 For the foregoing reasons, the trial court's judgment is affirmed.