IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CITY OF ELOY,
A MUNICIPAL CORPORATION OF THE STATE OF ARIZONA,
Plaintiff/Appellant,

v.

CITY OF COOLIDGE,
A MUNICIPAL CORPORATION AND REAL PARTY IN INTEREST;
PINAL COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA,
Defendants/Appellees.

No. 2 CA-CV 2017-0054
Filed November 17, 2017

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NOT FOR PUBLICATION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
Nos. S1100CV201501749 and S1100CV201502194 (Consolidated)
The Honorable Daniel A. Washburn, Judge

VACATED AND REMANDED

COUNSEL

Cooper & Rueter, L.L.P., Casa Grande
By Stephen R. Cooper
Counsel for Plaintiff/Appellant

The Doyle Firm, P.C., Phoenix
By William H. Doyle and Brian R. Hauser
Counsel for Defendant/Appellee City of Coolidge

MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 In November 2015, the City of Eloy filed an action challenging the annexation of unincorporated land by the nearby City of Coolidge. Eloy now appeals from the trial court's entry of summary judgment in favor of Coolidge, arguing the annexation is invalid because Coolidge failed to obtain the consent, pursuant to A.R.S. § 9-471(A)(4), of more than one-half of the owners of property subject to taxation by Coolidge as a result of the annexation. For the reasons that follow, we vacate the judgment and remand the matter for proceedings consistent with this decision.

Factual and Procedural Background

¶2 In August 2015, Coolidge initiated the process for annexation of a 160-acre area of land known as the Paso Fino Annexation ("Paso Fino"), filing the requisite petition with the Pinal County Recorder. According to the most recent property assessments and valuations, two "persons" owned real or personal property in Paso Fino. Paso Fino Horse Associates, LLC ("PFHA") owned a parcel of real property with an assessed value of $30,748, and Qwest Communications Corp. ("Qwest") owned personal property valued at $4,210.20. Coolidge obtained a signature from PFHA, consenting to the annexation, but did not obtain consent from Qwest.

¶3 In October 2015, Coolidge adopted an ordinance approving the annexation. *See* § 9-471(D). Eloy, however, filed a timely complaint in superior court challenging the annexation. *See* § 9-471(C). Eloy's complaint alleged, among other things, that Coolidge failed to comply with § 9-471(A)(4), which requires obtaining the signatures of "more than one-half of the persons owning . . . property that would be subject to taxation . . . in the event of annexation."

¶4 Eloy and Coolidge both moved for summary judgment, and both included arguments concerning the validity or invalidity of the annexation depending on the adequacy of Coolidge's compliance with § 9-471(A)(4). The trial court granted Coolidge's motion and thereafter

signed a final judgment. Eloy timely appealed, and we have jurisdiction pursuant to A.R.S. § 12-2101(A)(1).

Discussion

¶5 On appeal, Eloy argues the trial court erred in granting summary judgment for Coolidge because its annexation petition was signed by only one of the two property owners, and § 9-471(A)(4) requires the signatures of "more than one-half." We review a grant of summary judgment de novo, *Copper Hills Enters., Ltd. v. Ariz. Dep't of Revenue*, 214 Ariz. 386, ¶ 6 (App. 2007), to determine whether there is any "genuine dispute as to any material fact and [whether] the moving party is entitled to judgment as a matter of law," Rule 56(a), Ariz. R. Civ. P. Where, as here, the material facts are undisputed, "our role is to determine whether the trial court correctly applied the substantive law to [the] facts." *St. Luke's Health Sys. v. State*, 180 Ariz. 373, 376 (App. 1994). We likewise review the statutory construction of § 9-471(A)(4) de novo. *Copper Hills Enters.*, 214 Ariz. 386, ¶ 6. And, in doing so, we view the statute's language as "the most reliable evidence of legislative intent." *Tohono O'odham Nation v. City of Glendale*, 227 Ariz. 113, ¶ 8 (App. 2011) ("In construing statutes, our main objective is to determine and give effect to the legislative intent.").

¶6 The language of § 9-471(A)(4) plainly requires the signatures of "the owners of one-half or more in value . . . and more than one-half of the persons owning . . . property that would be subject to taxation . . . in the event of annexation."[1] Further, the requirement for the consent of a sufficient number of property owners is "an indispensable condition precedent" to jurisdiction to proceed with annexation. *See Town of Scottsdale*

[1]The number of eligible property owners is determined, as relevant here, based on the owners shown by the county assessor's most recent assessment, and the most recent valuation by the Arizona Department of Revenue. § 9-471(F)(1)–(2). However, while § 9-471(F) governs determination of "the number of persons owning property," it is silent as to determining their identities. When taxable property changes hands following the most recent assessment or valuation, obtaining the current property owner's consent to annexation is consistent with the statutory language referring to signature "by the owners," § 9-471(A)(4). *See McCune v. City of Phoenix*, 83 Ariz. 98, 102 (1957) (presuming validity of signature of owner who apparently acquired property after most recent assessment). We consider this approach preferable to disregarding the existence of such property for the purpose of determining statutory compliance.

v. State ex rel. Pickrell, 98 Ariz. 382, 385 (1965) (majority value requirement may not be satisfied with conditional signatures); *Gorman v. City of Phoenix*, 70 Ariz. 59, 64 (1950) (absent "sufficient petition," municipality lacks jurisdiction to pass annexation ordinance). Failure to comply with this requirement is "fatal" to a proposed annexation, regardless of whether the concept of substantial compliance otherwise applies. *Town of Miami v. City of Globe*, 195 Ariz. 176, ¶ 11 (App. 1998), *citing Town of Scottsdale*, 98 Ariz. at 385. In other words, although substantial compliance with § 9-471(A) has been held to suffice when a party makes a mere "technical error," it is insufficient when it fails to comply with "an express statutory condition." *Id.* ¶¶ 12-14.

¶7 By requiring the party seeking annexation to obtain the signatures of "more than one-half of the persons owning" specified property, § 9-471(A)(4) imposes "an express statutory condition" that must be strictly construed, *Town of Miami*, 195 Ariz. 176, ¶¶ 13-14. Moreover, the legislature's placement of the majority consent requirement in the same sentence as the value requirement, which uses the different term "one-half or more," supports the conclusion that obtaining the signatures of only one-half of the property owners is insufficient. *See Comm. for Pres. of Established Neighborhoods v. Riffel*, 213 Ariz. 247, ¶ 8 (App. 2006) ("[W]hen the legislature uses different language within a statutory scheme, it does so with the intent of ascribing different meanings and consequences to that language."). The "condition is either met or it is not." *Town of Miami*, 195 Ariz. 176, ¶ 13. Thus, we conclude that when there are two or fewer eligible property owners, the plain language of § 9-471(A)(4) requires unanimous consent.

¶8 Here, there were two eligible property owners in the annexation area, PFHA and Qwest, and Coolidge was aware of them both. The trial court, however, accepted unsupported assertions that Qwest had been purchased by CenturyLink and no longer owned any property, thereby reasoning that Coolidge "discovered Qwest was no longer in business" and was thus aware "someone else might own the personal property" in the annexation area.[2] The court also observed the Department

[2] The specific details of the transaction between Qwest and CenturyLink are not part of our record. In general, however, a corporation is not automatically dissolved when it is purchased by another entity; nor does a purchase automatically deprive the subsidiary of its property. *See* 18 C.J.S. *Corporations* § 8 (2017) (*inter alia*, describing parent, subsidiary, and

of Revenue's failure to provide an address for Qwest as required by § 9-471(G). Relying on *Glick v. Town of Gilbert*, 123 Ariz. 395, 398 (App. 1979), the court concluded Coolidge was not required to conduct any "independent research" to locate the property owner, and had thus complied with the statute by "obtain[ing] the signature of the only true owner" of property in the annexation area.

¶9 *Glick* does not support this approach. There, we concluded an annexing entity need not perform an independent assessment of personal property found in the annexation area that does not appear on the most recent assessment rolls. *Id.* Our opinion did not excuse a party from any and all "independent research," nor did it allow a party to simply disregard, for purposes of § 9-471(F), a property owner whose contact information is not immediately available. *See id.*

¶10 Had Qwest or its successor received notice of the proposed annexation and refused to sign the petition, Coolidge would unquestionably lack jurisdiction to proceed with annexation for failure to comply with § 9-471(A)(4). If conditional signatures are insufficient to satisfy the majority consent requirement, *Town of Scottsdale*, 98 Ariz. at 386, then the complete failure to obtain a required signature can hardly be excused by claiming it might require additional effort to obtain the address of a property owner whose consent is required. Coolidge cannot avoid the express statutory requirement of § 9-471(A)(4) by simply disregarding Qwest's inclusion on the most recent property valuation. *See Town of Miami*, 195 Ariz. 176, ¶¶ 13-14. Because Coolidge failed to satisfy the majority consent requirement of § 9-471(A)(4), we conclude the annexation ordinance is invalid, and the trial court erred in granting summary judgment in Coolidge's favor.

Disposition

¶11 For the foregoing reasons, we vacate the judgment in favor of Coolidge and remand for proceedings consistent with this decision. Because it is the successful party, Eloy is entitled to its costs on appeal pursuant to A.R.S. § 12-341, subject to its compliance with Rule 21(b), Ariz. R. Civ. App. P.

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affiliate corporations); 19 C.J.S. *Corporations* § 887 (2017) (distinguishing sale of assets from consolidation or merger transactions).