

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MARLENE HANNA,
Plaintiff/Appellant,

v.

THE HONORABLE THEODORE FORGACH, JUSTICE OF THE PEACE PRO
TEMPORE OF THE PIMA COUNTY CONSOLIDATED JUSTICE COURT,
Respondent Judge Pro Tempore/Appellee,

and

DIANNE AND RICHARD ROMERO,
Real Parties in Interest/Appellees.

No. 2 CA-CV 2017-0061
Filed October 25, 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NOT FOR PUBLICATION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 Pima County
No. C20170200
The Honorable Leslie Miller, Judge

AFFIRMED

COUNSEL

Southern Arizona Legal Aid, Inc., Tucson
By Julianne M. Yee
Counsel for Plaintiff/Appellant

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Blythe Edmonson, Tucson
Counsel for Real Parties in Interest/Appellees

MEMORANDUM DECISION

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

E P P I C H, Judge:

¶1 Marlene Hanna appeals the superior court’s order declining to exercise special action jurisdiction. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 Hanna was the defendant in an eviction proceeding. After a bench trial, the justice court dismissed her counterclaim with prejudice. The court’s ruling informed Hanna she had five days in which to appeal the judgment, but she did not. Two months later, she filed a complaint for special action in superior court challenging the justice court’s decision. The superior court declined to accept special action jurisdiction, finding that she had an opportunity for a speedy and adequate remedy by appeal. *See* Ariz. R. P. Spec. Act. 1(a). This appeal followed. We have jurisdiction pursuant to Ariz. Const. art. VI, § 9, A.R.S. § 12-2101, and Ariz. R. Civ. App. P. 8.

Special-Action Jurisdiction

¶3 A court’s decision to decline or accept special-action jurisdiction is discretionary. *Stapert v. Ariz. Bd. of Psychologist Exam’rs*, 210 Ariz. 177, ¶ 21, 108 P.3d 956, 961 (App. 2005). The availability of an appeal does not foreclose the exercise of the court’s discretion to accept jurisdiction. *Ariz. Dep’t of Pub. Safety v. Superior Court*, 190 Ariz. 490, 493, 949 P.2d 983, 986 (App. 1997). However, special action jurisdiction generally “shall not be available where there is an equally plain, speedy, and adequate remedy by appeal.” Ariz. R. P. Spec. Act.

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1(a). We review a court's denial of special action jurisdiction for an abuse of discretion. *Files v. Bernal*, 200 Ariz. 64, ¶ 2, 22 P.3d 57, 58 (App. 2001).

¶4 Hanna argues that the superior court failed to consider her argument that an appeal was an inadequate remedy. She contends that because the court did not make findings on the factors outlined in her argument, it abused its discretion in denying her request. The cases on which Hanna relies do not impose a duty on the court to make express findings on the adequacy of an appeal before denying special action jurisdiction. *See, e.g., Nordstrom v. Cruikshank*, 213 Ariz. 434, ¶¶ 8-9, 142 P.3d 1247, 1250-51 (App. 2006); *Ariz. Dep't of Pub. Safety*, 190 Ariz. at 493-94, 949 P.2d at 986-87. Further, we presume the court considered the arguments before it. *Cf. Occidental Chem. Co. v. Connor*, 124 Ariz. 341, 344, 604 P.2d 605, 608 (1979) (presuming trial court considered affidavits that were part of record when it ruled on motion); *State v. Cazares*, 205 Ariz. 425, ¶ 7, 72 P.3d 355, 357 (App. 2003) (presuming trial court considered any evidence before it relevant to sentencing); *Flynn v. Cornoyer-Hedrick Architects & Planners, Inc.*, 160 Ariz. 187, 193, 772 P.2d 10, 16 (App. 1988) (rejecting argument that court had not read reply to response to motion, despite absence in minute entry of express statement by court it had read reply).

¶5 While the superior court arguably could have exercised its discretion to accept special action jurisdiction, it was not required to do so. An adequate remedy was available to Hanna by appeal, she merely elected not to pursue it. The court did not abuse its discretion in declining to accept jurisdiction.

Attorney Fees

¶6 The appellees have properly requested attorney fees pursuant to the terms of the residential lease agreement between the parties. *See Murphy Farrell Dev., LLLP v. Sourant*, 229 Ariz. 124, ¶ 32, 272 P.3d 355, 364 (App. 2012) (court shall award reasonable attorney fees to prevailing party if contract so provides). Accordingly, we award attorney fees and costs to the appellees, the prevailing party, upon their compliance with Rule 21, Ariz. R. Civ. App. P.

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Disposition

¶7 For the foregoing reasons, we affirm the decision of the superior court.