IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CARMEN NOELLA MARIE CARTIER,
Plaintiff/Appellee,

v.

STESHA MADISON KELSEA LINDSTROM AND
BRYANNA LINDSTROM,
Defendants/Appellants.

No. 2 CA-CV 2019-0089
Filed August 28, 2020

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NOT FOR PUBLICATION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. C201700107
The Honorable Brenda E. Oldham, Judge
The Honorable Robert C. Olson, Judge

AFFIRMED

COUNSEL

Ryan Rapp Underwood & Pacheco P.L.C., Phoenix
By John G. Ryan
Counsel for Plaintiff/Appellee

Horne Slaton PLLC, Scottsdale
By Thomas C. Horne
Counsel for Defendants/Appellants

MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

¶1 In 2018, the Pinal County Superior Court entered a default judgment in favor of Carmen Cartier in her action for quiet title, partition, conversion, and unjust enrichment. Appellants Bryanna Lindstrom and Stesha Madison Kelsea Lindstrom ("Madison") now appeal from the trial court's post-judgment rulings denying their motion to set aside default judgment and designating them as vexatious litigants. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to affirming the trial court's rulings. *Ezell v. Quon*, 224 Ariz. 532, ¶ 2 (App. 2010). In her 2017 amended complaint,[1] Cartier alleged that in 2013, she acquired certain real property, naming Madison as a joint tenant with right of survivorship "as a convenience" and "in anticipation of Cartier being repaid the monies she had loaned" the Lindstroms. Cartier alleged the Lindstroms had agreed to repay her, with interest, "once Madison's inheritance comes in and once Madison and Bryanna settle a lawsuit" that was pending. When she had not received the Lindstroms' repayment by November 2015, Cartier requested that Madison relinquish her interest in the property via a quitclaim deed. Madison refused to sign, and Cartier filed the underlying suit to quiet the title in her own name, describing Madison's interest in the property as "junior" and "inferior." In support of the amended complaint, Cartier proffered exhibits including emails between the parties in which the Lindstroms purportedly "acknowledged" their debt and "promised to repay such funds to Cartier." Cartier also sought monetary damages, attorney fees, and costs.

[1]Cartier filed a verified complaint in 2016 in Maricopa County, which was transferred to Pinal County in November 2016. After contentious motions practice, Cartier filed an amended complaint in 2017. That complaint, which is the operative complaint in this case, is not verified.

¶3 The Lindstroms failed to timely answer the amended complaint and Cartier moved for the entry of default judgment pursuant to Rule 55(b), Ariz. R. Civ. P. The trial court denied the Lindstroms' subsequent motion for an extension of time to file an answer. It held a default hearing in February 2018, at which both Bryanna and Madison Lindstrom appeared. The court apparently received evidence from Cartier during this hearing, but no party testified. The court then entered default judgment, quieting title in favor of Cartier and ruling Cartier was entitled to $167,139.98 in damages, $24,399.50 in attorney fees, $1,365.29 in costs, and post-judgment interest.

¶4 The Lindstroms filed a timely motion to set aside the default judgment pursuant to Rule 60, Ariz. R. Civ. P. The trial court denied that motion without comment. The court also imposed sanctions on the Lindstroms for filing "meritless" requests such as their request to seal the proceedings. The Lindstroms attempted, twice, to appeal the denial to set aside the default judgment, but this court dismissed both appeals for lack of jurisdiction.

¶5 A subsequent forcible entry and detainer action in Maricopa Justice Court resulted in Cartier being awarded sole possession of the property. Afterward, the Lindstroms filed a declaration and claim of homestead in the property, as well as a notice of *lis pendens*. In February 2019, the trial court quashed both. In that order, the court also provided the finality language pursuant to Rule 54(c), Ariz. R. Civ. P., making final and appealable the court's denial of the motion to set aside the default judgment.[2] *See* A.R.S. §§ 12-120.21(A)(1) and 12-2101(A); *see also Cartier v. Lindstrom*, No. 2 CA-CV 2019-0089 (Ariz. App. Aug. 29, 2019) (decision order).

Discussion

¶6 On appeal, the Lindstroms argue they are entitled to relief because the underlying complaint is insufficient to support the judgment. They also argue that the statutory homestead exemption should have protected them from having what they characterize as an "unstated

[2]We noted in our August 2019 order that we have jurisdiction over not only the trial court's denial of the Lindstroms' motion to set aside the default judgment and its order declaring them to be vexatious litigants, but also its more recent order quashing their homestead declaration and notice of *lis pendens*. However, the opening brief does not appear to challenge these later determinations, and thus we do not address them.

attachment" to a "money judgment" against them, enforced as a lien against Madison's title to the property. And, they request without argument that we rescind the trial court's order declaring them to be vexatious litigants.

¶7 We note at the outset that although the Lindstroms secured counsel before filing their reply brief, they filed their opening brief *in propria persona*. We afford self-represented litigants the same level of consideration we give to those represented by counsel, holding them "to the same familiarity with court procedures and the same notice of . . . rules . . . as is expected of a lawyer." *Higgins v. Higgins*, 194 Ariz. 266, ¶ 12 (App. 1999). And, we will not consider arguments raised for the first time in a reply brief, which our rules limit to rebuttals of an appellee's answering brief. Ariz. R. Civ. App. P. 13(c) (reply brief "strictly confined to rebuttal of points made in the appellee's answering brief").

Denial of Motion to Set Aside Default Judgment

¶8 In their motion to set aside default judgment, the Lindstroms argued they were entitled to relief on grounds of excusable neglect, misrepresentation or misconduct of Cartier, or any other reason justifying relief, as provided by Rule 60(b)(1), (3), and (6), respectively. Only the argument raised under Rule 60(b)(6) is relevant here, as the Lindstroms do not raise on appeal their arguments raised under Rule 60(b)(1) or (b)(3). They argued relief was merited under Rule 60(b)(6) because no enforceable agreement existed that would legally justify Madison's removal as a joint title holder to the house, either because any such agreement would be unenforceable due to the statute of frauds or alternately because no breach had yet occurred. As to the latter ground, they contended that neither of the two conditions required to trigger their repayment had yet occurred.

¶9 On appeal, the Lindstroms renew the argument that they should have been afforded relief under Rule 60(b)(6) because the underlying complaint was insufficient to support the judgment. Specifically, they maintain that certain factual allegations in the complaint left "uncertainty" as to the existence or terms of an enforceable agreement. Specifically, they claim what they view as contradictions in the complaint preclude the trial court from assuming those allegations were true. And they argue the complaint established only that they agreed to repay the loan upon the fulfillment of certain conditions, and the complaint failed to state whether one of those conditions had come to pass. Thus, they argue, there was "no just legal basis for holding [them] liable to [Cartier] for an unpaid

loan (which was not yet due, on the pleaded facts), nor for transferring Madison Lindstrom's joint property title exclusively to" Cartier.

¶10 We review for abuse of discretion the trial court's denial of a motion to set aside a default judgment, *Blair v. Burgener*, 226 Ariz. 213, ¶ 7 (App. 2010), viewing the facts in the light most favorable to upholding that judgment, *Ezell*, 224 Ariz. 532, ¶ 2. We "liberally construe[ ]" a complaint underlying a default judgment as "stating a cause of action warranting the granting of the relief prayed for." *Walls v. Stewart Bldg. & Roofing Supply, Inc.*, 23 Ariz. App. 123, 125 (1975). Thus, we will affirm unless "no evidence" supports the court's ruling or if the reasons given are "clearly untenable, legally incorrect, or amount to a denial of justice." *Searchtoppers.com, L.L.C. v. TrustCash LLC*, 231 Ariz. 236, ¶ 20 (App. 2012) (quoting *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, ¶ 17 (App. 2006)).

¶11 When, as here, an appellant fails to provide a transcript of a hearing relevant to our review, we presume the evidence presented at the hearing supports the trial court's ruling.[3] *Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, ¶ 20 (App. 2000); *see also* Ariz. R. Civ. App. P. 11(c)(1)(B). And, although the Lindstroms vehemently contest the propriety of the underlying default judgment, we review only the denial of the motion to set aside, which "does not extend to . . . whether the trial court was substantively correct in entering the judgment from which relief was sought." *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 311 (1983).

¶12 Rule 55(c), Ariz. R. Civ. P., provides that a trial court may set aside a default judgment if a party makes an adequate showing under Rule 60. Rule 60(b)(6)[4] is sometimes referred to as a "catch-all provision." *E.g.*, *Amanti Elec., Inc. v. Engineered Structures, Inc.*, 229 Ariz. 430, ¶ 7 (App. 2012). It allows courts to set aside a default judgment when a party demonstrates "extraordinary circumstances of hardship or injustice justifying relief." *Id.* ¶ 10 (quoting *Webb v. Erickson*, 134 Ariz. 182, 187 (1982)). This provision highlights the "considerable tension" between the presumption that a case should be resolved on its merits and the principle of finality in judicial

[3]The Lindstroms filed two notices of a request for transcripts of the default hearing, but no such transcript appears in our record and no party cites to a transcript in its briefs.

[4]"The Arizona Rules of Civil Procedure changed in 2016, reorganizing Rule 60(c) as Rule 60(b), without substantive change." *Gonzalez v. Nguyen*, 243 Ariz. 531, n.1 (2018).

proceedings. *Gonzalez v. Nguyen*, 243 Ariz. 531, ¶ 11 (2018). As a result, the provision "invest[s] extensive discretion in trial courts." *Id.* To grant a party relief under Rule 60's catch-all provision, a court must find, at a minimum, that a defendant has provided the court with facts sufficient to "assert a meritorious defense."[5] *Id.* ¶ 12.

¶13 Considering the presumptions outlined above and given the record before us, we cannot say the trial court abused its "extensive discretion" in denying the Lindstroms' motion to set aside default judgment. The court did not explain in its minute entry its reasoning for denying the motion to set aside. However, because we lack a transcript of the hearing, we must presume the evidence and arguments presented at the hearing supported the court's judgment; thus we cannot override the court's implicit conclusion that the Lindstroms failed to support a meritorious defense sufficient to entitle them to relief under Rule 60. *See Daou v. Harris*, 139 Ariz. 353, 359 (1984) (trial judges "in a much better position than appellate judges to determine" whether defendant seeking vacatur of default judgment showed meritorious defense).

¶14 To the extent that the Lindstroms argue the facts alleged in the amended complaint fail to facially support a cause of action for quiet title, we disagree. As set forth in A.R.S. § 12-1102, a complaint for quiet title must:

> 1. Be under oath.
>
> 2. Set forth generally the nature and extent of plaintiff's estate.

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[5]Cartier cites pre-*Gonzalez* case law to assert that a party seeking to set aside default must show "(1) that it acted promptly in seeking relief from the default judgment, (2) that its failure to file a timely answer was excusable under one of the six subdivisions of Rule 60(c) . . . *and* (3) that it had a meritorious defense." *United Imps. & Exps., Inc. v. Superior Court*, 134 Ariz. 43, 45 (1982) (emphasis added). However, *Gonzalez* appears to have abrogated the requirement that litigants seeking relief under Rule 60(b)(6) also show that their failure to timely answer was excusable, as required by Rule 60(b)(1). 243 Ariz. 531, ¶ 15 ("Although some cases suggest that a defendant's failure to satisfy the excusable neglect standard of Rule 60(c)(1) can be used to defeat relief under Rule 60(c)(6), . . . the grounds for relief in each of the subsections are separate and distinct.").

> 3. Describe the premises.
>
> 4. State that plaintiff is credibly informed and believes defendant makes some claim adverse to plaintiff. . . .
>
> 5. Pray for establishment of plaintiff's estate and that defendant be barred and forever estopped from having or claiming any right or title to the premises adverse to plaintiff.

The second through fifth requirements set forth the specific facts a plaintiff must allege to state a claim for relief under the statute.[6] Cartier's amended complaint satisfied each of these elements. At bottom, the Lindstroms' arguments amount to a claim that Cartier had not sufficiently proven the existence of an enforceable agreement under which they had to repay her loan or forfeit title to the house. However, that was not Cartier's burden during the default judgment proceedings, at which point the allegations in the complaint were presumed to be true. *See Ness v. Greater Arizona Realty, Inc.*, 21 Ariz. App. 231, 232 (1974). And under Arizona's notice-pleading requirements, Cartier's complaint needed only "a statement of the ground upon which the court's jurisdiction depends, a statement of the claim showing that the pleader is entitled to relief and a demand for judgment." *Rowland v. Kellogg Brown & Root, Inc.*, 210 Ariz. 530, ¶ 10 (App. 2005) (quoting *Morn v. City of Phx.*, 152 Ariz. 164, 166 (App. 1986)). The complaint met these notice-pleading standards. Cartier was therefore not required at the pleading stage to support with evidence the complaint's allegations, such as the claim that a valid agreement existed.

¶15 Rather, to demonstrate a meritorious defense, the Lindstroms would have had to provide evidence in their motion to set aside that rebutted the complaint's allegations. Their exhibits, however, established

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[6]Our review of the record reveals that the amended complaint upon which the judgment relies is unverified, in contravention of the quiet title's requirement that any such complaint be made under oath. *See* § 12-1102(1); Ariz. R. Civ. P. 8(h). This lack of verification potentially undermines the propriety of the underlying default judgment. However, we may only consider matters expressly brought before us, *see Ezell*, 224 Ariz. 532, ¶ 14, and the Lindstroms have not raised this issue in their motion to set aside or in their briefs to this court. Thus, we do not address it further.

only that Cartier had loaned them money, that they felt an urgency to repay her, and that she had added Madison's name to the title of the house she purchased. None of this is enough to overturn the procedural presumption of truth at the default judgment stage. Thus, we find no abuse of discretion in the trial court's ruling.

¶16 Nor can we determine from the record before us that the Lindstroms established extraordinary circumstances as contemplated by Rule 60(b)(6). They maintained their participation in a witness protection program, their unsuccessful efforts to permanently seal the underlying litigation to protect their identities, and the stress accompanying these efforts prevented them from meeting the deadlines required of them by the procedural rules. However, the trial court temporarily granted the Lindstroms' request to seal, but unsealed the case when the Lindstroms failed to file the appropriate documents within several months. Indeed, the record reflects a pattern of delay, including the Lindstroms' repeated failure to appear at court-ordered hearings, with a frequency that eventually induced the court to issue civil arrest warrants against them. Rule 60 is not designed to provide relief for litigants who have failed to diligently defend themselves. *Cf. Hilgeman*, 196 Ariz. 215, ¶ 21 ("Although excusable neglect is not a prerequisite for obtaining relief from a judgment under Rule 60(c)(6), a court may consider that factor in determining whether to grant such relief under that rule."). Thus, the court did not abuse its discretion in concluding the Lindstroms made an inadequate showing of the extraordinary circumstances contemplated by Rule 60(b)(6). *See also* Rule 60(b)(2), Ariz. R. Civ. P. (emphasizing diligence as necessary for setting aside default).

Remaining Issues

Homestead Exemption

¶17 The Lindstroms further argue they were entitled to protection from a lien attachment on the property, which had served as their residence for a "half-decade," unless Cartier demonstrated an exception applied as set forth in A.R.S. § 33-1103. Although we previously ruled we have jurisdiction over the trial court's order quashing the Lindstroms' Declaration of Homestead, the Lindstroms' opening brief does not clearly address that declaration, nor does it set forth the standards by which we review a ruling on a motion to quash. The argument is therefore waived. *See Boswell v. Fintelmann*, 242 Ariz. 52, n.3 (App. 2017) (claims not supported by legal argument waived).

Vexatious Litigant Designation

¶18 Additionally, the Lindstroms request we "remove" the trial court's designation of them as vexatious litigants. However, they fail to provide substantial argument regarding this matter, and thus we decline to review that claim. *See* Ariz. R. Civ. App. P. 13(a)(7); *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) ("Opening briefs must present and address significant arguments, supported by authority that set forth the appellant's position on the issue in question."); *see also Boswell*, 242 Ariz. 52, n.3.

Costs and Fees

¶19 Because the Lindstroms are not the prevailing party on appeal, we deny their request for costs pursuant to A.R.S. § 12-341. Because Cartier has prevailed on appeal, we grant her costs on appeal pursuant to § 12-341, upon her compliance with Rule 21, Ariz. R. Civ. App. P.

¶20 Cartier also requests that we award costs and fees pursuant to A.R.S. §§ 12-349 and 12-1103(B). Section 12-1103 allows a party to recover its fees and costs in a quiet title action under certain circumstances. After considering the financial positions of the respective parties, as well as the briefings here and the record below, in our discretion we grant Cartier her fees on appeal under § 12-1103(B), *see Lewis v. Pleasant Country, Ltd.*, 173 Ariz. 186, 195 (App. 1992), but we decline to impose damages as allowed under § 12-349.

Disposition

¶21 For the foregoing reasons, we affirm the trial court's denial of the motion to set aside default judgment. We award costs and fees on appeal as outlined above.