IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

YAMAMOTO HOLDINGS, LLC,
Plaintiff/Appellee,

v.

CASA CALASA, LLC; CATHY HILL,
Defendants/Appellants.

YAMAMOTO HOLDINGS, LLC,
Plaintiff/Appellee,

v.

CATHY HILL,
Defendant/Appellant.

Nos. 2 CA-CV 2019-0132 and
2 CA-CV 2019-0138 (Consolidated)
Filed July 11, 2022

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NOT FOR PUBLICATION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. CV201701329 and CV201900309
The Honorable Stephen F. McCarville, Judge
The Honorable Steven J. Fuller, Judge

AFFIRMED

COUNSEL

Gust Rosenfeld P.L.C., Phoenix
By Scott A. Malm
Counsel for Plaintiff/Appellee Yamamoto Holdings, LLC

Cathy Hill, Tucson
In Propria Persona

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 In this consolidated appeal from a tax lien foreclosure action and forcible detainer judgment, Cathy Hill challenges the trial court's orders denying her motion to set aside the default judgment entered against her, granting substitution of the plaintiff and denying her motion for reconsideration on that issue, and finding her guilty of forcible detainer. She maintains she was not guilty of forcible detainer because the default judgment was a product of fraud and was void for lack of jurisdiction due to non-compliance with notice and service requirements. She also asserts the court abused its discretion by substituting the plaintiff in the foreclosure action. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In reviewing the denial of a motion to set aside a default judgment, we view the facts in the light most favorable to upholding the trial court's ruling. *Ezell v. Quon*, 224 Ariz. 532, ¶ 2 (App. 2010). In April 2013, a notice of lis pendens was recorded against the property where Hill was living. The homeowners' association filed a foreclosure action and subsequently moved for a default judgment, which the trial court granted in September 2013—foreclosing the property and ordering its sale. Due to delinquent property taxes since 2012, the property also had a tax lien which was sold to TFLTC, LLC in February 2014.

¶3 In August 2015, a sheriff's sale of the property occurred. The property was conveyed to Casa Calasa, LLC in March 2016, and the deed was recorded that same month. The taxes remained unpaid on the property after the sale, and in May 2017, TFLTC sent Casa Calasa notice of its intent to file foreclosure via certified mail to the property.

¶4 In July 2017, TFLTC filed a tax lien foreclosure complaint. The complaint named Casa Calasa, the homeowners' association, and parties in possession I-X as defendants, among others. Four days later, in a separate proceeding, the sheriff's sale to Casa Calasa was vacated.

¶5 The following month, Hill was personally served with TFLTC's tax lien foreclosure complaint and summons at the property, and on the return of service, she was identified as "parties in possession I." The return of service avowed that Hill was informed of its contents and that she was the only resident of the property. The attorney for the homeowners' association also sent Hill a letter explaining the foreclosure complaint and the consequences of failing to redeem the property.

¶6 In October 2017, after Casa Calasa and Hill failed to respond to the complaint, TFLTC moved for entry of a default judgment against them.[1] Notice of the application for default and the scheduled hearing were mailed to Hill at the property.

¶7 TFLTC transferred its interest in the property to Maricopoly, LLC, and upon request, the trial court ordered that Maricopoly be substituted as plaintiff. In December 2017, after Hill had failed to respond or appear for the default judgment hearing, the court granted the requested default; concluded the right to redeem the tax liens was "forever foreclosed" and Hill was "barred and forever estopped from having or claiming any right or title adverse to [Maricopoly]"; and conveyed the property to Maricopoly.

¶8 In October 2018, Maricopoly conveyed the property to Pinewood Property Trust, which then conveyed the property to Yamamoto Holdings, LLC. In February 2019, Yamamoto Holdings filed a complaint to evict Hill from the property. Hill contested the eviction, asserting that she was filing a motion to set aside the default judgment in the tax lien

[1]The homeowners' association disclaimed any redemptive right and consented to foreclosure.

foreclosure proceeding and that there were outstanding questions of who rightfully possessed title to the property.

¶9 In April 2019, sixteen months after the default judgment was entered in the tax lien foreclosure action, Hill filed a motion to set it aside pursuant to Rules 55(c) and 60(b), Ariz. R. Civ. P. She asserted that the judgment was the result of non-compliance with notice and service requirements and material misrepresentations to the trial court. Maricopoly and Yamamoto Holdings stipulated to Yamamoto Holdings, as the current title holder to the property, substituting in as plaintiff in the action. The court granted the substitution and denied Hill's motion for reconsideration on that issue. The following day, in a separate proceeding, the court found her guilty of forcible detainer, and her motion to set aside was subsequently denied.

¶10 Hill's appeals followed and were consolidated. We have jurisdiction pursuant to A.R.S. §§ 12-120.21, 12-2101(A)(2), and 12-1182. *See Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 420, ¶ 14 (App. 2016) (ruling on motion to set aside appealable as special order after final judgment).

Discussion

Motion to Set Aside

¶11 Hill first contends the trial court erred in denying her motion to set aside because the default judgment was void for lack of personal and subject matter jurisdiction and was the product of fraud and misrepresentation. Yamamoto Holdings responds that Hill's motion to set aside was untimely and fails on its merits. We generally review a court's denial of a motion to set aside for an abuse of discretion, but we review de novo if the judgment is void due to lack of jurisdiction. *Ezell*, 224 Ariz. 532, ¶ 15. The scope of our review is limited to the issues raised by the motion to set aside and does not extend to whether the court was substantively correct in entering the default judgment. *Id.* ¶ 14.

¶12 As a preliminary matter, we agree with Yamamoto Holdings that the trial court did not err in denying Hill's motion to set aside on the grounds of fraud and misrepresentation. Such claims must be brought "no more than 6 months after the entry of the judgment," and Hill filed her motion sixteen months after the entry of judgment. Ariz. R. Civ. P. 60(b)(3), (c)(1). Thus, the motion was untimely on this ground and properly denied.

See Fry v. Garcia, 213 Ariz. 70, ¶ 13 (App. 2006) (Rule 60 motion on misrepresentation time-barred).

¶13 Regarding Hill's jurisdictional arguments, Yamamoto Holdings acknowledges that no specific deadline exists for a motion to set aside a void judgment. Ariz. R. Civ. P. 60(b)(4), (c)(1) (motion to set aside void judgment "must be made within a reasonable time"). It contends that the motion here was not made within a reasonable time because Hill manifested an intention to treat the judgment as valid and granting relief would impair its substantial reliance on the judgment.

¶14 However, if the trial court lacked jurisdiction, as Hill asserts, the judgment is void and must be vacated even in the case of unreasonable delay. *Master Fin., Inc. v. Woodburn*, 208 Ariz. 70, ¶ 19 (App. 2004) ("party seeking relief from a void judgment need not show that their failure to file a timely answer was excusable, that they acted promptly in seeking relief from the default judgment, or that they had a meritorious defense"). Accordingly, we address Hill's jurisdictional arguments on their merits.

Personal Jurisdiction

¶15 Hill asserts the trial court lacked personal jurisdiction to enter a default judgment against her because the complaint named her as a fictitious entity, the summons was defective, and service of process was improper. Yamamoto Holdings responds that Hill was properly served with the summons and complaint, which sufficiently identified her and her interest in the property.

¶16 Hill first contends the complaint for the tax lien foreclosure improperly used a fictitious name to identify her when her identity was known.[2] If a plaintiff does not know a defendant's name, it may designate the defendant in the pleadings or proceedings by a fictitious name. Ariz. R. Civ. P. 10(d). Once the defendant's true name is discovered, "the pleading or proceeding should be amended accordingly."[3] *Id.* The question of

[2] Hill also asserts that the civil cover sheet submitted with the complaint was improper. *See* Ariz. R. Civ. P. 8(g). However, she failed to raise this issue to the trial court, and we will not consider it for the first time on appeal. *See Barkhurst v. Kingsmen of Route 66, Inc.*, 234 Ariz. 470, ¶ 22 (App. 2014) (failure to raise issue waives review on appeal).

[3] This new version of Rule 10(d) became effective in 2017. *See* Ariz. Sup. Ct. Order R-16-0010 (Sept. 2, 2016); *see also Safeway Stores, Inc. v.*

whether the plaintiffs acted in good faith in fictitiously naming a defendant rests with the trial court. *Gonzalez v. Tidelands Motor Hotel Co.*, 123 Ariz. 217, 218 (App. 1979).

¶17 The trial court did not err in its denial of Hill's motion to set aside because she was named as "part[y] in possession I," a fictitious defendant, in the complaint. In her motion, Hill asserted Maricopoly knew her name and had her contact information. But at the time the complaint was filed, TFLTC was the plaintiff, and Maricopoly did not become the plaintiff until approximately five months later. However, even if she was referring to TFLTC's knowledge, at the time the complaint was filed, the sheriff's sale had not yet been vacated, and Casa Calasa was the owner of the property per the Pinal County Recorder's records and Pinal County Treasurer's tax statements. Apart from stating that she had been asserting her right to ownership of the property since March 2016, Hill made no proffer to the court that TFLTC knew her name at the time the complaint was filed.[4] Accordingly, the court did not err in denying her motion to set aside on this ground. *See Gonzalez*, 123 Ariz. at 218.

Ramirez, 99 Ariz. 372, 375 (1965) ("When [defendant's] true name is discovered the pleading or proceeding may be amended accordingly." (quoting Rule 10(f), former Rule 10(d))). Thus, per the rule, TFLTC should have amended its complaint after serving Hill. The record does not reflect that the complaint was ever amended to reflect Hill's true name, although the application for default did. Hill cites Rule 10 in her brief, but she does not sufficiently develop an argument regarding the failure to amend the complaint and its affect, if any, on the proceeding. Thus, we do not address any apparent failure to comply with this portion of the rule. *See Little v. State*, 225 Ariz. 466, n.4 (App. 2010) (arguments not developed on appeal deemed waived).

[4]Although Hill offers more evidence on appeal that TFLTC may have known her identity before filing the complaint—including the lis pendens listing her name and a tax certificate purchased by TFLTC listing her as the owner—this evidence was apparently not presented to the trial court as it is not in the record below, and we do not consider new evidence for the first time on appeal. *See GM Dev. Corp. v. Cmty. Am. Mortg. Corp.*, 165 Ariz. 1, 4 (App. 1990) (appellate review limited to record presented to the trial court when making its ruling).

¶18 Hill next contends the trial court lacked personal jurisdiction over her because she was improperly served.[5] "The object of service of process is to give the defendant notice of the proceedings against [her]." *Lane v. Elco Indus., Inc.*, 134 Ariz. 361, 364 (App. 1982). For the court to have personal jurisdiction over a defendant fictitiously named, it must be made known to the defendant during service that she is being served as a fictitious defendant; otherwise, service is fatally defective. *Safeway Stores, Inc. v. Ramirez*, 99 Ariz. 372, 379 (1965); *see also Koven v. Saberdyne Sys., Inc.*, 128 Ariz. 318, 321 (App. 1980) (judgment void if entered without jurisdiction due to improper service). But it is proper to sue a fictitious defendant and substitute the name after service is made. *Ramirez*, 99 Ariz. at 380; *see also* Ariz. R. Civ. P. 4(c) (allowing for a party to be identified by a fictitious name, a summons issued for that fictitious name, and the return of service of process stating the true name). Service of process can be impeached by clear and convincing evidence, and it is the burden of the party challenging the judgment as void for lack of personal jurisdiction to demonstrate it. *See Blair v. Burgener*, 226 Ariz. 213, ¶¶ 7, 8, 23 (App. 2010). When the parties dispute evidence regarding service, we view the facts in the light most favorable to supporting the court's decision. *Hilgeman v. Am. Mortg. Sec., Inc.*, 196 Ariz. 215, ¶ 10 (App. 2000).

¶19 Hill asserted to the trial court, and again asserts on appeal, that the process server told her she was unnamed in the complaint and the complaint and summons were just a courtesy copy.[6] To the extent Hill asserts that her statement was evidence that service was non-compliant

[5]Hill also contends the summons was defective because she was served as a party in possession, but the summons was not directed to "parties in possession." If a party is named fictitiously, the summons may be "directed to a person with the fictitious name." Ariz. R. Civ. P. 4(c). Here, the summons named "parties in possession I-X," and was directed to "the above named defendants and any other person . . . with a redeemable interest" in the property. This was directed to Hill, as a party in possession, and she has not demonstrated error regarding the summons.

[6]Yamamoto does not respond to this assertion on appeal, but argued below that the statement was inadmissible hearsay and not a basis for setting aside the default.

with *Ramirez*, and the court should have held an evidentiary hearing, it was her burden to timely request a hearing.[7] *See Blair*, 226 Ariz. 213, ¶¶ 7, 8.

¶20 And contrary to Hill's assertion, the circumstances of her service are not sufficiently similar to those in *Ramirez* such that the trial court lacked personal jurisdiction. *See* 99 Ariz. at 379-81. In *Ramirez*, a defendant was fictitiously named in a personal injury lawsuit for an incident that occurred while he was at work. *Id.* at 373-74. In a proceeding to set aside the default judgment entered against him in his personal capacity, the defendant testified that the deputy told him during service that his employer was being sued and did not inform him that he was being personally sued. *Id.* at 375-76. The summons was directed to the employer corporation and the fictitiously named defendants "Doe[s]" and "Roe[s]." *Id.* at 379-80. The defendant told the deputy he would send the information to the "central office." *Id.* at 379. The return of service stated the defendant's true name, followed by his title "manager." *Id.* at 378. Our supreme court concluded the court lacked personal jurisdiction over the defendant because the record "should have indicated to the court that [the defendant] had been served in his representative capacity," rather than personally, and thus, the defendant was not on notice. *Id.* at 379-82.

¶21 Unlike the summons in *Ramirez*, *see id.* at 379-80, the summons here provided that "the above named defendants [including parties in possession] and any other person . . . with a redeemable interest in [the property]" were summoned to defend against the complaint. The complaint alleged that "[p]laintiff is therefore entitled to foreclose the rights of the Defendants, and each of them, to redeem the Property from the sale." Hill's insistence to the trial court that she had been asserting her right to ownership of the property since March 2016, belies any claim that she would not have known the complaint and summons applied to her, when she repeatedly asserted she had a redeemable interest in the property.

¶22 And unlike the *Ramirez* return of service that improperly reflected the defendant in his representative capacity, *id.* at 378, here, the return of service properly stated it was delivered to "PARTIES IN POSSESSION I, whose true name is Cathy Hill." It avowed that she was

[7]Hill did request an evidentiary hearing on May 14, 2020, but this was approximately ten months after the trial court had denied her motion to set aside. *See Airfreight Express Ltd. v. Evergreen Air Ctr., Inc.*, 215 Ariz. 103, ¶ 17 (App. 2007) (party must timely present legal theories to give trial court opportunity to properly rule).

personally served at the property and informed, in compliance with state statutes, of the summons and complaint therein. Both the summons and the complaint named "parties in possession I-X" as defendants. Although Hill is correct that it is service of the writ, not the return, that provides jurisdiction—the return is evidence of service. *See id.* at 379-80.

¶23 Moreover, later that day Hill acknowledged to the homeowners' association's counsel that she had been served, and the counsel subsequently provided her a letter explaining the complaint and the consequences of failing to redeem.[8] *See Lane*, 134 Ariz. at 364 (purpose of service is to give notice of proceedings); *see also Blair*, 226 Ariz. 213, ¶ 19 ("Due process requires notice 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950))). Hill had notice of the proceedings, compliant with due process, and the trial court did not lack personal jurisdiction over her.

Subject Matter Jurisdiction

¶24 Hill next asserts the judgment was void for lack of subject matter jurisdiction because she was not provided thirty-day notice of the proceeding pursuant to A.R.S. § 42-18202. As relevant here, § 42-18202 provides that "[a]t least thirty days before filing an action to foreclose the right to redeem . . . the purchaser shall send notice of intent to file the foreclosure action by certified mail to" the property owner according to the records of the county recorder where the property is located and to the treasurer of the county where the property is located. *See Advanced Prop. Tax Liens, Inc. v. Sherman*, 227 Ariz. 528, ¶¶ 12, 16 (App. 2011). This requirement is jurisdictional. *Advanced Prop. Tax Liens, Inc. v. Othon*, 252 Ariz. 206, ¶ 24 (App. 2021); *see* § 42-18202(C) ("A court shall not enter any

[8]The letter and Hill's acknowledgment of service were apparently not presented to the trial court. However, Yamamoto Holdings asked this court to take judicial notice of a response filed in an earlier proceeding involving Hill, and the letter and acknowledgement were attached to that response. Hill did not object and instead suggested the request should be granted. Accordingly, we granted Yamamoto Holdings' motion to take judicial notice. *See State v. Rojers*, 216 Ariz. 555, ¶ 25 (App. 2007) (judicial notice is discretionary, may be taken at any stage of a proceeding, and is frequently utilized by appellate courts to add necessary facts to affirm trial court).

action to foreclose the right to redeem under this article until the purchaser sends the notice required by this section.").

¶25 Hill has not demonstrated that TFLTC failed to comply with § 42-18202 or that the trial court lacked subject matter jurisdiction to enter default foreclosing the right to redeem pursuant to that statute. Casa Calasa was the property owner of record per the Pinal County Recorder's records at the time TFLTC filed its complaint, and Hill concedes that TFLTC addressed notice to Casa Calasa at the property address.[9] The Pinal County Treasurer also received notice. Hill's sole argument is that the notice was not addressed to her, but pursuant to § 42-18202, she was not entitled to receive thirty-day notice.[10]

Plaintiff Substitution

¶26 Hill next asserts that the trial court erred by substituting Yamamoto Holdings for Maricopoly as plaintiff. She contends the substitution "prejudg[ed] her Motion to Set Aside" because it operated as "recognition that Yamamoto had succeeded to Maricopoly's interest, which was contested." She further asserts the proper solution would have been to retain Maricopoly and allow Yamamoto Holdings to intervene. Yamamoto Holdings responds that "the mere substitution of an adverse party has no bearing on" Hill's alleged interest and does not prevent her from making her arguments. We review the court's decision on a motion to substitute

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[9]Hill never produced evidence showing she was the property owner of record according to the county recorder before the complaint or during the action. *See* § 42-18202.

[10]To the extent Hill asserts the trial court lacked jurisdiction because the pre-foreclosure notice was not delivered to Casa Calasa, she does not raise this argument until her reply brief, and thus we do not consider it. *See Ariz. Dep't of Revenue v. Ormond Builders, Inc.*, 216 Ariz. 379, n.7 (App. 2007) (court of appeals does not generally address arguments raised for the first time in reply). Hill also asserts for the first time in reply that TFLTC, or Maricopoly, was required to "re-start" the tax lien foreclosure and provide pre-foreclosure notice to her once it discovered Casa Calasa was an "illegitimate" owner. But the plain language of the statute, as relevant here, contemplates notice to the "owner of record according to the records of the county recorder," which Hill does not dispute was Casa Calasa. *See* § 42-18202(A)(1).

for an abuse of discretion. *See Martin v. Staheli*, 248 Ariz. 87, ¶¶ 13, 28-30 (App. 2019).

¶27 "If a party's interest is transferred, the action may be continued by or against that party, unless the court—on motion or on stipulation of the parties and the transferee—orders the transferee to be substituted in the action or joined with the original party." Ariz. R. Civ. P. 25(c). Maricopoly provided the trial court with unofficial copies of deeds recorded with Pinal County showing the transfers of interest to Yamamoto Holdings. The court, having found the interest transferred, then ordered the transferee, here Yamamoto Holdings, to be substituted in the action. Although Hill is correct that the court could have, alternatively, joined Yamamoto Holdings, the rule does not require that procedure. *See* Ariz. R. Civ. P. 25(c). Moreover, we agree with Yamamoto Holdings that the substitution did not prevent Hill from making her arguments. We cannot say the court abused its discretion in substituting the plaintiff.

Forcible Detainer Judgment

¶28 Hill asserts the judgment finding her guilty of forcible detainer should be vacated because the underlying foreclosure default judgment is void. As we have explained above, Hill has not shown that the default judgment underlying the eviction order here was void. Thus, we address that argument no further.

¶29 Hill also asserted to the trial court, and again asserts on appeal, that the judgment of guilt should be vacated because the chain of title conveying the property to Yamamoto Holdings was defective. But the only issue in a forcible detainer action is the right of possession, and "parties may not litigate the validity of title." *Carrington Mortg. Servs. LLC v. Woods*, 242 Ariz. 455, ¶¶ 11, 13 (App. 2017).

Attorney Fees on Appeal

¶30 Hill requests attorney fees and costs on appeal. However, she states no statutory basis for her claim and is not the prevailing party on appeal. Thus, we deny her request for fees and costs. *See Roubos v. Miller*, 214 Ariz. 416, ¶ 21 (2007) (party must state statutory basis for fee award); *Chopin v. Chopin*, 224 Ariz. 425, ¶ 24 (App. 2010) (denying fees for failure to state statutory basis and only awarding costs to prevailing party).

Disposition

¶31 For the foregoing reasons, we affirm the trial court's denial of Hill's motions to set aside the default judgment and to reconsider substitution of the plaintiff in the tax lien foreclosure action, and the court's judgment of guilt in the forcible detainer action.