IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

GUADALUPE EDWARDS, A WIDOW,
Plaintiff/Appellant,

v.

AU ENTERPRISES, INC., AN ARIZONA CORPORATION; VU THIEN AU AND QUYEN HO, HUSBAND AND WIFE; BLYTHE A. EDMONDSON AND JOHN DOE EDMONDSON, HUSBAND AND WIFE; DANIEL C. LANNING; ROBERT LEON; AND MARK NAPIER, PIMA COUNTY SHERIFF,
Defendants/Appellees.

No. 2 CA-CV 2021-0050
Filed February 18, 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NOT FOR PUBLICATION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 Pima County
No. C20201443
The Honorable Leslie Miller, Judge
The Honorable Richard Gordon, Judge
The Honorable Jeffrey L. Sklar, Judge

AFFIRMED

COUNSEL

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By Richard Luff
Counsel for Plaintiff/Appellant

Law Offices of Farley, Choate, & Wood, Oklahoma City, OK
By Robert W. Fischer III
Counsel for Defendants/Appellees Au Enterprises, Inc., Vu Thien Au, and Quyen Ho

Humphrey & Petersen P.C., Tucson
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Counsel for Defendants/Appellees Daniel C. Lanning, Robert Leon, and Mark Napier

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By Donald Wilson Jr., Kelley M. Jancaitis, and Danielle N. Chronister
Counsel for Defendants/Appellees Blythe A. Edmondson and John Doe Edmondson

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MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 Guadalupe Edwards appeals from the trial court's order dismissing her complaint against Au Enterprises, Inc., Vu Thien Au, Quyen Ho ("Au defendants"); Blythe and John Doe Edmondson; Pima County Sheriff Mark Napier, Deputy Daniel Lanning, and Sergeant Robert Leon, in their official capacities ("County defendants").[1] We affirm.

Factual and Procedural Background

¶2 In 2018, Au Enterprises acquired title to Edwards's home after foreclosure. Edwards was eventually found guilty of forcible detainer, and a writ of restitution was issued. That writ was stayed pending a determination of the fair market rental value of the real property. On March 12, 2019, the trial court issued an under advisement ruling (March 12 order)

[1]Edwards's complaint erroneously named "Sergeant Leon Figueroa" as a defendant and Lanning's supervisor at the civil enforcement division of the Pima County Sheriff's Department. That defendant's correct name is Sergeant Robert Leon.

setting a fair rental value for the property and the bond amount required on appeal. The March 12 order further stated:

> **IT IS HEREBY ORDERED** that the request for stay pending appeal is granted upon satisfaction of the following conditions:
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> 1. Defendant/Appellant will post a cash or surety bond in the Court approved amount of $864.40 for costs on or before March 20, 2019 with the Pima County Clerk of the Superior Court; and
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> 2. Defendant/Appellant must prosecute the appeal to effect; and
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> 3. Defendant/Appellant will pay the $600 rental value of the premises/periodic rent pending appeal to the Pima County Clerk of the Superior Court on or before the 20th day of every month commencing March 20, 2019; and
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> **IT IS FURTHER ORDERED** that if the 20th day of the month falls on a Saturday, Sunday or Superior Court holiday, then periodic rental due date will be paid no later than the next Superior Court business day.
>
> **IT IS FURTHER ORDERED** that if Defendant/Appellant fails to pay the rental value of the premises/periodic rent to the Clerk of the Superior Court on or before each periodic rental due date as ordered, then she is not in compliance with the mandatory conditions on which the stay is granted and this Court may dissolve the stay.
>
> **IT IS FURTHER ORDERED** that if Defendant/Appellant fails to post a cash or surety bond to the Clerk of the Superior Court as ordered, on or before March 20, 2019, then she is not in compliance with the mandatory conditions on which [the] stay is granted and this court may dissolve the stay.

> **IT IS FURTHER ORDERED that the temporary stay currently in place, regarding the Writ of Execution, expires on March 20, 2019.**

Edwards failed to post the required bond or make the first rent payment by the March 20 deadline. On March 21, the Au defendants, assisted by their attorney Edmondson, and Deputy Lanning, executed the writ and evicted Edwards from the property.

¶3 In early 2020, Edwards sued Au Enterprises, the Au defendants, Edmondson, Napier, Lanning, and Leon, and subsequently filed an amended complaint alleging: "Conversion and/or Trespass to Chattels and Trespass to Lands" by the Au and Edmondson defendants, negligence by the Au and Edmondson defendants, gross negligence by the County defendants, "Intentional (or Negligent) Infliction of Emotional Distress" by all defendants, abuse of process by all defendants, and a claim under 42 U.S.C. § 1983 against the County defendants, all arising from the "botched and unlawful physical eviction." All the defendants moved to dismiss, arguing in part that the writ of restitution was not stayed at the time it was executed as Edwards had failed to satisfy the conditions upon which it was to be granted. In response, Edwards asserted:

> The entire case revolves around Plaintiffs' contention the defendants relied upon and used a writ of restitution which had been **stayed** to evict plaintiffs from their home. Because a stayed writ, like a quashed arrest warrant, cannot be acted upon, Plaintiff has made out a prima facie case on all six counts, and the motions to dismiss of all defendants must be denied.

Edwards continued that the defendants "cherry pick[ed]" through the March 12 order and "[n]othing" in that order "either specifically or by inference, indicate[d] the stay was 'automatically lifted.'"

¶4 The trial court granted all defendants' motions to dismiss on all counts, stating "[t]he temporary stay automatically expired on March 20" and "the stay [pending appeal] never went into effect" because Edwards failed to satisfy the conditions upon which it was to be granted. As such, "no stay was in place . . . to render the execution of the Writ improper." Soon after, Edwards moved for a new trial, which the court

denied, finding "no error" in its ruling granting the defendants' motions to dismiss. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A).

Discussion

¶5 Edwards argues the trial court erred in dismissing her complaint. We review a court's ruling on a motion to dismiss de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, ¶¶ 7-8 (2012). In doing so, we look only to the complaint, assuming the truth of all "well-pled factual allegations" and drawing all reasonable inferences therefrom. *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, ¶ 7 (2008). But we will uphold a dismissal "if the plaintiff[] would not be entitled to relief under any facts susceptible of proof in the statement of the claim." *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). Moreover, "we do not accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts." *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, ¶ 4 (App. 2005).

Execution of the Writ of Restitution

¶6 Edwards contends the trial court erroneously dismissed her claims because the writ the defendants had executed was stayed at the time of her eviction. She argues that "reasonable inferences" from "undisputed facts" would allow a jury to "find the writ of restitution was stayed on March 20, 2019," meaning Edwards had "stated a claim upon which relief c[ould] be granted."

¶7 We interpret a trial court's order "according to the general rules of construction," *Motzer v. Escalante*, 228 Ariz. 295, ¶ 14 (App. 2011), and the "cardinal rule" is to ascertain intent, *cf. City of Phoenix v. Superior Court*, 139 Ariz. 175, 178 (1984) (discussing rules of construction when interpreting statute). Plain language is the best indication of intent, and when the language is clear, we apply it unless an absurd result will follow. *See Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, ¶ 9 (2016). We look at the text as a whole, *Carter Oil Co. v. Ariz. Dep't of Revenue*, 248 Ariz. 339, ¶ 18 (App. 2020), and when possible, we will seek to harmonize its provisions and avoid interpretations that result in contradictions, *Premier Physicians Grp., PLLC*, 240 Ariz. 193, ¶ 9. Additionally, specific provisions will usually control over any that are general. *City of Phoenix*, 139 Ariz. at 178. "A judgment must be construed in light of the situation of the court, what was before it, and the accompanying circumstances. In cases of

ambiguity or doubt the meaning of the judgment must be determined by that which preceded it and that which it was intended to execute." *Benson v. State ex rel. Eyman*, 108 Ariz. 513, 515 (1972) (quoting *Paxton v. McDonald*, 72 Ariz. 378, 383 (1951)); *see also In re Marriage of Zale*, 193 Ariz. 246, ¶ 10 (1999) (parole evidence rule not applicable to interpretation of judgment). Language is ambiguous if it is susceptible to multiple reasonable interpretations, *Premier Physicians Grp., PLLC*, 240 Ariz. 193, ¶ 9, and not merely because the parties disagree about its meaning, *Glazer v. State*, 244 Ariz. 612, ¶ 12 (2018).

¶8 As a threshold issue, and despite Edwards's apparent claim to the contrary, whether the writ was stayed at the time of execution was a question of law for the trial court to decide and not a question of fact. *See Quijada v. Quijada*, 246 Ariz. 217, ¶ 5 (App. 2019) (interpretation of court order "presents a question of law"). Edwards contends the March 12 order's language that "the stay is granted" and the "court may dissolve [it]" meant the writ continued to be stayed on March 21. And she argues the defendants and the trial court "cherry-picked" through the March 12 order to arrive at their conclusions. We disagree.

¶9 The sole reasonable interpretation of the trial court's March 12 order, when read in its entirety, is that the temporary stay automatically expired on March 20, 2019, and a conditional stay pending appeal was to be granted if Edwards satisfied the contingencies specifically listed. In addition, it outlined Edwards's ongoing obligations required to comply with the stay pending appeal should it come into effect, and it detailed a procedure for a situation where the stay arose but Edwards failed to satisfy the ongoing obligations required to sustain it. *See City of Phoenix*, 139 Ariz. at 178 (courts will construe language to give it "fair and sensible meaning"). It is undisputed that Edwards failed to satisfy the conditions governing the stay pending appeal, resulting in no stay in operation when the temporary stay had expired and the defendants executed the writ.

¶10 In this regard, it is Edwards who has "cherry-picked" through the March 12 order's language while ignoring its plain meaning when it is viewed in context.[2] *See Lewis v. Debord*, 238 Ariz. 28, ¶ 16 (2015) (we do not

[2] Edwards also argues the trial court erred in dismissing her conversion claim because it was "not dependent on the status of the stay." Edwards has not directed us to where in the record she made this argument below, *see* Ariz. R. Civ. App. P. 13(a)(7)(B) (appellate brief must contain references to record where issue was raised below), nor have we been able to find where she did so. To the contrary, in her motion for new trial,

analyze language in a vacuum but consider it in context). While the language Edwards cites could be marginally confusing in isolation, the March 12 order's intent is clear when considered in its entirety. *See Glazer*, 244 Ariz. 612, ¶ 10 (plain language interpretation does not focus on phrases in isolation); *Premier Physicians Grp., PLLC*, 240 Ariz. 193, ¶ 9 (ambiguity only arises when there is more than one reasonable interpretation). Rather, the language upon which Edwards relies detailed a procedure for a scenario that never occurred: if Edwards had satisfied the conditions, such that the stay pending appeal arose, and she subsequently breached her ongoing obligations under the March 12 order.[3]

¶11 We lastly address Edwards's assertion that, pursuant to Rule 17(c), RPEA, because she "remained in possession pending appeal," the defendants were "explicitly required" to return to court before executing the writ. Rule 17(c) states:

> An appeal from the superior court shall not cause a stay of execution of the judgment unless the superior court so orders. The appellant shall file a bond . . . conditioned on the appellant prosecuting the appeal to its conclusion. The bond shall be filed in an amount that provides security for the rental value of the premises pending the appeal and all damages, costs and

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Edwards asserted "[a]ll Defendants, the Plaintiffs, and this Court agree dismissal hinges on 'whether the . . . conditional stay . . . w[as] in effect at the time the Writ of Restitution was served.'" Thus, Edwards's argument regarding her conversion count may be deemed either waived or invited error, but regardless we need not address it further. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) ("absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal"); *Caruthers v. Underhill*, 235 Ariz. 1, ¶ 23 (App. 2014) (party that invites error may not assign it as error on appeal).

[3] Edwards also contends the March 12 order was sufficiently ambiguous to require the defendants to seek court approval before executing the writ. This argument also fails for the reasons described above, and Edwards's proffered interpretation ignores the unambiguous conditional terms upon which the stay pending appeal was to go into effect. *See Carter Oil Co.*, 248 Ariz. 339, ¶ 8 (we apply unambiguous language without further analysis).

> rent that has been or may be ordered by the superior court.
>
> In the event that a defendant remaining in possession pending appeal subsequently breaches an appeal condition imposed by the court, the plaintiff may file an emergency motion to lift a stay, and the court shall conduct a hearing within three days. . . .

¶12 Rule 17(c), however, does not compel the conclusion that Edwards urges. This is because she failed to satisfy its requirements as well as those mandated by the March 12 order. The Rule 17(c) language upon which she relies is only operative if a stay pending appeal is in place, and the defendant-appellant "subsequently breaches an appeal condition." *Id.*; *see Bond v. United States*, 572 U.S. 844, 857 (2014) (notion that some things "go without saying" applies to interpretation of legal text "as it does to everyday life"). Because Edwards failed to state a claim upon which relief could be granted, *see* Ariz. R. Civ. P. 12(b)(6), the trial court did not err in dismissing her amended complaint.[4]

Costs on Appeal

¶13 Pursuant to Rule 21(a), Ariz. R. Civ. App. P., and A.R.S. §§ 12-341, 12-342(a), Au Enterprises, Inc., Vu Thien Au, Quyen Ho, and Blythe and John Doe Edmondson have requested an award of costs incurred in this appeal. As they are the prevailing parties on appeal, we award their costs upon compliance with Rule 21. *See Sklar v. Town of Fountain Hills*, 220 Ariz. 449, ¶ 23 (App. 2008).

Disposition

¶14 For the reasons stated above, the trial court's judgment is affirmed.

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[4]Edwards similarly contends the trial court erred in denying her motion for a new trial. For the same reasons that the court correctly granted the defendants' motions to dismiss, it correctly denied Edwards's post trial motion.