

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
DEC -3 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IRENE MILLER,)	
)	
Plaintiff/Appellee,)	2 CA-CV 2009-0077
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
GAYLE ANN LaPERLE,)	Rule 28, Rules of Civil
)	Appellate Procedure
Defendant/Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CV 2005-0233

Honorable Peter J. Cahill, Judge

APPEAL DISMISSED

Jackson White
By James L. Tanner

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By Marilee Miller Clarke

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V Á S Q U E Z, Judge.

¶1 Appellant Gayle LaPerle appeals from the trial court’s judgment entered after a jury verdict awarding appellee Irene Miller \$450,000 on Miller’s breach of fiduciary duty claim arising from a trust agreement. LaPerle contends the court erred in denying her motion in limine and “accepting the full amount of the [jury’s] verdict, . . . which resulted in excessive damages.” For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

Facts and Procedure

¶2 LaPerle and Miller are beneficiaries of the Walter S. Miller Revocable Living Trust Agreement. LaPerle is Walter’s daughter, and Miller is the surviving spouse of Walter’s son, who apparently pre-deceased Walter. The trust designated Walter as trustee and LaPerle as a successor trustee. In 2001 or 2002, Walter amended the trust increasing LaPerle’s beneficial interest to seventy-five percent and reducing Miller’s share to twenty-five percent. Walter died in August 2004.

¶3 In September 2005, Miller filed a complaint in Gila County Superior Court, alleging conversion, unjust enrichment, and statutory financial exploitation in connection with LaPerle’s handling of Walter’s assets and property. After a five-day trial, a jury found against LaPerle for wrongful amendment to the trust and breach of fiduciary duty and awarded Miller \$450,000 in damages. The trial court signed the judgment in accordance with the jury’s verdict on February 2, 2009, and awarded Miller attorney fees in the sum of \$45,000 and costs totaling \$13,443. The judgment was filed on February 3.

¶4 On February 20, LaPerle filed a “motion for new trial or, in the alternative, for amendment of judgment.” The trial court denied the motion on April 15. LaPerle filed her notice of appeal on May 18.

Discussion

¶5 As a threshold issue, we must address whether this court lacks jurisdiction over the appeal, because, as Miller contends, LaPerle did not file a timely notice of appeal. The timely filing of the notice of appeal is a prerequisite to appellate jurisdiction. *Edwards v. Young*, 107 Ariz. 283, 284, 486 P.2d 181, 182 (1971). And, “where the appeal is not timely filed, the appellate court acquires no jurisdiction other than to dismiss the attempted appeal.” *Id.* Here, the trial court’s judgment was entered on February 3, 2009. LaPerle did not file her notice of appeal until May 18, well outside the thirty-day window for filing it. *See* Ariz. R. Civ. App. P. 9(a) (must file notice of appeal no later than thirty days after judgment).

¶6 The time for filing an appeal may be extended by filing a motion for new trial, as did LaPerle in this case. However, a new trial motion must be filed within fifteen days of the entry of judgment. *See* Ariz. R. Civ. App. P. 9(b) (motions for new trial extend time for filing appeal); Ariz. R. Civ. P. 59(d) (fifteen days to file motion for new trial). LaPerle’s motion was untimely because it was filed on February 20, two days after the time for filing such a motion had expired. Although the trial court apparently denied LaPerle’s motion for new trial on the merits, it lacked jurisdiction to do so. *See Monti v. Monti*, 186 Ariz. 432, 435, 924 P.2d 122, 125 (App. 1996) (“If the motion [for new trial] is not timely filed, the trial

court does not have jurisdiction to decide it.”). And, when a motion for new trial is untimely, the time for filing an appeal is not extended. *See Butler Prods. Co. v. Roush*, 145 Ariz. 32, 33-34, 699 P.2d 906, 907-08 (App. 1984).¹ Because LaPerle’s notice of appeal thus was filed untimely, we lack jurisdiction to reach the merits of her arguments. *See Edwards*, 107 Ariz. at 284, 486 P.2d at 182.

¶7 Even had LaPerle timely filed this appeal, we would deem her arguments waived. Her brief does not comply with Rule 13(a)(6), Ariz. R. Civ. App. P. It contains no “citations to the authorities, statutes and parts of the record relied on.” *Id.* And, although LaPerle contends the jury’s verdict was the result of passion or prejudice and the testimony and report of Miller’s expert were “severely flawed,” the only part of the trial transcript LaPerle has provided is that of her own testimony, which is insufficient to determine these issues. When “the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence, [s]he shall include in the record a certified transcript of all evidence relevant to such finding or conclusion.” Ariz. R. Civ. App. P. 11(b)(1). This court has no obligation to search the record to determine if evidence supports an appellant’s position. *Hubbs v. Costello*, 22 Ariz. App. 498, 501, 528 P.2d 1257, 1260 (1974). *See also*

¹Even assuming the trial court somehow could have treated LaPerle’s motion for new trial as timely filed, the court’s ruling on the motion was entered April 15. And, although LaPerle purportedly mailed the notice of appeal on May 13, which would have been within the required time frame, it was not filed until May 18, thirty-three days after the ruling was entered. Rule 4(a), Ariz. R. Civ. App. P., states that “[f]iling [a notice of appeal] may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within [the] time fixed for filing.”

Ritchie v. Krasner, 221 Ariz. 288, ¶ 62, 211 P.3d 1272, 1289 (App. 2009) (failure to provide citation to authorities and record relied on “can constitute abandonment and waiver”).

Disposition

¶8 For the reasons set forth above, we dismiss LaPerle’s appeal for lack of jurisdiction. Miller, the prevailing party, has requested attorney fees. Because she has failed to “articulate an appropriate statutory basis for that request,” we deny it. *Fid. Nat. Title Co. v. Town of Marana*, 220 Ariz. 247, ¶ 17, 204 P.3d 1096, 1100 (App. 2009); *Bed Mart, Inc. v. Kelley*, 202 Ariz. 370, ¶ 24, 45 P.3d 1219, 1224 (App. 2002). She is, however, entitled to costs upon compliance with Rule 21, Ariz. R. Civ. App. P.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge