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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PIMA COUNTY, a body corporate and politic, Plaintiff/Appellee, v. PIMA COUNTY BOARD OF ADJUSTMENT, DISTRICT 4, Defendant/Appellant.	2 CA-CV 2008-0176 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C-20070660

Honorable Leslie B. Miller, Judge

DISMISSED

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E S P I N O S A, Presiding Judge.

¶1 In this appeal, appellant Pima County Board of Adjustment, District Four (PCBA) challenges the trial court's grant of summary judgment in favor of Pima County. The court's ruling reversed PCBA's decision concerning Ricky and Janice Robinson's use of their property. However, because the Robinsons failed to appeal from the court's decision, we dismiss PCBA's appeal.

Factual Background and Procedural History

¶2 The Robinsons are property owners in Pima County. In 2005, the Pima County Board of Supervisors adopted Ordinance 2005-85 (the Ordinance), which regulates off-road vehicle facilities (ORVFs) and the use of off-road vehicles (ORVs).[1] Under the Ordinance, property owners must obtain a conditional use permit in order to operate an ORVF on their property.

¶3 In December 2005, in response to a complaint, a Pima County land specialist conducted a site visit and observed an ORVF on the Robinsons' property. Because the Robinsons did not have a conditional use permit to operate the ORVF, they were issued a citation and were ordered to appear before a Pima County Code Enforcement Hearing Officer, who found them in violation of the Ordinance. They then appealed to the Pima County Board of Supervisors, *see* A.R.S. § 11-808(G), contending their ORVF was a lawful, nonconforming

[1]The Ordinance defines an ORVF as a "place where off-road vehicles are operated such as a track, vehicle jumping area, or any other constructed facility, generally with berms, hills, banked turns, and other grading" and "any path or trail over which vehicles traverse repetitively for recreational or training purposes on any private real property within Pima County." P.C.C. § 18.03.020(O)(2).

use because it predated the Ordinance. That board remanded the matter to the hearing officer, who directed the Robinsons to apply to PCBA to resolve the dispute. *See* A.R.S. § 11-807(B)(1) (board of adjustment interprets disputed zoning ordinances).

¶4 After a hearing, PCBA agreed with the Robinsons, finding their ORVF was a permitted nonconforming use prior to the Ordinance's adoption. Pima County appealed that decision to superior court pursuant to A.R.S. § 11-807(D), naming both PCBA and the Robinsons in its complaint, and both appeared as defendants. After considering cross-motions for summary judgment, the court ruled in favor of Pima County, finding that before the Ordinance was enacted, ORVFs were not a permitted accessory use and therefore not a legal nonconforming use. PCBA appealed the court's decision to this court, but the Robinsons did not.

Discussion

¶5 As a threshold matter, we must determine whether we should reach the merits of this appeal in view of the Robinsons' failure to appeal the trial court's decision. This court sua sponte ordered the parties to submit supplemental briefing on this issue. In its supplemental brief, Pima County contends the appeal should be dismissed because the Robinsons are not parties to the appeal, "leav[ing] only an abstract legal question to adjudicate."

¶6 PCBA, on the other hand, argues the appeal can go forward even if the Robinsons are not parties to the appeal because if PCBA is successful, "the Robinsons will

benefit from the [PCBA's] decision being reinstated." This argument, however, is based on the flawed assumption that a decision by this court could benefit the Robinsons despite their failure to appeal the trial court's decision. To the contrary, the trial court's decision is final as to the Robinsons, and any success PCBA might have on appeal would not benefit them. *See Century Med. Plaza v. Goldstein*, 122 Ariz. 583, 584, 596 P.2d 721, 722 (App. 1979) (judgments are final as to parties who do not appeal, even if other parties successfully appeal same decision); *see also Int'l Bhd. of Elec. Workers v. Kayetan*, 119 Ariz. 508, 509, 581 P.2d 1158, 1159 (App. 1978) (trial court's decision final as to successful party when opposing party failed to timely perfect appeal); *see also* 1 State Bar of Arizona, Arizona Appellate Handbook § 3.3.3.3, at 3-33 to 3-34 (4th ed. 2006) ("A judgment is final as to parties who do not join in appealing from it.").

¶7 PCBA argues we should nevertheless reach the merits of its appeal because if it prevails, "it will be vindicated." In addition, "those who enforce, interpret and are subject to the definition of what constitutes an accessory use will benefit by a decision from the court as to which standard to follow." Finally, PCBA contends that if its appeal is successful, "potentially others who had uses that preexisted before the 2005 ordinance was adopted, will also benefit."

¶8 However, even if a successful appeal would "vindicate" PCBA, give it guidance, and possibly help others who might be in situations similar to the Robinsons, these are insufficient reasons for this court to decide the appeal in the Robinsons' absence. As Pima

County correctly notes, "[w]ithout a party whose property interest is at stake before this Court, there is no relief this Court can grant other than answering an abstract legal question, something the courts of this state do not do." Nor is there any indication in the record that others are in situations similar to the Robinsons'. Thus, any decision from this court would be merely advisory. *See Stonecreek Bldg. Co. v. Shure*, 216 Ariz. 36, n.3, 162 P.3d 675, 676 n.3 (App. 2007) ("[T]his court does not give advisory opinions or decide issues it is not required to reach in order to dispose of an appeal."); *Int'l Bhd. of Elec. Workers*, 119 Ariz. at 509-11, 581 P.2d at 1159-61 (trial court's ruling final as to contractor when appellants failed to timely perfect their appeal of ruling in contractor's favor; dismissing remainder of appeal as moot "since any relief we might grant would be for naught"); *cf. Thomas v. City of Phoenix*, 171 Ariz. 69, 74, 828 P.2d 1210, 1215 (App. 1991) (refusing to resolve party's abstract desire to know whether municipal board of adjustment statute was constitutional).[2]

Disposition

¶9 For the foregoing reasons, this appeal is dismissed.

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[2]Because we dismiss the appeal on this ground, we need not address the related issue of whether the Robinsons were a necessary or indispensable party to this appeal. However, we have previously stated that "on an appeal . . . of a board of adjustment decision, the board and the property owner directly subject to the board decision are necessary parties." *Murphy v. Town of Chino Valley*, 163 Ariz. 571, 574, 789 P.2d 1072, 1075 (App. 1989); *see also* 4 C.J.S. Appeal and Error § 325 ("It is generally recognized that all persons who were parties to the action in the court below and who will be affected by . . . the judgment, order, or decree, must be made parties to the appellate proceedings.").

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

JOHN PELANDER, Judge