Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: February 21, 2023
Certiorari to the District Court, Saguache County, 2022CV2 County Court, Saguache County, 2018C30078	
Petitioner: Bayardo R. Sandy, v. **Respondent:** The Baca Grande Property Owners Association, a Colorado nonprofit corporation.	Supreme Court Case No: 2022SC651
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the District Court of Saguache County and after review of the record, briefs, and the judgment of said District Court,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, FEBRUARY 21, 2023.

Appendix-B

DISTRICT COURT SAGUACHE COUNTY STATE OF COLORADO 501 Christy Avenue, P.O. Box 197 Saguache, CO 81149	DATE FILED: July 25, 2022 10:45 AM
County Court, Saguache County, Colorado Case Number 18C30078	
Plaintiff-Appellee: THE BACA GRANDE PROPERTY OWNERS ASSOCIATION, a Colorado nonprofit corporation v. **Defendant-Appellant**: BAYARDO R. SANDY	District Court Case No.: 22CV2

JUDGMENT ON APPEAL REGARDING THE RULING OF THE SAGUACHE COUNTY COURT

THIS MATTER comes before the Court on appeal from a ruling of the Saguache County Court ("County Court") in case number 18C30078. While the orders appealed and subject matter are different, this is considered a companion case to Saguache case 22CV1 because a number of the concerns are similar.

INTRODUCTION

17th century poet Alexander Pope is credited with the line "a little learning is a dangerous thing". While it is likely he meant it as a critique of his detractors, very respectfully it has been used rather loosely for suggesting that a little knowledge may make one believe one knows more than others. Appellant Mr. Sandy is clearly a very intelligent man and has clearly done a great deal of research. He also

clearly strongly feels that "the system"---Appellee, the courts, and others, have stepped on him and he is choosing to fight back. Despite his best efforts, in this forum, respectfully he cannot prevail. This Order determines that.

Initially, the Court notes that it is using, in large part, a proposed order filed by the Appellee on July 15, 2022. Mr. Sandy suggests that this Court should not consider it, and questions the communication before it was filed. On July 14, 2022, an email was sent by the undersigned to the civil clerk for the 12th judicial district, stating: "Would you please communicate with the Association's counsel and verify whether they are or are not going to file proposed orders." This was done because, at that point, the Court was preparing to determine the issues and having proposed orders from both sides was now going to be more important than when the Court initially authorized, but did not require, proposed orders. Mr. Sandy had filed his proposed order, which not one this Court would ultimately approve. The email was not concerning anything substantive but rather an administrative matter to simply ask the question: are you filing a proposed order or not. The "deadline" quoted by Mr. Sandy in his filings of July 22, 2022 was not jurisdictional and the Court was not going to reject either party's submissions if filed anytime up to the Court issuing its order. Yes, the Appellant's proposed order was after the Court's deadline. It was not due to any improper *ex parte* communication concerning any substantive issues.

BACKGROUND

This appeal stems from an action to enforce restrictive covenants on residential property. Mr. Sandy owns 609 Heatherbrae Rd., Crestone, CO 81131 ("Property"). *County Court Record – Part 3* at p. 155 at ¶ 3. The Association and Mr. Sandy agree that the Property is subject to the governing documents of the Association, including the Amended and Restated Declaration of Covenants ("Declaration"). Among other requirements, the Declaration requires require owners to obtain building permits and, once obtained, substantially complete construction of improvements, approved by the Association's Environmental and Architectural Committee ("Committee"), within eighteen (18) months of approval or any 6-month extensions thereof. *Answer Brief* at p. 7.

In 2014, Mr. Sandy received approval to build a dome structure on the Property. *County Court Record – Part 3* at p. 159 at ¶ 10. Despite requesting and receiving several extensions, Mr. Sandy did not substantially complete the dome structure. *Answer Brief* at p. 7. Ultimately, the Association decided not to grant any additional extensions, given Mr. Sandy's lack of progress.

1. Initial Bench Trial and Appeal

In November 2018, the Association filed its Verified Complaint for Injunctive Relief For Breach Of Restrictive Covenants. *Answer Brief* at p. 7. After numerous motions filed by Mr. Sandy, on October 17, 2019, a one-day bench trial was held. *County Court Record – Part 2* at p. 173; *County Court Record –*

Part 3 at p. 154. On November 17, 2019, the County Court issued its Order for Judgment For Injunctive Relief For Breach Of Restrictive Covenants ("Judgment"). *County Court Record – Part 3* at pp. 154 - 184. The County Court found in favor of the Association and against Mr. Sandy. *County Court Record – Part 3* at p. 181 at ¶ 60(c), at p. 185 at ¶ A.

Relevant to this appeal, the Judgment ordered Mr. Sandy "to comply with the following:

> 1. Defendant shall complete the residence to the specifications approved in the Original Permit, or any modified plans as agreed by the parties, no later than six months from the date of this Order;
>
> 2. If Defendant fails to complete the residence as required within six months of the date of this Order, Defendant shall be required to remove said structure and return the Property to its original undisturbed condition.
>
> 3. The Association must consider any request for approval of modified plans by Defendant in good faith as required by law. If Defendant believes any such application or request was not considered in good faith, he may request a hearing with this Court.

County Court Record – Part 3 at p. 185 at ¶ A.

In November 2019, Mr. Sandy appealed the Judgment (Case No. 2019CV21). In May 2020, the Saguache District Court dismissed the appeal for failure to file an appeal bond. In October 2020, the Colorado Supreme Court denied Mr. Sandy's Petition for Writ of Certiorari (20SC000623). Thereafter, the case was remanded to the County Court.

2. Contempt of Court

In April 2021, the Association moved the County Court to hold Mr. Sandy in contempt of court for failure to obey the Judgment. *County Court Record – Part 3* at pp. 213 - 216. Again, after many motions by Mr. Sandy and a change in judges, on September 10, 2021, a contempt citation hearing was held. *County Court Record – Part 5* at p. 91. A transcript of the contempt citation hearing is not part of the record on appeal.

On October 15, 2021, the County Court issued its Order and Judgment Finding The Defendant Guilty Of Indirect Contempt For Failure And Refusal To Comply With Court Order For Breach Of Restrictive Covenants, Entered November 17, 2019 ("Contempt Judgment"). *County Court Record – Part 6* at pp. 23 - 27. The County Court found Mr. Sandy to be in contempt of court for failure to obey the Judgment. *County Court Record – Part 6* at p. 24 at ¶ 5. The County Court imposed remedial sanctions in the amount of $50.00 per day until the contempt is purged. *County Court Record – Part 6* at p. 27 at ¶ B.

3. Motion to Set Aside Judgment and/or Order

On December 7, 2021, Mr. Sandy filed his Motion to Set Aside Judgement and/or Order. *County Court Record – Part 6* at pp. 195 - 216. The Association filed a response. *County Court Record – Part 6* at pp. 314 – 323. On January 4, 2022, the County Court issued its Order Re: Defendant's Motion to Set Aside Judgement And/Or Order, denying said Motion. *County Court Record – Part 6* at

p. 325. The County Court found as follows: "Defendant fails to cite legal authority and his argument lacks merit. the court declares this a frivolous motion." *County Court Record – Part 6* at p. 325.

4. Current Appeal

On January 21, 2022, Mr. Sandy filed a Notice of Appeal. On May 2, 2022, Mr. Sandy filed his Opening Brief. Essentially, the Opening Brief argues that the Association's alleged failure "to deny many averments" in Mr. Sandy's Motion to Set Aside Judgment and/or Order constitutes reversible error. *Opening Brief* at p. 11. The Opening Brief applies this argument in sixteen instances, identified as "Undefended Claim" #1 – 16, that arguably constitute reversible error. The Opening Brief contains numerous assertions arising outside of the record on appeal. On June 22, 2022, the Association filed its Answer Brief.

ANALYSIS

The Court concludes that the County Court's Order Re: Defendant's Motion to Set Aside Judgement And/Or Order, dated January 4, 2022, must be affirmed. First, the Opening Brief's argument that the Association's alleged failure "to deny many averments" in Mr. Sandy's Motion to Set Aside Judgment and/or Order constitutes reversible error is without merit. The Opening Brief's reliance on the pleadings standard set forth in C.R.C.P. Rule 8 is misplaced. A motion, whether a motion to set aside or otherwise, is not a pleading and, as such, does not impose the same requirements as a pleading does on the respondent.

Second, even if the Opening Brief's argument was legally sound, this Court must presume that the County Court's findings and conclusions are correct because Mr. Sandy has failed to provide an adequate record. Mr. Sandy already had an opportunity to and did appeal the Judgment, which resulted in the dismissal of his first appeal. As such, this Court only concerns itself with the Contempt Judgment.[1] Mr. Sandy has not provided a transcript of any portion of the contempt citation hearing, held September 10, 2021, that ultimately lead to him filing his Motion to Set Aside Judgment and/or Order, off which the current appeal is based.

1. Standard of Review

Appeals from final judgments of county courts shall be taken to the district court for the judicial district in which the county court entering such judgment is located, and the appeal "shall be based upon the record made in the county court." C.R.S. § 13-6-310(1). "The district court shall review the case on the record on appeal and affirm, reverse, remand, or modify the judgment . . ." *Id.* at (2). When the district court exercises its authority to decide the case based on the record developed by the county court, "it [is] bound to accept the facts as found by the county court and its review [is] limited to the sufficiency of the

1 The law of the case doctrine recognizes that "[a]lthough a trial court is not inexorably bound by its own precedents, prior relevant rulings made in the same case are generally to be followed." *In re Bass*, 142 P.3d 1259, 1263 (Colo.2006) (quoting *People ex rel. Gallagher v. Dist. Ct.*, 666 P.2d 550, 553 (Colo.1983)).

evidence." *Water, Waste & Land, Inc. v. Lanham*, 955 P.2d 997, 1002 (Colo. 1998).

In general, for the standard of review on appeal, questions of law are reviewed de novo; questions of fact are reviewed for clear error; and questions of discretion are reviewed for abuse of discretion. *Valdez v. People*, 966 P.2d 587, 590 (Colo. 1988)! Specifically, related to a motion to set aside under C.R.C.P. 60 and 360, the standard of review is abuse of discretion. *Taylor v. HCA-HealthONE LLC*, 2018 COA 29, ¶¶ 29-30. A trial court "abuses its discretion if it applies an incorrect legal standard. Whether the trial court applied the correct legal standard is a question of law that [the appellate court reviews] de novo." *Id.* Similarly, a trial court's decision on whether to hold a party in contempt is reviewed for abuse of discretion. *In re Webb*, 284 P.3d 107, 108-09 (Colo. App. 2011).

2. Presumption That the Trial Court's Findings And Conclusions Are Correct

This Court presumes that the Saguache County Court's findings and conclusions in the Contempt Judgment are correct because Mr. Sandy has failed to provide this Court with an adequate record on appeal. When bringing an appeal, "[i]t is the appellant's job to ensure that the reviewing court has an adequate record." *Knoll v. Allstate Fire & Cas. Ins.*, 216 P.3d 615, 617 (Colo. App. 2009). When the appellant fails to ensure the appellate court has an adequate record, the appellate court presumes "the trial court's findings and

conclusions are correct." *People v. Gravina*, 2013 COA 22. ¶ 13 (quoting *People v. Clendenin*, 232 P.3d 210, 216 (Colo. App. 2009)).

Here, Mr. Sandy has not provided this Court with an adequate record on appeal. Mr. Sandy seeks reversal of the County Court's Order Re: Defendant's Motion to Set Aside Judgement And/Or Order, which denied said Motion's request to set aside the Judgment and Contempt Judgment. In terms of the Contempt Judgment, Mr. Sandy has not provided a transcript of any portion of the contempt citation hearing, held September 10, 2021. While Mr. Sandy has alternative means of providing an adequate record on appeal, Mr. Sandy has failed to do so. *See, e.g.* C.A.R. 10. Given this, the Court presumes that the trial court's findings and conclusions were correct in the Contempt Judgment.

3. Alleged Failure to Expressly Deny Averments in a Motion to Set Aside Judgment are not Grounds for Reversal

The Opening Brief's argument that the Court should reverse the County Court's Order Re: Defendant's Motion to Set Aside Judgement And/Or Order, dated January 4, 2022, is without merit both factually and legally. This Court will address both.

Factually, the record on appeal shows that, on December 27, 2021, the Association filed its Response to Defendant's Motion To Set Aside Judgement And/Or Order. The Response "is structured to match the arguments set forth as headings in the Motion." *County Court Record – Part 6* at p. 315. Thereafter, the Response addressed the arguments raised in the Motion. *County Court Record – Part 6* at pp. 315-323. The Association did respond to the Motion. Thus, factually, the Opening Brief is without merit.

Legally, the rules regarding pleadings standards does not apply to motions, including a motion to set aside an order or judgment. Motions are different and distinct from pleadings. *In re Marriage of Runge*, 2018 COA 23M, ¶ 19. Pleadings" are defined as "the formal allegations by the parties of their respective claims and defenses and are intended to provide notice of what is to be expected at trial." *In re Estate of Jones*, 704 P.2d 845, 847 (Colo. 1985). A "pleading" includes the complaint, answer, and reply in a case. *In re Marriage of Runge*, 2018 COA 23M, ¶ 19. In district court, the pleadings standard is set forth by C.R.C.P. Rule 8. In relevant part, "[a]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." C.R.C.P. Rule 8(d). However, the corresponding rule in County Court, C.R.C.P. 308, does not contain a similar provision.

Appendix-G

A "motion" is not a pleading. *In re Marriage of Runge*, 2018 COA 23M, ¶ 19. Rather, a "motion" is "a written or oral request for the court to make a particular ruling or order." *Id.*

When Mr. Sandy filed his Motion to set Aside Judgement and/or Order he was requesting that the County Court make a particular ruling or order. Unlike a pleading, the Motion is not intended and did not make formal allegations by Mr. Sandy of his claims, with the intention to provide notice of what is to be expected at trial. Thus, the Association's Response, to the extent it does not expressly deny an allegation in the Motion, is not bound by the pleadings standards in C.R.C.P. Rule 8(d). Moreover, the pleadings standards set forth in C.R.C.P. Rule 8(d) are not applicable in County Court. Thus, even to the extent that Mr. Sandy's Motion to set Aside Judgement and/or Order could be considered a "pleading," which it cannot, undenied averments are not deemed admitted in County Court.

There is a provision in district court that permits a court to deem failure to respond to a motion as confessing the motion. C.R.C.P.121, 1-15. However, there is no corresponding provision applicable to county court procedure; even if there was, there is no indication the County Court would have utilized such a provision.

CONCLUSION

Based on the analysis set forth above, the Court must and hereby does AFFIRMS the Saguache County Court's Order Re: Defendant's Motion To Set Aside Judgement And/Or Order, dated January 4, 2022.

ORDER

IT IS THEREFORE ORDERED THAT the Order Re: Defendant's Motion to Set Aside Judgement And/Or Order, dated January 4, 2022, of the Saguache County Court in case number 2018C030078 is AFFIRMED.

IT IS FURTHER ORDERED THAT this matter is remanded to the Saguache County Court for an award of attorney fees and costs incurred by the Association on appeal, should the Association make a motion for such an award, pursuant to C.R.S. § 38-33.3-123.

DONE AND SIGNED this 25th day of July, 2022

BY THE COURT:

SCOTT B. EPSTEIN[2]
Senior District Court Judge

2 Sitting by assignment from the Colorado State Court Administrator's Office and under authority from the Chief Justice of the Colorado Supreme Court.

Additional material from this filing is available in the Clerk's Office.