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Appendix A

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME
COURT 111(c), THIS DECISION IS NOT PRECE-
DENTIAL AND MAY BE CITED ONLY AS AU-
THORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

MICHELET MICHAEL SMITH,
Plaintiff/Appellant,

v.

JESSICA REYNOLDS, et al.,
Defendants/Appellees.

No. 1 CA-CV 25-0147

FILED 09-30-2025

Appeal from the Superior Court in Maricopa County
No. cv2024-029230
The Honorable Peter A. Thompson, Judge

AFFIRMED

COUNSEL

Michelet Michael Smith, Mesa
Plaintiff/Appellant

Broening Oberg Woods & Wilson, P.C., Phoenix
By Kelley M. Jancaitis, Danielle N. Chronister
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Judge Cynthia J. Bailey delivered the decision of the Court, in which Presiding Judge Jennifer M. Perkins and Vice Chief Judge David D. Weinzweig joined.

B A I L E Y, Judge:

¶1 Michelet Michael Smith appeals the superior court's dismissal of his complaint under Arizona Rule of Civil Procedure ("Rule") 12(b)(6). We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In October 2024, Smith filed a complaint against Jessica Reynolds and Nikki Petit (collectively, "Defendants"), raising claims of professional misconduct, negligence, and intentional infliction of emotional distress, and seeking \$300,000 in damages. Smith alleged Reynolds improperly substituted as opposing counsel for his then-wife in a separate family law matter and filed pleadings that "exacerbate[d] procedural delays and prejudice[d] [his] legal standing." He alleged Petit, acting as Reynolds' paralegal, engaged in improper and threatening communications, causing him severe emotional distress.

¶3 Defendants moved to dismiss the complaint under Rule 12(b)(6), arguing Smith alleged insufficient facts to support his claims. After full responsive briefing, the superior court issued a minute entry on December 4, 2024, granting the motion to dismiss, allowing Defendants to apply for an award of costs, and directing them to submit a proposed form of judgment.

¶4 Defendants then filed a verified statement of costs, and Smith filed an objection. On December 23,

2024, the court entered a signed judgment with Rule 54(c) finality language that awarded Defendants \$265.75—the amount requested—in taxable costs.

¶5 Smith filed a timely notice of appeal. We have jurisdiction under Arizona Revised Statutes (“A.R.S.”) section 12-2101(A)(1).

DISCUSSION

I. Smith’s due process rights were not violated.

¶6 Smith does not challenge the merits of the superior court’s ruling granting Defendants’ motion to dismiss. Rather, he argues the court committed several procedural errors, which he alleges deprived him of his right to due process.

¶7 We review de novo constitutional issues, including an alleged violation of due process. *Wassef v. Ariz. State Bd. of Dental Exam’rs*, 242 Ariz. 90, 93, ¶ 11 (App. 2017). “Due process entitles a party to notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Cook v. Losnegard*, 228 Ariz. 202, 206, ¶ 18 (App. 2011) (citation omitted). “Due process errors require reversal only if a party is thereby prejudiced.” *Volk v. Brame*, 235 Ariz. 462, 470, ¶ 26 (App. 2014) (citation omitted).

A. The superior court entered a final, appealable judgment.

¶8 Smith argues the superior court never entered a final, appealable order or judgment because the December 4 ruling dismissing his complaint was unsigned. He further argues the court’s subsequent signed judgment, which incorporated the December 4 ruling, caused procedural ambiguity that deprived him of due process.

¶9 Smith is correct that the December 4 ruling was not a final appealable order or judgment because it was unsigned. See Ariz. R. Civ. P. 58(b) (requiring that a judgment be signed by a judge or authorized court commissioner). But the December 4 ruling became appealable when the court entered a signed final judgment for Defendants on December 23. A judgment as to all claims and parties is final if the judgment recites that no further matters remain pending and that the judgment is entered under Rule 54(c). Ariz. R. Civ. P. 54(c).

¶10 The December 23 judgment incorporated the December 4 ruling by reference, and stated that "no further matters remain pending" and that judgment was entered under Rule 54(c). Because the court entered a signed judgment that included Rule 54(c) language and disposed of all issues, the court's ruling granting Defendants' motion to dismiss became appealable under §12-2101(A)(1).

¶11 Smith also argues the December 4 ruling was improperly titled and created ambiguity because it was titled "Defendants' Motion to Dismiss." But even assuming the ruling was titled incorrectly, its subject was clear from its contents. See *Hegel v. O'Malley Ins. Co.*, 117 Ariz. 411, 412 (1977) (reasoning that examining only the title of a motion is contrary to the purpose of the rules of civil procedure).

¶12 Nor does Smith identify how he was prejudiced either by the court's final judgment or by the title of its December 4 minute entry. And although he alleges the court's actions may have created procedural ambiguity, he does not explain how either deprived him of his right to notice or to be heard. We discern no error.

- B. Smith had no right to file a surreply, and his due process rights were not violated on that basis.

¶13 Smith also alleges the superior court denied him due process by granting the motion to dismiss without permitting him to file a surreply.

¶14 Here, Smith received due process. He was given a full and fair opportunity to respond to Defendants' motion to dismiss and filed a response defending against dismissal. Smith, however, contends the court should have allowed him to address new arguments raised in Defendants' reply brief. But he identifies no such arguments, and Defendants did not raise new arguments in their reply. And nothing in Rule 7.1, which covers motions, provides for a response to a reply, known as a surreply, let alone entitles Smith to one. *See* Ariz. R. Civ. P. 7.1(a). Moreover, Smith never moved to file a surreply and thus waived any argument that the court erred by not allowing him to file one. *See Gross v. Shores at Rainbow Lake Cmty. Ass'n*, 258 Ariz. 365, 373, ¶ 24 (App. 2024).

- II. Smith was not entitled to an opportunity to amend his complaint.

¶15 Smith next argues the court erred when it did not sua sponte offer him leave to amend his complaint under Rule 15(a)(2), which generally provides that leave to amend the complaint should be granted liberally. Under Rule 7.1(a)(1), "[a]n application to the court for an order must be by motion which, unless made during a hearing or trial, must be in writing, state with particularity the grounds for granting the motion, and set forth the relief or order sought."

¶16 Here, the record shows Smith never moved for leave to amend his complaint. And Smith's reference to repleading in his objection to Defendants' application for costs is not a motion and is not pleaded with particularity as required by Rule 7.1(a)(1). Thus, the court did not err because it did not sua sponte grant Smith leave to amend his complaint.

¶17 Smith also contends the court erred by not granting leave to amend because the court should have considered his unrepresented status to ensure he had a fair opportunity to be heard. But in Arizona, pro se litigants are not afforded any special leniency and are held to the same standards as attorneys. *Ramos v. Nichols*, 252 Ariz. 519, 522, ¶ 8 (App. 2022). The court did not err by not affording Smith any special leniency.

III. The superior court did not err in granting Defendants their taxable costs.

¶18 Smith argues the superior court erred in granting Defendants their taxable costs. Smith is incorrect.

¶19 Smith's challenge to Defendants' recovery of taxable costs largely turns on his mistaken belief that the court's December 4 ruling and subsequent judgment were invalid and unenforceable. But the judgment properly incorporated the valid December 4 ruling and resolved all issues implicated by Smith's complaint in a signed and certified writing that was final and appealable. See Ariz. R. Civ. P. 54(c). Further, a request for costs is properly submitted before final judgment enters. See Ariz. R. Civ. P. 54(f)(2)(A).

¶20 And although Smith maintains "the court failed to provide adequate findings or justification"

before awarding costs, the court is generally not required to state findings or conclusions when ruling on a motion, *see* Ariz. R. Civ. P. 52(a)(3), including a request for costs, *see* Ariz. R. Civ. P. 54(f). Further, although Smith argues he was not given a fair opportunity to oppose Defendants' request for costs, the record reflects, and Smith admits, that he timely objected to Defendants' statement of costs.

¶21 Having achieved dismissal of the complaint against them, Defendants were entitled to an award of costs under A.R.S. §12-341. *See Assyia v. State Farm Mut. Auto. Ins. Co.*, 229 Ariz. 216, 223, ¶ 32 (App. 2012). The superior court did not err in awarding Defendants their taxable costs.

IV. Defendants are entitled to their taxable costs on appeal.

¶22 Citing A.R.S. §12-332 and the private attorney general doctrine, Smith requests costs and attorneys' fees on appeal. Even ignoring the questionable applicability of Smith's authorities, we note Smith is not the successful party, is not an attorney, and has not otherwise incurred attorneys' fees. Accordingly, we decline to award Smith costs or fees. Defendants request costs on appeal under A.R.S. §12-341. As the prevailing party, Defendants are awarded their taxable costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶23 We affirm.

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Appendix B

[Filed: Dec. 5, 2024]

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-029230

12/04/2024

HONORABLE PETER A.
THOMPSON

CLERK OF THE
COURT
A. Villela
Deputy

MICHELET M SMITH

MICHELET M
SMITH
9549 E MESETO
AVE
MESA AZ 85209

v.

JESSICA REYNOLDS, et al.

DANIELLE N
CHRONISTER

JUDGE THOMPSON

Defendants' Motion To Dismiss

The Court has received and fully considered Defendants Jessica Reynolds and Nikki Petit's Motion to Dismiss, Plaintiff's Response and Defendants' Reply. After full consideration of all points and authorities contained in the Motion and Reply, the Motion is granted.

Plaintiff, representing himself in a family court case, has brought claims of professional misconduct, negligence and intentional infliction of emotional

distress against opposing counsel in the family court case and counsel's paralegal. There is no alleged relationship between Plaintiff and Defendants, professional or otherwise, which would give rise to any duty owed to Plaintiff. To the contrary, the law requires the Court to hold all persons representing themselves to the same standard as a licensed attorney. Parties who choose to represent themselves "are entitled to no more consideration than if they had been represented by counsel" and are held to the same standards as attorneys with respect to "familiarity with required procedures and . . . notice of statutes and local rules." *Smith v Rabb*, 95 Ariz. 49, 386 P.2d 649 (1963); see also *Higgins v. Higgins*, 194 Ariz. 266, 981 P.2d.134 (App. 1999). A party's ignorance of the law is not an excuse for failing to comply with it. *In re Marriage of Williams*, 219 Ariz. 546, 200 P.3d 1043 (App. 2008) citing *Moore v. Meyers*, 31 Ariz. 347, 253 P.2d 626 (1927). Plaintiff claims that a Notice of Appearance or Substitution of Counsel was improper in the family court case and thereafter he suffered the alleged harms in dealing with opposing counsel.

In ruling on a Rule 12(b)(6) motion to dismiss, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). The Court will grant the motion only if the plaintiff is not entitled to relief "under any facts susceptible of proof in the statement of the claim." *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289 (App. 2010), quoting *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996). The Court will not "speculate about hypothetical facts that might entitle the plaintiff to relief." *Cullen, id.* at

420. Nor will the Court "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, 389 (App. 2005). Based upon the record submitted,

THE COURT FINDS that Plaintiff has failed to state a claim for relief against the Defendants pursuant to Rule 12(b)(6), Arizona Rules of Civil Procedure. Therefore,

IT IS ORDERED granting Defendants Jessica Reynolds and Nikki Petit's Motion to Dismiss filed November 12, 2024.

IT IS ORDERED that, not later than 20 calendar days after the entry of this order, Defendants may apply for an award of taxable costs pursuant to A. R. S. §12-332. If an application or statement is submitted that Plaintiff wishes to oppose, a response must be filed not later than 20 calendar days after service. Defendants are not permitted to file a reply unless requested to do so by the court.

IT IS FURTHER ORDERED that not later than 20 calendar days after the entry of this order, Defendants must also submit a proposed form of judgment, leaving blank a space for taxable costs. That form of judgment may incorporate by reference what is said here but otherwise should be confined to the amounts being awarded along with Rule 54(b), Arizona Rules of Civil Procedure language.

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Appendix C

[Filed: Dec. 23, 2024]

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Attorneys for Defendants

**IN THE SUPERIOR COURT OF THE STATE OF
ARIZONA**

IN AND FOR THE COUNTY OF MARICOPA

MICHELET MICHAEL
SMITH,

Plaintiff,

vs.

JESSICA REYNOLDS,
ESQ., NIKKI PETIT

Defendants.

NO. CV2024-029230

JUDGMENT

(Assigned to the Honorable
Peter Thompson)

The Court, having granted Defendants' Motion to Dismiss, has now reviewed and considered Defendants' Verified Statement of Costs;

IT IS NOW ORDERED granting Judgment in favor of Defendants Jessica Reynolds and Nikki Petit.

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IT IS FURTHER ORDERED awarding Defendants their taxable costs in the amount of \$266.75.

IT IS FURTHER ORDERED that no further matters remain pending, and final judgment is entered in Defendants' favor pursuant to Arizona Rules of Civil Procedure 54(c).

DATED this 20th day of December, 2024

/s/ Peter A. Thompson

The Honorable Peter A. Thompson

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Appendix D



**Supreme Court
STATE OF ARIZONA**

ANN A. SCOTT TIMMER **AARON C. NASH**
Chief Justice Clerk of the Court
ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

March 19, 2026

RE: SMITH v REYNOLDS et al
Supreme Court of Arizona No. CV-25-
0281-PR
Court of Appeals, Division One No. 1 CA-
CV 25-0147
Maricopa County Superior Court No.
CV2024-029230

GREETINGS:

The following action was taken by the Supreme Court of Arizona on March 19, 2026, regarding the above-referenced cause:

ORDERED: Petition for Review of the Court of Appeals Decision Filed September 30, 2025 = DENIED.

A panel composed of Chief Justice Timmer, Justice Beene, Justice Montgomery and Justice

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King participated in the determination of this matter.

Aaron C. Nash, Clerk

TO:

Michelet Michael Smith

Danielle Chronister

Kelley M Jancaitis

Matthew J Martin

lg

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Appendix E

[Filed: Dec. 2, 2024]

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Attorneys for Defendants

**IN THE SUPERIOR COURT OF THE STATE OF
ARIZONA**

IN AND FOR THE COUNTY OF MARICOPA

MICHELET MICHAEL
SMITH,

Plaintiff,

vs.

JESSICA REYNOLDS,
ESQ., NIKKI PETIT

Defendants.

NO. CV2024-029230

**REPLY IN SUPPORT
OF MOTION TO DIS-
MISS**

(Assigned to the Honora-
ble Peter Thompson)

Plaintiff's response to the motion to dismiss filed by Defendants Jessica Reynolds and Nikki Petit confirms that his complaint fails to state any valid claim for relief. Plaintiff only responded with unsupported conclusory arguments and still fails to set forth any facts alleged in his complaint which could support viable

claims for negligence, intentional infliction of emotional distress or punitive damages against his opposing counsel and/or her paralegal arising from their alleged "procedural misconduct" in his ongoing family court matter. Plaintiff concedes that he has already raised his concerns with Ms. Reynolds' substitution of counsel for his opponent in the family court matter. Plaintiff's attempt to re-raise his concerns about "procedural fairness" in his family court case in this new civil proceeding against his opposing counsel and her paralegal is improper and subject to dismissal.

///

To the extent Plaintiff attempts to argue that the Arizona Rules of Professional Conduct (the "Ethical Rules") create a legal duty of care requiring Ms. Reynolds to conform to a certain standard of care, his reliance on the Ethical Rules is misguided.¹ The Preamble to the Ethical Rules expressly states: "Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached." Ariz. St. S.Ct. Rule 42, Preamble [20]; *Elliott v.*

¹ Plaintiff cites to Ethical Rule 1.16, which sets forth the circumstances under which a lawyer must withdraw from the representation of a client (again, Plaintiff has never been Ms. Reynolds' client such that she owed him a duty of care arising from an attorney-client relationship) and Ethical Rule 4.4, which prohibits a lawyer from using means that have "no substantial purpose other than to embarrass, delay or burden any other person, or use methods of obtaining evidence that violate the legal rights of such a person." He still has not alleged any facts that implicate these Ethical Rules, even if they were properly considered by this Court in determining whether Plaintiff has stated a viable legal malpractice claim against Ms. Reynolds.

Videan, 164 Ariz. 113, 791 P.2d 639 (App. 1989) (affirming jury instruction that violation of rules of professional conduct “does not establish malpractice”); *Cecala v. Newman*, 532 F.Supp.2d 1118, 1141 (D. Ariz. 2007) (“State ethics rules do not, of course, create private rights of action for aggrieved clients”). Because Arizona law is clear that a violation of an Ethical Rule does not give rise to a legal malpractice claim, nor does it create any presumption that Ms. Reynolds owed Plaintiff a legal duty of care or that she breached a legal duty, a legal malpractice claim premised on alleged Ethical Rule violations is factually unsupported and subject to dismissal. Plaintiff’s conclusory allegation that he has “sufficiently demonstrated” the existence of a legal duty “given the circumstances of procedural misconduct and Defendants’ roles” is insufficient to demonstrate he is entitled to relief under any interpretation of the facts susceptible to proof such that his legal malpractice claim against Ms. Reynolds could survive. As a matter of law, Ms. Reynolds did not owe Plaintiff a duty of care. His legal malpractice claim against her fails.

///

The parties attended a meet-and-confer call on Friday, November 22, but were unable to reach a resolution as to any of the issues raised in Defendants’ Motion.² Because Plaintiff still fails to set forth any

² The timing of Defendants’ request for a meet-and-confer call and the subsequent filing of their motion to dismiss was not done in bad faith to “disregard” Plaintiff’s “physical and mental condition.” Defendants timely filed their Motion on the responsive pleading deadline and Plaintiff filed his response less than one week later, despite informing counsel he was unable to attend a brief phone call to discuss the matter for 11 days after her

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factual or legal basis to support his claims against his opposing counsel, the complaint should be dismissed.

RESPECTFULLY SUBMITTED this 2nd day of December, 2024.

BROENING OBERG WOODS & WILSON, P. C.

By /s/ Danielle N. Chronister

Danielle N. Chronister
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Phoenix, Arizona 85004
Counsel for Defendants

Original of the foregoing filed via
Turbocourt on this 2nd day of December,
2024

Copy of the foregoing emailed on this ____
2nd day of December, 2024, to:

Michelet Michael Smith
9549 East Meseto Avenue
Mesa, AZ 85209
Micsmi9459@aol.com
Plaintiff pro per

By Shari L. Swartz

request for a call. The parties participated in the call on the date Plaintiff indicated he was first available.

