IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

NORMAN R. DEAL, and MILLIE V. DEAL, husband and wife,
Plaintiffs/Appellees,

v.

BRENT J. DEAL, and JANE DOE DEAL, husband and wife, BRENT J. DEAL, As TRUSTEE OF THE B & B REVOCABLE TRUST DATED MARCH 24, 2014,
Defendants/Appellants.

No. 1 CA-CV 20-0669
FILED 11-30-2021

Appeal from the Superior Court in Yavapai County
No. V1300CV201980212
The Honorable Christopher L. Kottke, Judge (*Retired*)

JURISDICTION ACCEPTED; RELIEF GRANTED

COUNSEL

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By Michael J. Gordon
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OPINION

Judge Jennifer M. Perkins delivered the opinion of the Court, in which Presiding Judge Cynthia J. Bailey and Judge Maria Elena Cruz joined.

P E R K I N S, Judge:

¶1 Brent Deal appeals the superior court's grant of partial summary judgment to his parents, Norman and Millie Deal (collectively "Parents"). The court invalidated Parents' general durable powers of attorney ("POAs") because the court found the notary improperly acted as a partial witness in violation of A.R.S. § 41-328. Brent argues the court erred by imposing an impartiality requirement on § 41-328. We agree. For this reason, and reasons discussed below, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 We review the facts in the light most favorable to Brent. *See Stramka v. Salt River Recreation, Inc.*, 179 Ariz. 283, 284 (App. 1994). On March 23, 2014, Brent and Parents executed the POAs in which Parents named Brent their attorney-in-fact. Margaret Mauk signed as a witness and Deanell Gregory notarized the signatures. Mauk is Gregory's mother.

¶3 The next day, Brent created the B & B Revocable Trust ("Trust") and named himself grantor, trustee, and one of three beneficiaries. Mala Vancil (Gregory's sister) and Millie Deal were the other two beneficiaries.

¶4 Brent and Parents owned several properties as joint tenants with rights of survivorship. Brent used the POAs to sign for Parents on quitclaim deeds that transferred the shared properties to the Trust.

¶5 Parents later challenged Brent's use of the POAs to make the transfers, alleging conversion, financial exploitation of a vulnerable adult, breach of fiduciary duty, unjust enrichment, and quiet title. They moved for summary judgment on the conversion and breach of fiduciary duty claims, contending the POAs were invalid because Gregory notarized them in violation of § 41-328. The superior court granted partial summary judgment to Parents, voiding the POAs because of a "de facto conflict." Brent timely appealed.

DISCUSSION

I. Jurisdiction

A. Partial Summary Judgment Ruling

¶6 Although neither party raised the issue on appeal, we have an independent obligation to ensure we have jurisdiction. *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304 (App. 1991). This court derives its jurisdiction from statute. *Garza v. Swift Transp. Co.*, 222 Ariz. 281, 283, ¶ 12 (2009). Because "[p]ublic policy is against deciding cases piecemeal," our jurisdiction is generally "limited to final judgments which dispose of all claims and all parties." *Musa v. Adrian*, 130 Ariz. 311, 312 (1981).

¶7 When "an action presents more than one claim for relief," the superior court "may direct entry of a final judgment as to one or more, but fewer than all" claims. Ariz. R. Civ. P. 54(b); *Garza*, 222 Ariz. at 284, ¶ 13.

¶8 The superior court invalidated the POAs but declined to enter judgment on any of Parents' claims, finding "disputed facts concerning the basis or agreements concerning the transfers" and the resulting transactions. Although the court purported to certify the ruling as a partial final judgment under Rule 54(b), when a judgment merely disposes of one or more legal theories supporting a claim, "Rule 54(b) language does not make the judgment final and appealable." *Musa*, 130 Ariz. at 313. Because the court failed to dispose of any claims, its grant of partial summary judgment is not an appealable order. *See* Ariz. R. Civ. P. 54(b).

B. Special Action Jurisdiction

¶9 Despite lacking appellate jurisdiction, we have discretion to accept special action jurisdiction. *See Grand v. Nacchio*, 214 Ariz. 9, 17, ¶¶ 20–21 (App. 2006). Special action jurisdiction is proper when a party has no "equally plain, speedy, and adequate remedy by appeal," Ariz. R.P. Spec. Act. 1(a), or in cases "involving a matter of first impression, statewide significance, or pure questions of law." *State ex rel. Pennartz v. Olcavage*, 200 Ariz. 582, 585, ¶ 8 (App. 2001).

¶10 The issue presented here is a pure question of law: whether Gregory violated § 41-328 by notarizing a document witnessed by her mother, which Brent used to transfer property into a trust and gave Gregory's sister a contingent beneficiary interest. As presented, this dispute "require[s] neither factual review nor interpretation." *See Orme Sch. v. Reeves*, 166 Ariz. 301, 303 (1990). Because this is a legal issue of first

impression and of statewide importance, we accept special action jurisdiction to determine whether the superior court erred by invalidating the POAs. *See* Ariz. R.P. Spec. Act. 1(a).

II. Gregory Did Not Violate § 41-328

¶11 We review the superior court's grant of summary judgment *de novo*, considering the facts and any inferences drawn in the light most favorable to Brent. *See Tierra Ranchos Homeowners Ass'n v. Kitchukov*, 216 Ariz. 195, 199, ¶ 15 (App. 2007). We also review *de novo* issues of statutory interpretation. *Compassionate Care Dispensary, Inc. v. Ariz. Dep't of Health Servs.*, 244 Ariz. 205, 211, ¶ 17 (App. 2018). "We interpret statutory language in view of the entire text, considering the context and related statutes on the same subject. A cardinal principle of statutory interpretation is to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous." *Nicaise v. Sundaram*, 245 Ariz. 566, 568, ¶ 11 (2019).

¶12 Citing § 41-328, the superior court invalidated the POAs because it found a "de facto conflict" in the mother-daughter and sister-sister relationships between Mauk, Gregory, and Vancil. But the statute does not discuss, let alone prohibit, a "de facto conflict" for notaries.

¶13 A notary is a public officer, commissioned by Arizona and appointed by the Secretary of State, A.R.S. § 41-312(A), (C), who takes acknowledgements, administers oaths, performs jurats, and certifies copies. A.R.S. § 41-313(A). Pursuant to § 41-328:

> B. A notary public is an impartial witness and shall not notarize the notary's own signature or the signatures of any person who is related to the notary by marriage or adoption.
>
> C. Subject to section 41-320, a notary public shall not perform a notarization on a document if the notary is an officer of any named party, if the notary is a party to the document or if the notary will receive any direct material benefit from the transaction that is evidenced by the notarized document that exceeds in value the fees prescribed pursuant to section 41-316.

A. § 41-328(B)

¶14 Citing § 41-328(B), Parents note that once the parties executed the POAs and Gregory notarized them, Brent used them to transfer their

properties into the Trust, of which Gregory's sister is a contingent beneficiary. But Gregory notarized the POAs, not the quitclaim deeds by which Brent moved the properties into the Trust. How Brent used the POAs is irrelevant to whether Gregory violated § 41-328(B) by notarizing them. Parents correctly do not contend Mauk is related to Gregory by marriage or adoption. While Mauk is Gregory's mother, they are related by blood, not by marriage or adoption.

¶15 Parents contend the statute imposes an independent duty on a notary to be impartial. *See* A.R.S. § 41-328(B). We disagree. The statute states, "[a] notary public is an impartial witness," but the legislature left "impartial witness" undefined. Instead, § 41-328(B) prohibits a notary from notarizing her own signature or notarizing a marital or adoptive relative's signature. *Id.* The legislature thus set out which relationships are prohibited, and we decline the opportunity to read an independent requirement for impartiality into § 41-328(B).

¶16 The provision's statutory history also suggests that Gregory's relationship to Mauk and Vancil is permissible. House Bill 2659, the enabling legislation which created § 41-328, would have prohibited notaries from performing notarizations for blood relatives. H.B. 2659, 44th Leg., 1st Reg. Sess. (1999) (as introduced). But the legislature ultimately rejected this concept and removed the language prohibiting notarizations for blood relatives. *See* Floor Amend. 1 to H.B. 2659, 44th Leg., 1st Reg. Sess. (1999). The legislature later revisited, but rejected, a similar prohibition, which would have prohibited notarial acts for immediate family members. *Compare* H.B. 2253, 46th Leg., 2d Reg. Sess. (2004) (as introduced), *with* H.B. 2253, 46th Leg., 2d Reg. Sess. (2004) (as enacted).

¶17 Despite several opportunities to do so, the legislature never defined "impartial witness" or expanded subpart (B) to include blood relatives. And to the extent that the superior court's "de facto conflict" language implicated this subsection, the court erred in finding Gregory violated § 41-328(B).

B. § 41-328(C)

¶18 Nor is Parents' argument supported in subpart (C) of the statute. Under that provision, a notary public must not notarize a document if "the notary will receive any direct material benefit from the transaction that is evidenced by the notarized document that exceeds in value [the notary's fees]." A.R.S. § 41-328(C). Parents have not shown how Gregory or Mauk received any benefit, let alone a "direct material benefit," from the

POAs. Although they point to the fact that Vancil, Gregory's sister, is a contingent beneficiary of the Trust, Gregory did not notarize the quitclaim deeds transferring Parents' properties to the Trust; she notarized the POAs. And Gregory is not a Trust beneficiary. The prohibition in subpart (C) relating to an interest "in the transaction[s] that [are] evidenced by the notarized document" is irrelevant.

¶19 The superior court erred in holding Gregory violated § 41-328(C).

III. Attorneys' Fees and Costs

¶20 Brent requests attorneys' fees under A.R.S. § 12-341.01. This action did not arise out of contract, so we decline to award attorneys' fees. Brent is entitled to his taxable costs upon compliance with ARCAP 21.

CONCLUSION

¶21 We accept special action jurisdiction and reverse the superior court's order invalidating the POAs. We remand for further proceedings consistent with this opinion.

AMY M. WOOD • Clerk of the Court
FILED: AA