

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

ANTHONY ELADIO RAMOS, *Plaintiff/Appellant*,

v.

CHRISTOPHER NICHOLS, et al., *Defendants/Appellees*.

No. 1 CA-CV 21-0322

FILED 1-25-2022

Appeal from the Superior Court in Maricopa County

No. CV2021-000703

The Honorable Andrew J. Russell, Judge

AFFIRMED

COUNSEL

Anthony Eladio Ramos, Phoenix
Plaintiff/Appellant

Wieneke Law Group PLC, Tempe
By Kathleen L. Wieneke, Laura Van Buren
Counsel for Defendants/Appellees

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OPINION

Presiding Judge Randall M. Howe delivered the opinion of the court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 Anthony Eladio Ramos appeals the superior court’s dismissal with prejudice of his claims against the Arizona Corporation Commission, its Securities Division, and related individual defendants. Ramos has flagrantly refused to comply with Arizona Rule of Civil Appellate Procedure (“ARCAP”) 13 in his opening brief and has therefore waived any legal issue for review. He has also used abusive, insulting, and offensive language and argument rather than reasoned discussion and legal analysis in his briefs and other filings with this court. We therefore affirm the superior court’s dismissal of all claims with prejudice and sanction Ramos under ARCAP 25 for filing a frivolous appeal and for using abusive language and argument.

FACTUAL AND PROCEDURAL HISTORY

¶2 This appeal comes as the second of its kind from Ramos’s litigation against the Commission and various defendants. In December 2018, the Commission began investigating Ramos’s securities activities and moved through an administrative proceeding for a temporary order to stop his improper conduct. During that proceeding, Ramos filed his first suit in superior court against the Commission and individual employees alleging fraud related to the investigation. He also moved for an injunction against each defendant. The superior court granted the defendants’ motion to dismiss for Ramos’s failure to comply with Arizona’s notice of claim statute, A.R.S. § 12-821.01, and for his failure to plead facts on which an injunction could be granted. In Ramos’s appeal of that judgment, he argued that A.R.S. § 12-821.01 did not apply to the Commission, and that even if it did apply to the Commission, it did not apply to a suit for an injunction. This court affirmed the judgment, ruling that A.R.S. § 12-821.01 did apply to suits against the Commission and that Ramos had failed to plead facts sufficient for an injunction under Rule 12(b)(6). *See Ramos v. Dinell*, No. 1 CA-CV 20-0133, 2021 WL 127195, at *2 ¶ 11 (App. Jan. 14, 2021).

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¶3 Meanwhile, the administrative law judge (“ALJ”) presiding over Ramos’s administrative proceeding issued a Recommended Opinion & Order, finding that Ramos had committed securities fraud. The ALJ also found that Ramos had failed to show that the Division’s investigation constituted fraud, violated the Securities Act, or exhibited any form of bias against Ramos. The Commission approved the recommendation in a May 2020 open meeting and Ramos did not appeal that decision.

¶4 Almost eight months later and on the same day that this court affirmed dismissal of his first suit, Ramos filed this case in superior court against the Commission, some of its employees, the Division, and the ALJ, alleging fraud based on the May 2020 open meeting. His complaint also requested an injunction against the Commission and the Division and access to the Division’s records in a “public information request.” The defendants (collectively, the “ACC”) moved to dismiss for various reasons, including Ramos’s failure to comply with A.R.S. § 12-821.01. The superior court granted the motion and Ramos timely appealed.

¶5 Before filing his opening brief, Ramos moved this court to stay the appeal until after the supreme court had ruled on his initial appeal’s petition for review. This court denied the motion, reasoning in part that Ramos had failed to “explain how a review of that case, should it occur, would bear on the issue raised in this appeal.” Ramos then filed his opening brief.

¶6 Arguing that Ramos’s brief did not comply with ARCAP 13, the ACC in its answering brief claimed that Ramos had waived all appealable issues. Ramos moved to strike that argument. While his motion to strike remained pending, Ramos filed his reply brief. The brief asserted for the first time that the superior court erred in dismissing his public information request and provided additional arguments not made in his opening brief. It also discusses largely irrelevant current events, unrelated photos, and abusive personal attacks against the ACC.

¶7 The supreme court subsequently denied review of his first appeal and this court denied Ramos’s motion to strike. Ramos then moved to supplement his reply brief and filed a supplemental brief without court order. Less than ten days later, Ramos submitted a second supplement to the reply brief and four “praecipes.” The ACC moved to strike the latter filings and this court struck them. Ramos then filed a “Request [. . .] for Orders” and moved for judicial notice of public documents. The ACC responded that no motions remained pending and that Ramos requested

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notice of documents already in the record. This court denied Ramos's motions in a concurrent order.

DISCUSSION

I. Ramos has waived all issues on appeal by failing to file briefs that comply with ARCAP 13.

¶8 This court has “a responsibility to see that [litigants] conform to an acceptable, minimal level of competency and performance” and “[w]e owe this responsibility to the judiciary, the bar and, more importantly, to [all] litigants and the people as a whole.” *Evans v. Arthur*, 139 Ariz. 362, 364–65 (1984). While any party aggrieved by a judgment may appeal as provided under Arizona law and ARCAP, *see* ARCAP 1, the supreme court has adopted rules that parties must follow to bring an appeal, *see* ARCAP 1–31. Under Rule 13, an opening brief must set forth a “statement of the case” that must concisely “state the nature of the case, the course of the proceedings, the disposition in the court from which the appeal is taken, and the basis of the appellate court’s jurisdiction” with appropriate references to the record. ARCAP 13(a)(4). The brief must also contain a “statement of facts” relevant to the issues presented for review with appropriate references to the record. ARCAP 13(a)(5). The brief must present arguments that explain an appellant’s “contentions concerning each issue presented for review” with supporting reasons, citations to legal authorities, and appropriate references to the record. ARCAP 13(a)(7). An appellant who fails to make a “bona fide and reasonably intelligent effort to comply with the rules” will waive issues and arguments “not supported by adequate explanation, citations to the record, or authority.” *In re Aubuchon*, 233 Ariz. 62, 64–65 ¶ 6 (2013). Courts hold unrepresented litigants in Arizona to the same standards as attorneys and do not afford them special leniency. *Flynn v. Campbell*, 243 Ariz. 76, 83–84 ¶ 24 (2017).

¶9 Our review of the opening brief shows that Ramos has failed to provide a bona fide and reasonably intelligent effort to comply with Rule 13 and has therefore waived any issues he may have wished to submit for this court’s review. *See In re Aubuchon*, 233 Ariz. at 64–65 ¶ 6. In his opening brief’s “Statement of the Case,” Ramos states only that “[t]he issues in this appeal are identical to the first appeal, and therefore, Appellant adopts and reincorporates into this Brief, his Brief in the first appeal, which is now made an Appendix to this Brief.” To clarify the nature of the case, he merely asserts that the “punks” hid “behind a petty, pitiful, pathetic ‘notice’ statute.” For his statement of facts, he lists only that the May 2020 open meeting occurred, that he sent a new “set of ‘notices,’” and that “there are

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no additional facts.” While Ramos sought to raise “whether A.R.S. § 12–821.01 has any applicability in this matter,” his argument, in a single sentence for each point, cites no legal authorities, contains no reasoning or references to the record, and refers only to his brief filed in the first appeal.

¶10 Ramos’s brief thus does not comply with Rule 13. His statement of the case does not concisely “explain the nature of the case,” refer to — much less cite — the superior court’s order from which he appeals, nor explain the case’s background. Ramos’s statement of facts and argument sections do not just fail to properly cite the record or legal authority, which occurs at times and which this court often overlooks in the interest of resolving appeals on the merits. *See Adams v. Valley Nat’l Bank of Ariz.*, 139 Ariz. 340, 342–43 (App. 1984) (this court prefers resolving appeals on their merits). Instead, Ramos makes no attempt to refer to the record or explain his contentions with citation to legal authority based on the record in this appeal. Ramos merely attaches his brief from his previous appeal, which we will not consider. *See Ortiz v. Rappeport*, 169 Ariz. 449, 452 (App. 1991) (this court will not consider briefs filed in prior appeals).

¶11 While Ramos provides some arguments in his lengthy reply brief, he has waived them by not presenting them in his opening brief. *See Dawson v. Withycombe*, 216 Ariz. 84, 111 ¶ 91 (App. 2007) (courts will not consider issues or arguments made for the first time in a reply brief); *see also Robert Schalkenbach Found. v. Lincoln Found., Inc.*, 208 Ariz. 176, 180 ¶ 17 (App. 2004) (this court considers an issue not raised in an appellant’s opening brief as abandoned or conceded); *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167 (App. 1996) (“Issues not clearly raised and argued in a party’s appellate brief are waived.”). Because Ramos has waived all appealable issues, he has effectively abandoned his appeal. *See, e.g., Robert Schalkenbach Found.*, 208 Ariz. at 180 ¶ 17. The superior court’s dismissal with prejudice of his action therefore must be affirmed.

II. Ramos’s actions in this appeal warrant sanctions under Rule 25.

¶12 Both Ramos’s violation of ARCAP 13 and his abusive language and argument warrant sanctions. An appellate court may sanction an attorney or a party for violating the ARCAP. ARCAP 25 (providing that an appellate court on its own may sanction a party or an attorney). Sanctions must be appropriate to “the circumstances of the case” and are meant to “discourage similar conduct in the future.” *Id.* Sanctions may include contempt, dismissal, or withholding or imposing costs or attorneys’ fees. *See id.* This court does not impose sanctions lightly. *See Johnson v. Brimlow*, 164 Ariz. 218, 222 (App. 1990). But when a party files a

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frivolous appeal, this court can award attorneys' fees to the opposing party for the cost of defending the appeal, *see Price v. Price*, 134 Ariz. 112, 114 (App. 1982), and when a party uses hostile language, a court may sanction the party to be paid to the clerk of the court, *see Ashton-Blair v. Merrill*, 187 Ariz. 315, 316 (App. 1996).

A. Sanction for violating ARCAP 13

¶13 As shown above, Ramos's failure to comply with Rule 13 waived any issues he might have had on appeal thus rendering his appeal frivolous. *See, e.g., Robert Schalkenbach Found.*, 208 Ariz. at 180 ¶ 17. While "courts prefer to decide each case upon its merits," judicial leniency can be stretched only so far. *Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342 (App. 1984). By enforcing the minimum standards in ARCAP, this court "elevate[s] the level of appellate practice to a higher plane. If we ignore a failure to comply with these elementary rules and tolerate unprofessional standards, it will be the clients, the public, the bar[,] and the courts which ultimately suffer." *Id.* Given appellees have been required to allocate resources to respond to a frivolous appeal, we sanction Ramos by awarding the Commission, Division, and the individual defendants the reasonable attorneys' fees they incurred in responding to this appeal and the related motions upon compliance with ARCAP 21. *See Price*, 134 Ariz. at 114.

B. Sanction for abusive language and argument

¶14 Ramos not only grossly violated ARCAP 13; his briefs and motion papers are rife with abusive language and argument. He referred to the Commission and its individual members, the ALJ, and opposing counsel as "punks" and "rats[.]" and asserted that the ACC's investigation equated to George Floyd's death and analogized the ACC to rioters at the United States Capitol, including attaching photographs of one of those rioters in prison. This approach did not explain or advance any reasoned analysis why the superior court erred in dismissing his lawsuit.

¶15 Ramos's abusive language and argument used throughout his appeal demeans not only the appellees, but also constitutes an affront to the dignity of the judicial process and the people of this state that rely on it in resolving their disputes. This conduct separately warrants censure and an additional sanction beyond shifting of fees and costs. *See Ashton-Blair*, 187 Ariz. at 316. The rule of law depends largely upon civil discourse in the peaceful resolution of legitimate disputes upon their legal merits. Redress in our courts must not be employed using empty viciousness to decide matters based on who can voice the most powerful antipathy. Ramos has

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chosen unsupportable polemic, accusation, and innuendo over reasoned discussion and legal analysis. To discourage similar conduct, we impose an additional sanction under Rule 25 against Ramos of \$500, which he must pay directly to the Clerk of the Court of the Arizona Court of Appeals, Division One, within thirty days from the date of this order, *see Ashton-Blair*, 187 Ariz. at 316 (requiring abusive parties to pay the clerk of court \$500 for violating ARCAP 25); *Evans*, 139 Ariz. at 365 (stating that supreme court considers “the discouragement of like conduct in the future” of paramount importance), to be credited to the state’s general fund, A.R.S. § 35-146(B).

CONCLUSION

¶16 For the reasons stated above, we affirm the superior court’s judgment and sanction Ramos.



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