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capacity*

ARIZONA COURT OF APPEALS

DIVISION ONE

MARK FINCHEM,

Plaintiff/Appellant,

v.

ADRIAN FONTES, et al.,

Defendants/Appellees.

No. 1 CA-CV 23-0064

Maricopa County Superior Court No.
CV2022-053927

JOINT MOTION FOR A PROCEDURAL ORDER

The Parties jointly move this Court for a procedural order staying this appeal, and its current deadlines, until the superior court enters a final appealable judgment in the underlying action related to an award of sanctions so that the judgment, which Appellant will appeal, can be appealed and the parties can have that appeal consolidated with this appeal to avoid piecemeal appeals and promote judicial economy.

I. FACTUAL BACKGROUND

This appeal arises out of an election contest Plaintiff/Appellant Mark Finchem filed in the superior court by on December 9, 2022.

On December 16, 2022, the superior court issued a final judgment pursuant to Arizona Rule of Civil Procedure (“Rule”) 54(b), granting the Defendants’/Appellees’ Motions to Dismiss. In that ruling, the superior court also granted Defendants’ request for more fulsome briefing on sanctions.

On December 21, 2022, Mr. Mark Finchem filed his Notice of Appeal initiating this appeal. Meanwhile, the parties completed briefing on the sanctions issue in the superior court.

On January 3, 2023, the superior court issued its Under Advisement Ruling granting the Defendants’/Appellees’ motion for sanctions.

On March 16, 2023, Mr. Mark Finchem filed a Motion for Reconsideration.

The Parties are waiting for the superior court’s final, appealable judgment on the sanctions issue and any pending Motion for Reconsideration, at which time, Mr. Finchem will appeal that judgment.

The opening brief deadline for Mr. Finchem is April 7, 2023.

II. LEGAL ARGUMENT

This Court’s policy regarding extensions of times is as follows:

Any request for an extension of time to file a brief in a civil appeal must be made by filing a motion for procedural order that complies with ARCAP 6(b)(1)(B) & (C). The court will deny a motion if it does not comply with the rule.

The court will only grant an extension of time to file a brief upon a showing of good cause. Conclusory statements asserting “scheduling conflicts” or “other work” will not constitute good cause for an extension of time. The court will only grant an additional extension if the motion provides new and unforeseen circumstances that justify another extension.

As outlined above, the Parties are awaiting a final judgment from the superior court on the sanctions issue. Once that occurs, undersigned Mr. Finchem intends to appeal the superior court's sanction order.

Thus, the parties have conferred and agree that in the interest of conserving judicial resources and as to not cause piecemeal appellate litigation and review, it would be most advantageous to stay this appeal and its deadlines until the sanctions issue is also on appeal. At that point, the parties will request that the appeals be consolidated as they arise out of the same action and involve the same facts. The requested stay of this appeal and its corresponding deadlines, under these circumstances, will ensure fairness, completeness of the record, and protect judicial resources.

III. CONCLUSION

For all the reasons stated above, and in order to avoid piecemeal appellate litigation and review, and to preserve judicial resources, the Parties jointly request that this Court stay this appeal or extend the deadline for filing the opening brief a period of 30 days to permit the superior court to rule on the sanctions issue.

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RESPECTFULLY SUBMITTED this 6th day of April, 2023.

SHERMAN & HOWARD, L.L.C.

By: /s/ Craig Morgan

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 6, 2023, a copy of the foregoing Joint Motion for a Procedural Order was electronically filed via AZ TurboCourt. The undersigned also certifies that a copy was e-served via AZ TurboCourt and/or emailed to:

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Filed By: Craig A Morgan

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MOTION - Stay Appeal: Joint Motion for a Procedural Order

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