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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000488-001 DT 11/16/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

LAURA QUIGG
RITA EAGLESON

LAURA QUIGG
2301 N 17TH AVE
PHOENIX AZ 85007
RITA EAGLESON
2301 N 17TH AVE
PHOENIX AZ 85007

v.

C D C POOLS INC (001)
AZ REGISTRAR OF CONTRACTORS (001)

WILLIAM R RICHARDSON
JOHN R TELLIER

OFFICE OF ADMINISTRATIVE HEARINGS
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Defendant-Appellee CDC Pools, Inc. (CDC) has filed a Motion To Dismiss Administrative Appeal, and Defendant-Appellee Arizona Registrar of Contractors (AzROC) has filed a Motion To Dismiss; Plaintiffs-Appellants Laura Quigg and Rita Eagleson (Quigg and Eagleson) have filed an Objection to Motion To Dismiss; and the AzROC has filed a Reply. For the following reasons, this Court grants Appellees' Motions To Dismiss.

I. FACTUAL BACKGROUND.

In April 2011, Quigg and Eagleson hired CDC to resurface their pool. Various disagreements arose, and as a result, Quigg and Eagleson filed a Complaint with the AzROC. That Complaint ultimately resulted in an Administrative Hearing held February 10, 2012. On March 1, 2012, ALJ Eric A. Bryant issued his Decision, which contained a Recommended Order that the AzROC dismiss the Citation and Complaint against CDC. On March 14, 2012, the AzROC adopted the ALJ's Findings of Fact, Conclusions of Law, and Recommended Order, and issued its Order dismissing the Citation and Complaint against CDC.

On March 21, 2012, Quigg and Eagleson filed a Petition for Rehearing, and on June 19, 2012, the AzROC issued its Order Denying Request for Rehearing. On September 12, 2012, Quigg and Eagleson filed their Appeal to the Superior Court, Judicial Review of the ROC's Decision Under the Administrative Review Act. This Court has jurisdiction pursuant to A.R.S. § 12–124(A) and A.R.S. § 12–905(A).

II. ISSUE: DOES THIS COURT HAVE JURISDICTION TO CONSIDER THIS MATTER FURTHER.

CDC and the AzROC have each filed Motions To Dismiss contending the Appeal to this Court filed by Quigg and Eagleson was untimely, and thus this Court does not have further jurisdiction in this matter. The applicable Arizona statute provides:

> An action to review a final administrative decision shall be commenced by filing a complaint within 35 days from the date when a copy of the decision sought to be reviewed is served upon the party affected. . . . Service is complete on personal service or 5 days after the date that the final administrative decision is mailed to the party's last known address.

A.R.S. § 12–904(A). In addition to any motion to dismiss filed by a party, an appellate court has an independent duty to determine whether it has jurisdiction in an appeal. *State v. Valley Union H.S.D.*, 229 Ariz. 52, 270 P.3d 879, ¶ 2 (Ct. App. 2012).

The Arizona courts have held the time limits prescribed for an appeal from an administrative agency are jurisdictional. *Arizona Corp. Comm'n v. Catalina Foothills Estates*, 78 Ariz. 245, 250, 278 P.2d 427, 430 (1954); *Bolser Ent. Inc. v. Arizona R.O.C.*, 213 Ariz. 110, 139 P.3d 1286, ¶ 16 (Ct. App. 2006); *Guminski v. Arizona St. Vet. Med. Exam. Bd.*, 201 Ariz. 180, 33 P.3d 514, ¶ 8 (Ct. App. 2001); *Thielking v. Kirschner*, 176 Ariz. 154, 156, 859 P.2d 777, 779 (Ct. App. 1993); *Smith v. Arizona D.O.C.*, 135 Ariz. 160, 162, 659 P.2d 1305, 1307 (Ct. App. 1982); *State ex rel. Dandoy v. City of Phoenix*, 133 Ariz. 334, 337, 651 P.2d 862, 865 (Ct. App. 1982); *Pesqueira v. Pima County. Assessor*, 133 Ariz. 255, 257, 650 P.2d 1237, 1239 (Ct. App. 1982); *Hurst v. Bisbee U.S.D.*, 125 Ariz. 72, 74, 607 P.2d 391, 393 (Ct. App. 1979); *Arizona D.E.S. v. Holland*, 120 Ariz. 371, 372, 586 P.2d 216, 217 (Ct. App. 1978).

In the present matter, the AzROC issued its Order Denying Request for Rehearing on June 19, 2012. That was the final decision in the proceedings below. Quigg and Eagleson thus had 40 days from June 19, 2012, to file a Complaint for Judicial Review of Administrative Decision, which would have been July 29, 2012. It was not until September 12, 2012, that Quigg and Eagleson filed their Appeal to the Superior Court, Judicial Review of the ROC's Decision Under the Administrative Review Act, which this Court considers to be their Complaint for Judicial Review of Administrative Decision. September 12, 2012, was 85 days after June 19, 2012, thus this Court does not have jurisdiction to review the proceedings below.

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Quigg and Eagleson note they are not attorneys and are proceeding *pro se,* and thus ask this Court to grant them some leeway in this matter. In certain situations, a court may grant a certain amount of leeway to a litigant proceeding *pro se.* But as noted above, the time limits prescribed for an appeal from an administrative agency are jurisdictional, and because they are jurisdictional, an appellate court has no legal authority to waive them. Thus, it does not matter whether a party is appearing *pro se* or by an attorney, and as such, the result is the same: If a party does not file the necessary document within the time limit specified in the statute, the appellate court has no jurisdiction and thus has no authority to do anything other than to dismiss the appeal.

IV. CONCLUSION.

Based on the foregoing, this Court concludes it does not have jurisdiction to consider the appeal in this matter and must dismiss this appeal. This Court further determines, within the exercise of this Court's discretion, it is not appropriate to award attorneys' fees in this matter. Finally, this Court determines there is no just reason to delay entry of judgment.

If any party wishes to appeal this Court's Decision to the Arizona Court of Appeals, that party must do so pursuant to A.R.S. § 12–913 and Rule 9(a) of the Arizona Rules of Civil Appellate Procedure. *See Eaton v. AHCCCS,* 206 Ariz. 430, 79 P.3d 1044, ¶ 7 (Ct. App. 2003) ("The [Arizona Court of Appeals] will allow an administrative decision to stand if there is any credible evidence to support it, but, because we review the same record, we may substitute our opinion for that of the superior court." "And when consideration of the administrative decision involves the legal interpretation of a statute, this court reviews de novo the decisions reached by the administrative officer and the superior court."); *accord, Blancarte v. Arizona DOT,* 230 Ariz. 241, 282 P.3d 442, ¶ 7 (Ct. App. 2012) ("Applying a *de novo* review of the superior court's decision . . . .); *Ritland v. Arizona St. Bd. Med. Exam.,* 213 Ariz. 187, 140 P.3d 970, ¶ 7 (Ct. App. 2006) ("In reviewing the Board's decision, we are not bound by the superior court's judgment because we review the same record.").

IT IS THEREFORE ORDERED granting CDC's Motion To Dismiss Administrative Appeal.

IT IS FURTHER ORDERED granting the AzROC's Motion To Dismiss.

IT IS FURTHER ORDERED dismissing the appeal in this matter.

IT IS FURTHER ORDERED denying any requests for attorneys' fees.

IT IS FURTHER ORDERED remanding this matter to the AzROC.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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