

ARIZONA SUPREME COURT

THE ESTATE OF MAGDALENA RIOS
DE DOMINGUEZ,

Plaintiff/Appellant,

vs.

RENEE KAY DOMINGUEZ,

Defendant/Appellee.

Arizona Supreme Court
No. CV-24-0102-PR

Court of Appeals Division One
No. 1 CA-CV 23-0363

Maricopa County
Superior Court
Nos. CV2020-011404
CV2020-013833
CV2022-001764
(Consolidated)

RESPONSE OPPOSING PETITION FOR REVIEW

Lance R. Broberg (SBN 024103)
Nicholas A. Beatty (SBN 036230)



Camelback Esplanade II
Seventh Floor
2525 East Camelback Road
Phoenix, Arizona 85016-4229
Telephone: (602) 255-6000
lrb@tblaw.com | nab@tblaw.com
Attorneys for Defendant/Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF FACTS	2
I. Magdalena and Isidro Convey the Property to Renee and Jose	2
II. Magdalena Sues Renee Seventeen Years after the Deed is Recorded	3
III. The Court Grants Renee's First Motion for Summary Judgment	4
IV. The Estate Refuses to Release the Lis Pendens on the Property	6
V. The Court of Appeals Affirms the Trial Court's Decision	6
ARGUMENT.....	9
I. The Court of Appeals Correctly Held an Allegedly Forged Deed Satisfies § 12-524's "Recorded Deed" Requirement	9
A. A Forged Deed can Satisfy § 12-524's "Recorded Deed" Requirement.....	9
B. The Estate Should Direct its Public Policy Concerns to the Legislature	11
II. The Estate waived its "city or town" Argument.. ..	11
III. Magdalena Failed to Establish a Material Factual Dispute.....	13
IV. The Estate Waived its Equitable Tolling Argument... ..	13
CONCLUSION	15

TABLE OF AUTHORITIES

Cases

<i>Contempo Cost. Co. v. Mountain States Tel. & Tel. Co.</i> , 153 Ariz. 279 (App. 1987)	12
<i>Dobson v. Grand Intern. Broth. Of Locomotive Engineers</i> , 101 Ariz. 501 (1966).....	13
<i>Henderson v. Tejada</i> , 26 Ariz. App. 462 (App. 1976).....	10
<i>McCleary v. Tripodi</i> , 243 Ariz. 197 (App. 2017)	15
<i>Nicholas v. Giles</i> , 102 Ariz. 130 (1967).....	10, 11
<i>Quality Plastics, Inc. v. Moore</i> , 131 Ariz. 238 (1981).....	10, 11
<i>Ritchie v. Krasner</i> , 221 Ariz. 288 (App. 2009)	12
<i>Sparks v. Douglas & Sparks Realty Co.</i> , 19 Ariz. 123 (App. 1917)	10
<i>Sw. Paint & Varnish Co. v. Ariz. Dep't of Env'tl. Quality</i> , 194 Ariz. 22 (1999).....	11

Statutes

A.R.S. § 12-524passim
A.R.S. § 12-5252, 5, 7
A.R.S. § 12-5434, 6, 14
A.R.S. § 12-550 8
A.R.S. § 12-110315
A.R.S. § 33-420passim

Rules

Ariz. R. Civ. App. P. 2115

INTRODUCTION

Petitioner asks this Court to disregard over a century’s worth of case law—and a statute of limitations’ plain language—to save Petitioner from its failure to timely assert its claims. Magdalena Rios de Dominguez (“Magdalena”)¹ and Isidro Dominguez (“Isidro”) had a son named Jose Dominguez (“Jose”). In 1995, Jose purchased a vacant lot located at 3125 N 313th Avenue, Buckeye, Arizona 85396 (“Property”). Jose titled the Property to his parents, Magdalena and Isidro. After Jose married Appellee Renee Kay Dominguez (“Renee”), Isidro and Magdalena executed a notarized warranty deed conveying the Property to Jose and Renee (“Deed”). Renee and Jose recorded the Deed in November 2003.

Over the following years, Jose and Isidro passed away. Magdalena then sued Renee in September 2020, bringing a claim to quiet the Property’s title in Magdalena’s favor and another claim against Renee for clouding the Property’s title by allegedly forging and recording the Deed in violation of [A.R.S. § 33-420](#). Magdalena also recorded a *Notice of Lis Pendens* (“Lis Pendens”) on the Property. Renee brought a competing quiet title claim against Magdalena along with a § [33-420](#) claim associated with the Lis Pendens. During the litigation, Magdalena passed away and the Estate of Magdalena de Dominguez (“Estate”) assumed Magdalena’s role as the real party in interest.

¹ The parties are referred to by their first names to avoid confusion.

The trial court entered summary judgment in Renee’s favor on the parties’ competing claims, finding that: (1) [A.R.S. § 12-524](#)’s five-year statute of limitations barred Magdalena from bringing a quiet title claim *seventeen* years after the Deed’s recording—even if Magdalena alleged, baselessly, that the Deed was forged; and (2) because Magdalena was not the Property’s owner at the time she filed her claims, she lacked standing to bring a § [33-420](#) claim on a Property she did not own.

The Court of Appeals affirmed the trial court’s rulings, citing this Court’s opinions dating back to 1917, noting the Legislature’s decision not to include a forgery exception in § [12-524](#) like it did in [A.R.S. § 12-525](#), and expressly rejecting the Estate’s request to adopt other states’ case law. Undeterred, the Estate now asks this Court to unwind over 100 years’ worth of case law and usurp the role of the Legislature by inserting a forgery carve-out into a statute where none is found. Because the Estate has failed to provide any sound reason to do so, this Court should decline review of the Court of Appeals’ opinion.

STATEMENT OF FACTS

I. Magdalena and Isidro convey the Property to Renee and Jose

Magdalena and Isidro married each other in 1964. Magdalena and Isidro had a son named Jose. In 1995, Jose purchased the Property. After paying the Property’s purchase price, Jose titled the Property to Magdalena and Isidro. Jose married Renee a few years after purchasing the Property.

On April 26, 2002, Isidro and Magdalena executed a notarized warranty deed conveying their interests in the Property to Jose and Renee (“Deed”). [Appendix at pg. 1]. Jose and Renee recorded the Deed in November 2003. [Appendix at pg. 1]. Renee paid all taxes assessed to the Property from that point forward. [Appendix at pgs. 6–7, 84–116].

Isidro passed away in 2012. Jose similarly disappeared around January 2020 before Mexican law enforcement discovered his remains months later.

II. Magdalena Sues Renee Seventeen Years after the Deed is Recorded

In September 2020, Magdalena filed her *Complaint* in Maricopa County Case No. CV2020-011404 (“Magdalena’s Complaint”). Magdalena’s Complaint raised two claims: (1) a claim seeking to quiet the Property’s title in Magdalena’s favor; and (2) a § [33-420](#) claim for recording a “forged” Deed. Magdalena then filed a Lis Pendens on the Property shortly after.

In October 2020, Renee filed her *Verified Complaint* in Maricopa County Case No. CV2020-013833 (“Renee’s Complaint”), bringing a claim to quiet the Property’s title in Renee’s favor and another claim against Magdalena for clouding the Property’s title in violation of § [33-420](#) by recording the Lis Pendens. The trial court consolidated Renee’s Complaint and Magdalena’s Complaint into a single lawsuit.

III. The Court Grants Renee’s First Motion for Summary Judgment

In April 2021, Renee moved for summary judgment, asking the trial court to: (1) dismiss Magdalena’s quiet title claim and § [33-420](#) claim; (2) quiet the Property’s title in Renee’s favor; and (3) enter judgment in Renee’s favor on her § [33-420](#) claim (“Renee’s First Motion for Summary Judgment”). Renee argued that Magdalena’s quiet title claim was time-barred under § [12-524](#)’s five-year statute of limitations.

Magdalena responded to Renee’s First Motion for Summary Judgment in June 2021 (“Response to First Motion for Summary Judgment”). [Estate’s Appendix at pg. 27]. Magdalena expressly conceded the Property is “a lot located in a city or town” pursuant to § [12-524](#)’s five-year statute of limitations. [See Estate’s Appendix at pg. 37 (“Magdalena does not dispute that the Properties in question are “lots” *as the term is applied in A.R.S. § 12-524.*”) (Emphasis added)]. Magdalena further urged the trial court to apply the “discovery rule” under A.R.S. § [12-543](#) or the doctrine of equitable tolling, postponing the accrual of Magdalena’s § [33-420](#) claim until Magdalena allegedly discovered the Deed in 2020. [Estate’s Appendix at pgs. 37–38]. But Magdalena’s Response to First Motion for Summary Judgment lacked *any* argument that § [12-543](#)’s discovery rule or the doctrine of equitable tolling should apply to her quiet title claim. [See *generally* Estate’s Appendix at pg. 27; *see also* Appendix at pg. 132, ¶ 20].

The trial court granted Renee’s First Motion for Summary Judgment, entering summary judgment in Renee’s favor on both competing quiet title claims but declining to enter summary judgment on the competing § [33-420](#) claims (“First Order”). [Estate’s Appendix at pgs. 4–6].

According to the trial court, “[t]here is no dispute” that Renee satisfied “the first and third elements” and “no material fact question [exists] on the fourth element.” [Estate’s Appendix at pg. 5]. Namely because Renee provided a Declaration confirming she paid the Property’s taxes and receipts from the Maricopa County Treasurer’s Office confirming as much [Appendix at pgs. 6–7, 84–116]—while “Magdalena offer[ed] no controverting evidence.” [Estate’s Appendix at pg. 5].

The trial court explained the second element was slightly “more difficult” and acknowledged that, even if it assumed the Deed was forged, [12-524](#)’s “recorded deed” requirement requires only that the deed purports to operate as a conveyance and is not void on its face.” [Estate’s Appendix at pgs. 5–6]. As such, the Deed satisfied this requirement because it contained the Property’s description and Magdalena’s and Isidro’s notarized signatures. [Estate’s Appendix at pgs. 5–6].

The trial court emphasized [§ 12-525](#) to support its finding, explaining the trial court “is not free to impose a forgery exclusion” when the Legislature has chosen to

impose such an exclusion in similar statutes—but not the one at issue. [Estate’s Appendix at pg. 5].

IV. The Estate Refuses to Release the Lis Pendens on the Property

After Renee prevailed on her quiet title claim, the Estate refused to release its Lis Pendens on the Property, arguing it still possessed the right to pursue its remaining clouded title claim under § [33-420](#).

Renee then moved for summary judgment on the parties’ competing clouded title claims under § [33-420](#) (“Second Motion for Summary Judgment”). The Estate responded to Renee’s Second Motion for Summary Judgment (“Response to Second Motion for Summary Judgment”) but failed to raise any arguments concerning § [12-543](#)’s discovery rule or the doctrine of equitable tolling. [See Appendix at pgs. 296–303].

The trial court agreed and entered summary judgment in Renee’s favor on the parties’ competing § [33-420](#) claims. In its February 17, 2023, Minute Entry (“Second Order”), the trial court emphasized that its First Order—quieting the Property’s title in Renee’s favor—barred Magdalena and the Estate from bringing a § [33-420](#) claim because “Magdalena was not an owner or beneficial title holder of the [Property]” when she filed suit. [Appendix at pgs. 305–06].

V. The Court of Appeals Affirms the Trial Court’s Decision

The Estate appealed the trial Court’s First Order and Second Order. The Estate argued that the trial court erred by: (1) applying § [12-524](#)’s five-year statute of limitations to an allegedly forged Deed; (2) finding that Magdalena failed to produce any evidence controverting that Renee paid the Property’s taxes; and (3) declining to apply the doctrine of equitable tolling to Magdalena’s quiet title claim and § [33-420](#) claim. [Appendix at pgs. 130–33, ¶¶ 15, 19, 20, and 24]. For the first time in its reply brief, the Estate disputed the Property is “located in a city or town.” [See Appendix at pg. 129, ¶ 12].

The Court of Appeals affirmed the trial court’s prior decisions. More specifically, the Court of Appeals confirmed § [12-524](#)’s five-year statute of limitations applies to void—or forged—deeds if the deed at issue is “not void upon its face” and “purports to operate as a conveyance.” [See Appendix at pg. 130, ¶ 16]. To support this position, the Court of Appeals cited this Court’s prior opinions in 1917, 1967, and 1981, confirming that a legitimately void deed can still satisfy § [12-524](#)’s “recorded deed” requirement if the deed at issue appears facially valid. [See Appendix at pg. 130, ¶ 16]. The Court of Appeals expressly rejected the Estate’s reliance on non-binding authority:

The Arizona legislature did not proscribe the benefits of § [12-524](#) to those who hold title through an alleged forged deed, as it did in the *very next section of the same statute*. Compare A.R.S. § [12-524](#) with A.R.S. § [12-525](#)

(providing a five-year limitation period for claims to recover real property from a person in . . . possession but *expressly prohibiting the benefits of the provision to those who claim title through a forged deed*).

[See Appendix at pg. 131, ¶ 18 (Emphasis added)].

The Court of Appeals affirmed the trial court’s Second Ruling on the parties’ § [33-420](#) claims but for a different rationale than the trial court. More specifically, the Court of Appeals held the trial court improperly focused on when Magdalena “filed suit” for tolling purposes under § [12-550](#)’s four-year statute of limitations when the trial court should have instead focused on when the allegedly forged Deed was filed with the recorder’s office. [See Appendix at pgs. 132–33, ¶¶ 22, 23]. The Court of Appeals nevertheless affirmed the trial court’s ruling because “Magdalena brought the suit more than a decade after” the Deed was recorded in 2003 and well beyond § [12-550](#)’s four-year statute of limitations. [See Appendix at pgs. 132–33, ¶ 23].

The Court of Appeals also confirmed the trial court’s First Ruling, finding Magdalena failed to provide any evidence controverting the fact Renee paid the Property’s taxes. [See Appendix at pgs. 131–32, ¶ 19 (Emphasis added)].

As for the trial court’s decision not to apply the doctrine of equitable tolling to Magdalena’s claims, the Court of Appeals held the Estate waived this argument as it relates to its quiet title claim because the Estate never raised it in its Response to First Motion for Summary Judgment. [See Appendix at pg. 132, ¶ 20; *see also*

Estate’s Appendix at pgs. 27–41]. The Court of Appeals similarly held that the Estate waived its equitable tolling argument as it relates to the Estate’s § [33-420](#) claim because the Estate never raised it in its Response to Second Motion for Summary Judgment. [*See* Appendix at pgs. 296–303].

Finally, the Court of Appeals held that the Estate waived its ability to dispute that the Property is “located in a city or town” after conceding the factual dispute at trial and only attempting to backtrack in its appellate reply brief and at oral argument. [*See* Appendix at pg. 133, ¶ 24].

ARGUMENT

I. The Court of Appeals Correctly Held an Allegedly Forged Deed Satisfies § 12-524’s “Recorded Deed” Requirement

The Estate asks this Court to review the Court of Appeals’ Opinion, holding that even an allegedly forged deed satisfies § [12-524](#)’s “recorded deed” requirement if the allegedly forged deed is: (1) recorded, and (2) facially purports to convey the property. The Estate does not argue that the Court of Appeals misapplied this Court’s controlling authority on the matter nor that the Court of Appeals’ Opinion is inconsistent with § [12-524](#)’s plain language. The Estate instead asks this Court to “clarify whether forged deeds are subject to statutes of limitation and effectual to pass title.” [Petition at pg. 5]. The Court has already answered this question—the Estate just dislikes the answer.

A. *A Forged Deed Can Satisfy § 12-524's "Recorded Deed" Requirement*

There is no dispute that a forged deed can still convey title if a party fails to timely challenge the forged deed. A party may bring a quiet title claim to recover a lot from another party possessing a recorded deed for the same lot, including a recorded forged deed. *See* A.R.S. § [12-524](#). If a party wishes to do so, it must bring its claim within five years of the allegedly forged deed's recording. *See* [Nicholas v. Giles, 102 Ariz. 130, 134 \(1967\)](#). A party opposing such a claim can establish the claim is time-barred under § [12-524](#) if: (1) the property at issue is a lot in a city; (2) the opposing party possesses a "recorded deed" for the property; (3) the opposing party claims she owns the property; and (4) the opposing party paid taxes on the property for five consecutive years. *See id.* at 133.

This Court, and the Court of Appeals interpreting this Court's prior decisions, have held that a void deed satisfies § [12-524](#)'s "recorded deed" element if the deed at issue "purports to operate as a conveyance." *See* [Quality Plastics, Inc. v. Moore, 131 Ariz. 238, 241–42 \(1981\)](#) (quoting [Sparks v. Douglas, 19 Ariz. 123, 127 \(1917\)](#) (internal quotation marks omitted)). Stated differently, the deed at question only needs to *attempt* to convey the property at issue by including the basic information generally contained in a deed transferring property, such as the legal description of the property it governs, the parties to the transaction, and notarized signatures. *See* [Henderson v. Tejada, 26 Ariz. App. 462, 466 \(App. 1976\)](#) (a deed is "not void upon

its face, [when], tested by itself, has all the constituent parts knitted into that kind of an instrument”). In [Nicholas](#), this Court applied § [12-524](#)’s five-year statute of limitations to a void deed that otherwise contained all the basic information generally contained in a deed transferring property. [102 Ariz. at 131](#).

The Court of appeals applied [Nicholas](#) and [Quality Plastics, Inc.](#), to this case reasoning that—even if forged—the Deed “properly described the Property, and the signatures of the granters were notarized. The Property’s [D]eed *was thus valid on its face.*” [See Appendix pgs. 130–31, ¶ 17]. As such, the Court should decline the Estate’s invitation “to clarify” sound case law that is consistently applied. *See, e.g., Sw. Paint & Varnish Co. v. Ariz. Dep’t of Env’tl. Quality*, [194 Ariz. 22, 23, ¶ 4 \(1999\)](#) (review generally reserved to resolve “conflicting decisions in the court of appeals”).

B. The Estate Should Direct its Public Policy Concerns to the Legislature

The Estate attempts to fabricate a jurisdictional split, arguing that twenty foreign jurisdictions have allegedly established “that forged deeds are. . . not subject to the statute of limitation.” [See Petition at pg. 7]. To support this contention, the Estate cites nine cases from eight jurisdictions—with only Hawaii, California, New York, and Florida, declining to impose a statute of limitations on challenges to allegedly forged deeds. [See Petition at pgs. 7–8]. The Court of Appeals expressly rejected the Estate’s invitation to apply foreign authority—contradictory to this

Court’s prior rulings and inconsistent with the plain language of § [12-524](#)—to the present dispute. [See Appendix at pg. 131, ¶ 18]. This Court should do the same.

II. The Estate waived its “city or town” Argument

The Estate next asks this Court to unwind four years of litigation because the Estate took a position it now regrets. More specifically, the Estate argues that Renee failed to establish the Property is “located in a city or town” under § [12-524](#)’s first prong—even though the Estate affirmatively admitted as much at all relevant stages of the litigation.

Renee dedicated a substantial portion of her First Motion for Summary Judgment to explaining *why* the Property satisfies § [12-524](#)’s first prong which requires the Property to be “located in a city or town.” So much so that the Estate mocked the discussion. [See Estate’s Appendix at pg. 36 (“Renee’s [First Motion for Summary Judgment] contains a *lengthy* analysis of element number one” but “Magdalena *does not dispute that the Properties in question are ‘lots’ as the term is applied in A.R.S. § [12-524](#)*”) (emphasis added)]. Relying on Renee’s argument and the Estate’s concession, the trial court expressly found “[t]here is no dispute” the Property satisfies § [12-524](#)’s first prong.” And in its *Opening Brief*, the Estate failed to raise any argument disputing that the Property is “located in a city or town”.

Multiple layers of waiver therefore prevent the Estate from unwinding its concession from nearly four years ago. See [Contempo Const. Co. v. Mountain States](#)

[Tel. & Tel. Co., 153 Ariz. 279, 282 \(App. 1987\)](#) (“On appeal from a summary judgment, parties are not allowed to advance new theories or raise new issues in order to secure a reversal.”); *see also* [Ritchie v. Krasner, 221 Ariz. 288, ¶ 62 \(App. 2009\)](#) (appellant waives arguments not raised in opening brief).

III. Magdalena Failed to Establish a Material Factual Dispute

The Estate argues that the Court of Appeals erred by affirming the trial court’s First Order, finding no genuine issue of material fact surrounding Renee’s payment of the Property’s taxes pursuant to the § [12-524](#)’s fourth prong. To establish this element, Renee provided a Declaration confirming she paid the Property’s taxes and receipts from the Maricopa County Treasurer’s Office listing Renee as the payor [*see* Appendix at pgs. 6–7, 84–116]. In contrast, Magdalena “offer[ed] no controverting evidence” other than her unsubstantiated assertion that Renee paid the Property’s taxes with Magdalena’s funds. [Estate’s Appendix at pg. 5].

The trial court found that Magdalena failed to satisfy her burden of establishing a material factual dispute and the Court of Appeals agreed. [*See* Appendix at pgs. 131–32, ¶ 19]. Because the Court of Appeals reached the same conclusion during its review, this Court should decline review. *See, e.g., Dobson v. Grand Intern. Broth. Of Locomotive Engineers, 101 Ariz. 501, 502 (1966)* (declaration fails to establish triable issue of fact when “[t]here is not a scintilla of evidence in the record which lends substance to [the] contention”).

IV. The Estate Waived its Equitable Tolling Argument

Finally, the Estate argues the Court of Appeals incorrectly held that the Estate waived its ability to challenge the trial court's decision not to apply the doctrine of equitable tolling in its First Order or Second Order. [See Petition at pgs. 12–15]. These arguments can be quickly disposed of.

In April 2021, Renee moved for summary judgment on the parties' competing quiet title and § [33-420](#) claims. In her Response to First Motion for Summary Judgment, Magdalena urged the trial court to apply the "discovery rule" under § [12-543](#) or the doctrine of equitable tolling, postponing the accrual of Magdalena's § [33-420](#) claim. [See Estate's Appendix at pgs. 37–38]. But Magdalena's Response to First Motion for Summary Judgment lacks *any* argument that § [12-543](#)'s discovery rule or the doctrine of equitable tolling should apply to her *quiet title* claim. [See *generally* Estate's Appendix at pgs. 27–41]. As such, the trial court's entry of summary judgment on the parties' competing quiet title claims did not address Magdalena's nonexistent request to apply equitable tolling. [See *generally* Estate's Appendix at pgs. 5–6].

In November 2021, Renee moved for summary judgment on the parties' competing § [33-420](#) claims. In its Response to Second Motion for Summary Judgment, the Estate failed to raise *any* arguments concerning § [12-543](#)'s discovery rule or the doctrine of equitable tolling. [See Appendix at pgs. 296–303]. As such,

the trial court's Second Order did not address Magdalena's non-existent request to apply equitable tolling. [*See generally* Appendix at pgs. 304–06].

The Court of Appeals therefore properly concluded that the Estate waived its equitable tolling arguments because it failed to raise this argument for the quiet title claims resolved by the trial court's First Order or the § [33-420](#) claims resolved by the Second Order. *See* [McCleary v. Tripodi, 243 Ariz. 197, 202, ¶ 24, n.4 \(App. 2017\)](#) (failure to raise an argument before the trial court waives the argument on appeal).

CONCLUSION

Renee respectfully asks the Court to deny review and award her attorneys' fees and costs pursuant to [ARCAP 21](#) and A.R.S. §§ [12-1103](#) and [33-420](#).

DATED this 12th day of September, 2024.

TIFFANY & BOSCO, P.A.

By /s/ Lance R. Broberg

Lance R. Broberg (SBN 024103)
Nicholas A. Beatty (SBN 036230)
Camelback Esplanade II
Seventh Floor
2525 East Camelback Road
Phoenix, Arizona 85016-4229
Telephone: (602) 255-6000
lrb@tblaw.com | nab@tblaw.com
Attorneys for Defendant/Appellee