

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re:)	2 CA-CV 2008-0012
)	DEPARTMENT A
)	
\$1,034.00 IN U.S. CURRENCY; 2005)	<u>MEMORANDUM DECISION</u>
CHEVROLET TAHOE, AZ Reg.)	Not for Publication
216TDG,)	Rule 28, Rules of Civil
)	Appellate Procedure
)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV-200601545

Honorable Stephen F. McCarville, Judge

VACATED

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B R A M M E R, Judge.

¶1 Appellant Elías López appeals from the trial court’s order vacating a judgment that had granted his claim to a truck the government had seized, and the subsequent judgment forfeiting the truck to the state. López argues the court lacked jurisdiction to vacate the first judgment, that the state’s motion for reconsideration cannot be viewed as a postjudgment motion, that the subsequent forfeiture violates the Eighth Amendment’s prohibition against excessive punishment, and that A.R.S. § 13-4304(4) protects him from forfeiture of the truck. We vacate both the trial court’s order vacating the judgment in López’s favor and its judgment forfeiting the truck to the state.

Factual and Procedural Background

¶2 The relevant facts are undisputed. In August 2006, law enforcement officers stopped López’s son in a construction office parking lot. Police searched the truck López’s son had been driving and found a bag containing marijuana and a backpack belonging to a passenger that contained more marijuana, an electronic scale, empty bags, and approximately \$1,000 in cash. The passenger admitted he had been selling marijuana.

¶3 The state seized the truck, contraband, and currency and served López’s son with a notice of pending seizure and uncontested forfeiture of the truck. In September 2006, López filed a claim stating he had an ownership interest in the truck and challenging its forfeiture. The state then filed an “initiation of civil forfeiture proceedings.” After an

evidentiary hearing in April 2007, the trial court ruled in López’s favor and granted his claim to the truck. Although the state filed a motion for reconsideration of that ruling on June 20, because it had listed the wrong trial judge in the caption of the motion, the motion did not reach the court until July 19. The court gave the parties notice on July 5 that it would sign López’s proposed judgment if there were no timely objections. The state did not file an objection, the court signed the judgment on July 13, and the judgment was entered the same day. The judgment ordered the state to return the truck to López immediately.

¶4 When the trial court ultimately received the June 20 motion for reconsideration on July 19, it entered an order requiring López to respond pursuant to Rule 7.1(e), Ariz. R. Civ. P.,¹ and stating the July 13 judgment “be held in abeyance.” On October 2, after López’s response and the state’s reply were filed, the court “set aside” its “previous ruling” and forfeited López’s truck to the state. López objected to the state’s proposed form of judgment, arguing, inter alia, that the “state’s motion for reconsideration was not properly brought before the court” and that the court “lacked jurisdiction to entertain” the motion. The court determined López’s objection should properly be characterized as a motion for reconsideration of its October 2 ruling and denied it. The court stated it had granted the state’s motion “because it had actually been filed PRIOR to the Judgment having been signed and entered” and noted López “did not contest this Court’s authority or jurisdiction to correct

¹All references to a “Rule” refer to the Arizona Rules of Civil Procedure unless otherwise noted.

its own error” in its response to the state’s motion for reconsideration. The court signed the judgment forfeiting López’s truck to the state on November 19, the judgment was entered on November 20, and this appeal followed.

Is a Rule 7.1(e) Motion for Reconsideration a “Postjudgment Motion”?

¶5 López first argues the trial court lacked jurisdiction to enter the November 19 judgment in favor of the state. He posits that, because the state did not file a postjudgment motion after the court entered the July 13 judgment, the court “lost jurisdiction to alter or amend” that judgment once the time for filing postjudgment motions had lapsed. López reasons that the state’s motion for reconsideration filed before the judgment had been entered “c[ould not] perform the functions” of a proper postjudgment motion, and, as we understand his argument, the trial court therefore lacked the authority to grant that motion and vacate the July 13 judgment after it had been entered.²

¶6 López devotes the bulk of his argument on appeal to whether the trial court properly could regard the state’s motion for reconsideration as a motion under Rules 59 or 60. But the question he really raises here is whether a trial court has the authority to grant a motion for reconsideration filed pursuant to Rule 7.1(e), thereby modifying a final judgment after it has been entered. We conclude it does not.

²Although the trial court stated López should have raised these issues in his response to the state’s motion for reconsideration, we note that subject matter jurisdiction cannot be waived and can be raised at any stage of the proceeding. *Swichtenberg v. Brimer*, 171 Ariz. 77, 82, 828 P.2d 1218, 1223 (App. 1991). And in his objection to the form of judgment the state had lodged, he did argue the court could not take the action it did.

¶7 In Arizona,

the inherent power of the court to vacate or modify its judgment does not extend beyond the point at which the judgment becomes final, except as authorized by law. When a judgment becomes final, the power of the court to open it is governed by the Rules of Civil Procedure adopted by [our supreme court].

Preston v. Denkins, 94 Ariz. 214, 219, 382 P.2d 686, 689 (1963).³ “In construing procedural rules promulgated by our supreme court, we employ the traditional tools of statutory construction.” *Medders v. Conlogue*, 208 Ariz. 75, ¶ 9, 90 P.3d 1241, 1244 (App. 2004). We look first to the plain language of the rule. *See In re MH 2004-001987*, 211 Ariz. 255, ¶ 15, 120 P.3d 210, 213 (App. 2005).

A. Rules Enumerating Postjudgment Motions

¶8 Several rules of civil procedure provide trial courts with the authority to modify or vacate a final judgment. Rule 50(b) permits a court, upon disposing of a renewed motion for judgment as a matter of law, to “allow the judgment to stand or . . . reopen the judgment.” Rule 52(b) allows a court, upon motion, to amend findings requested under Rule 52(a) or make additional findings, and states the court may also “amend the judgment accordingly.”

¶9 If a trial court grants a motion for a new trial filed pursuant to Rule 59(a), it may vacate “[a] verdict, decision or judgment.” *See also* Rule 59(b) (permitting trial court

³The supreme court went on to explain that “[t]his limitation does not . . . apply to the right to challenge a judgment on the ground that it is void for lack of jurisdiction of the parties. The right of the court to hear such a challenge does not depend upon rules of the court or statute.” *Preston*, 94 Ariz. at 219, 382 P.2d at 689. Nothing in the record suggests the July 13 judgment is void.

upon grant of new trial motion to “open the judgment . . . , take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment”). A court may also sua sponte grant a new trial, Rule 59(g), or, upon motion, modify or amend a judgment, Rule 59(l).

¶10 Rule 60 also permits a trial court to alter or vacate a judgment after its entry. For example, upon its own motion or a party’s, a court may correct clerical mistakes in a judgment. Rule 60(a). Rule 60(c) permits a court upon a motion to “relieve a party or a party’s legal representative from a final judgment, order or proceeding.”

B. Rule 7.1(e)

¶11 In contrast to the rules described above, Rule 7.1(e), which pertains to motions for reconsideration, does not use the term “judgment.” It states only that a party may “seek[] reconsideration of a *ruling* of the court.” (Emphasis added.) The rule further provides a motion for reconsideration “may not be employed as a substitute for a motion pursuant to Rule[s] 50(b), 52(b), 59 or 60,” *id.*, all of which explicitly allow a trial court to modify or vacate a final judgment. And Rule 7.1(e) states that the filing of a motion for reconsideration “shall not operate to extend the time within which a notice of appeal must be filed.” That our supreme court used the term “judgment” in other rules but not in Rule 7.1(e) demonstrates that, had the court intended for a trial court to have the authority to amend or vacate a judgment based on a motion for reconsideration filed pursuant to Rule 7.1(e), it would have expressly given trial courts that authority. *See State v. Gonzales*, 206 Ariz. 469, ¶ 11, 80 P.3d

276, 278 (App. 2003).⁴ Instead, our supreme court expressly stated in Rule 7.1(e) that a motion for reconsideration could not substitute for postjudgment motions available pursuant to Rules 50(b), 52(b), 59 or 60.

¶12 Our conclusion is consistent with the public policy favoring finality of judgments. *See Panzino v. City of Phoenix*, 196 Ariz. 442, ¶ 18, 999 P.2d 198, 204 (2000); *see also Rodriguez v. Rodriguez*, 133 Ariz. 88, 89, 649 P.2d 291, 292 (App. 1982) (“Public policy requires an end to litigation and even erroneous final judgments must be honored in order to continue the well-ordered functioning of the judicial process.”), *quoting In re Marriage of Fellers*, 178 Cal. Rptr. 35, 37 (1981). The postjudgment motions we described above generally must be filed within strict time limits⁵ and allow relief to be granted only for specific reasons. These restrictions help protect the finality of judgments by preventing unlimited and unrestricted attempts to relitigate issues resolved at trial. A motion for reconsideration pursuant to Rule 7.1(e), in contrast, has no specific time limit and does not restrict a party to any particular basis for requesting relief. Thus, allowing a motion for reconsideration to be used as a vehicle to modify or vacate a final judgment would render superfluous the postjudgment motions we have enumerated. *See Adrian E. v. Ariz. Dep’t.*

⁴Of course, nothing would preclude a court from granting reconsideration of and modifying appealable orders that have not become final judgments. *See* A.R.S. § 12-2101.

⁵Certain motions pursuant to Rule 60(c) are not subject to strict time limits. Specifically, Rule 60(c) motions asserting a judgment is void or is otherwise no longer valid must be filed within a reasonable time after the entry of judgment. Other Rule 60(c) motions must be filed within six months of the entry of judgment.

of *Econ. Sec.*, 215 Ariz. 96, ¶ 12, 158 P.3d 225, 229 (App. 2007) (courts are reluctant to interpret rule so as to render any part of it superfluous). For these reasons, we conclude a trial court cannot modify or vacate a final judgment pursuant to Rule 7.1(e).

C. Jurisprudence Pre-Dating the Adoption of Rule 7.1(e)

¶13 We recognize, however, that our supreme court’s reasoning in *Engineers v. Sharpe*, 117 Ariz. 413, 573 P.2d 487 (1977), suggests a trial court may consider a timely filed motion for reconsideration as a Rule 59 motion for a new trial—thus permitting it to vacate or modify a judgment. There, the trial court had granted summary judgment and, after making findings pursuant to Rule 54(b) ordered that “judgment should be entered forthwith” in favor of one of several defendants. *Id.* at 414, 573 P.2d at 488. After the trial judge resigned, the plaintiff filed a motion for reconsideration. *Id.* The newly assigned judge ruled that he would treat the motion for reconsideration as a Rule 59(a) new trial motion, granted the motion, vacated the judgment, and reinstated the defendant as a party. *Id.*

¶14 On review, our supreme court in *Engineers* determined that it “was appropriate and was not an abuse of discretion” for the trial court to treat the motion for reconsideration as a motion for a new trial. *Id.* at 415, 573 P.2d at 489. The court stated:

We believe that a timely motion for reconsideration filed in an attempt to gain vacation of a summary judgment is not factually distinguishable from a Rule 59(a) motion for a new trial attacking a summary judgment. While style should not control substance, it is nevertheless obvious that proper pleading requires that a motion be labeled in a manner in conformity with the Rules of Civil Procedure.

Id. Subsequent opinions have interpreted this language as allowing a trial court to consider variously titled motions as Rule 59 motions. *See, e.g., Farmers Ins. Co. v. Vagnozzi*, 132 Ariz. 219, 221-22, 644 P.2d 1305, 1307-08 (1982) (“The rule announced in *Engineers* is that the trial court may treat a so-called ‘motion for rehearing’ as one under rule 59.”); *Union Rock & Materials Corp. v. Scottsdale Conference Ctr.*, 139 Ariz. 268, 273, 678 P.2d 453, 458 (App. 1983) (trial court may, but need not, “consider a motion for reconsideration as a Rule 59 . . . motion for new trial”); *J-R Constr. Co. v. Paddock Pool Constr. Co.*, 128 Ariz. 343, 344, 346, 625 P.2d 932, 933, 935 (App. 1981) (“‘Motion for Rehearing upon Motion to Dismiss’” “is not factually distinguishable from a rule 59(a) motion attacking [a] judgment”).

¶15 We conclude, however, that even if we reasonably could interpret the trial court’s rulings here as demonstrating it had treated the state’s motion for reconsideration as a postjudgment motion,⁶ *Engineers* does not permit the trial court to do so. At the time *Engineers* was decided, our civil rules did not specifically provide for the filing of a motion for reconsideration. Our supreme court first adopted the rule governing motions for reconsideration, Rule IV(h) of the Uniform Rules of Practice of the Superior Court, in 1989.⁷

⁶We note that in *Engineers* the trial court specifically stated it was converting the motion into a Rule 59 motion. 117 Ariz. at 414, 573 P.2d at 488. Here, in contrast, the trial court clearly treated the motion as one for reconsideration, “finding that a response [to the motion] pursuant to Rule 7.1(e) of the Arizona Rules of Civil Procedure is required.”

⁷That subsection was added to Rule 7.1 in 2000 when the Uniform Rules were abrogated. *See* Rule 7.1 cmt. to 2000 amendment. The rule’s language has not changed since 1989.

And the rule, by its plain language, now prohibits a trial court from doing what the trial court properly did in *Engineers*—allowing a motion for reconsideration to substitute for a Rule 59 motion. See Rule 7.1(e) (motion for reconsideration “may not be employed as a substitute for a motion pursuant to Rule[s] 50(b), 52(b), 59 or 60”). Thus, although the holding in *Engineers* clearly means a trial court may sua sponte treat a motion that is not provided for in the rules of civil procedure as a motion the rules do permit, it does not stand for the proposition that trial courts may consider a motion filed pursuant to Rule 7.1(e) as a motion under Rules 50(b), 52(b), 59 or 60.

¶16 Our conclusion is supported by a series of cases decided by our supreme court addressing whether various motions would extend the time for filing an appeal. See Ariz. R. Civ. App. P. (ARCAP) 9(a). ARCAP 9(b) states: “[T]he time for appeal for all parties is extended” when any party timely files motions under Rules 50(b), 52(b), 59(a), or 59(l). The line of cases, beginning with *Arizona State Liquor Board v. Slonsky*, 106 Ariz. 25, 470 P.2d 106 (1970), and culminating in *Vagnozzi*, hold that “in order for a party to be assured of the time-extending qualities of a motion for new trial, [either the party] must both refer to rule 59 as authority for the motion and describe grounds set forth in that rule,” or the trial court must “state[] in the record its intention” to treat the motion as one under Rule 59. *Vagnozzi*, 132 Ariz. at 221-22, 644 P.2d at 1307-08; see also *James v. State*, 215 Ariz. 182, ¶¶ 12-16, 158 P.3d 905, 908-09 (App. 2007).

¶17 *Vagnozzi* and its predecessors support our conclusion here in two ways. First, those cases demonstrate that we must strictly apply the limits applicable to motions for reconsideration as defined by Rule 7.1(e)—that it may not be a substitute for a postjudgment motion—just as our supreme court strictly applied the limits on which motions may toll the time for an appeal under ARCAP 9(b). And second, they show that, in order for a motion titled or described as a “motion for reconsideration” to be granted by a trial court after final judgment has been entered, the motion must in substance be a postjudgment motion permitted by our rules of civil procedure. That is, the motion must refer to one of those rules as authority and describe the grounds for relief available under that rule.⁸ *See Vagnozzi*, 132 Ariz. at 221-22, 644 P.2d at 1307-08. That was not the case here,⁹ nor does the state argue otherwise.

¶18 Moreover, the state had the opportunity to avoid this error, and in a timely fashion. When the state received the July 5 notice that judgment would be entered “[i]f no objections are filed within the time provided by [the] Rules of Civil Procedure,” it did not contact the court in an attempt to learn what had happened to its motion for reconsideration,

⁸That portion of *Vagnozzi*’s rule that allows a trial court to state on the record that it is treating a party’s motion as a postjudgment motion provided for in the rules does not apply to motions for reconsideration filed pursuant to Rule 7.1(e). *See Vagnozzi*, 132 Ariz. at 222, 644 P.2d at 1308. Like *Engineers*, *Vagnozzi* was decided well before Rule 7.1(e), governing motions for reconsideration, was adopted. As we have explained, that rule by its plain language flatly prohibits a court from substituting a motion for reconsideration filed under it for one of the enumerated motions.

⁹Understandably so, as the motion was filed prior to the entry of judgment in favor of López.

or whether it had been either considered or ruled on by the court. Nor did the state request that the court delay signing the judgment until it had considered the state’s motion for reconsideration. And when the judgment was entered, the state did not file a postjudgment motion.¹⁰

D. State’s Arguments

¶19 The state argues a determination that the trial court lacked the authority to rule on the state’s motion for reconsideration would “elevate form over the substance of the case.” *See Valenzuela v. Brown*, 186 Ariz. 105, 108, 919 P.2d 1376, 1379 (App. 1996) (“[O]rders and judgments must be considered in context and . . . form should not be elevated over substance.”). As we discussed above, however, our interpretation of Rule 7.1(e) is no more strict than our supreme court’s interpretation of ARCAP 9(b). Nor do we believe that requiring trial courts and parties to comply with the procedural rules improperly elevates

¹⁰Admittedly, the state may not have seen a reason to do so. The court ordered López to respond to the state’s motion for reconsideration six days after judgment had been entered. Thus, the time for filing a postjudgment motion had not yet expired, *see, e.g.*, Rules 59(d) and 60(c), and, instead of filing a postjudgment motion, the state might have relied on the court’s mistaken belief that it could properly rule on the motion for reconsideration after it had signed the judgment. But requiring the state and the trial court to strictly comply with applicable procedural rules is particularly appropriate here. “Government confiscation of private property is disfavored in our constitutional system.” *United States v. \$191,910.00 in U.S. Currency*, 16 F.3d 1051, 1068 (9th Cir. 1994). Consequently, “forfeiture statutes are to be strictly construed against the government.” *In re \$315,900.00 in U.S. Currency*, 183 Ariz. 208, 213 n.8, 902 P.2d 351, 356 n.8 (App. 1995). Similarly, the state should be required to strictly comply with any applicable procedural rules. *Cf. Macborski v. Chase Serv. Corp. of Ariz.*, 161 Ariz. 557, 561, 779 P.2d 1296, 1300 (App. 1989) (party seeking forfeiture of interest in property “must strictly comply with all requirements for the forfeiture”).

style over substance. Moreover, nothing in the state’s motion for reconsideration or the court’s rulings concerning it suggests the court or the state ever believed that motion was, in substance, anything other than a motion for reconsideration, which, as we have explained, does not permit a trial court to vacate or modify a final judgment.

¶20 The state also asserts that a trial court has an obligation to correct erroneous rulings. *See King v. Superior Court*, 138 Ariz. 147, 152, 673 P.2d 787, 792 (1983) (“If a trial judge realizes that an erroneous ruling has been made, he must act to prevent a miscarriage of justice.”). Assuming without deciding that the July 13 judgment was reached in error, we of course agree that a trial court should correct its errors whenever possible, and hold only that it must do so consistent with the rules of procedure.¹¹ And, to the extent the state suggests the July 13 judgment was void, it cites to, and we find, nothing in the record to support that assertion.

¶21 The state next contends the trial court had the authority to “vacat[e] [the] judgment nunc pro tunc” pursuant to Rule 58(a). Nothing in the language of Rule 58(a), or any other authority, suggests that rule gives a trial court the power to vacate a judgment. Permitting the entry of judgment nunc pro tunc is solely for correcting clerical errors in the judgment or modifying the date a judgment becomes effective. *See, e.g., Hatch v. Hatch*, 113 Ariz. 130, 134, 547 P.2d 1044, 1048 (1976); *State v. Surety Ins. Co. of Cal.*, 137 Ariz. 351,

¹¹For example, the trial court sua sponte could have granted a new trial pursuant to Rule 59(g). Or, it might have denied the motion for reconsideration as moot, thereby alerting the state that it should file a proper and timely postjudgment motion.

353, 670 P.2d 1175, 1177 (App. 1983); *see also* Daniel J. McAuliffe & Shirley J. Wahl, 2A *Arizona Civil Trial Practice* § 28.6, at 178 (2d ed. 2001) (“A judgment *nunc pro tunc* may be used to correct a clerical error but it cannot correct a judicial error.”) (footnotes omitted). Rule 58(a) does not authorize the court’s actions here. Moreover, nothing in the record suggests the court relied on Rule 58(a) when it vacated the July 13 judgment.

¶22 Last, we note the trial court’s order holding the judgment in “abeyance” if the truck had “not yet been returned to [López]” cannot be interpreted to aid the state’s position. Although the term “abeyance” does not appear in any relevant statute or rule, this language appears to invoke implicitly the provisions of Rule 62(b). That rule allows a trial court to stay execution of a judgment, *inter alia*, “when justice so requires.” *Id.* Nothing in that rule, however, suggests staying execution of a judgment either tolls or extends the time limits for filing postjudgment motions or a notice of appeal, nor does it grant the court authority to alter or vacate the judgment. *See also* Rule 6(b); ARCAP 9(b).

¶23 For the reasons stated above, we conclude the trial court lacked the authority to grant the state’s motion for reconsideration and vacate the July 13 judgment after it had been entered. Nor was the court permitted to treat that motion as a postjudgment motion authorized by the Rules of Civil Procedure. We therefore need not reach the remaining issues raised by López’s appeal.

Disposition

¶24 We vacate the trial court's grant of the state's motion for reconsideration and its order vacating the July 13 judgment. Accordingly, we also vacate the November 20 judgment.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

JOHN PELANDER, Chief Judge