IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

KARI LAKE,
Plaintiff/Contestant/Appellant,

v.

KATIE HOBBS, PERSONALLY AS CONTESTEE; ADRIAN FONTES, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE; STEPHEN RICHER, IN HIS OFFICIAL CAPACITY AS MARICOPA COUNTY RECORDER; BILL GATES, CLINT HICKMAN, JACK SELLERS, THOMAS GALVIN, AND STEVE GALLARDO, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE MARICOPA COUNTY BOARD OF SUPERVISORS; SCOTT JARRETT, IN HIS OFFICIAL CAPACITY AS MARICOPA COUNTY DIRECTOR OF ELECTIONS; AND THE MARICOPA COUNTY BOARD OF SUPERVISORS,
Defendants/Appellees.

No. 2 CA-CV 2023-0144
Filed June 11, 2024

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Maricopa County
No. CV2022095403
The Honorable Peter A. Thompson, Judge

AFFIRMED

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MEMORANDUM DECISION

Presiding Judge Brearcliffe authored the decision of the Court, in which Judge Eckerstrom and Judge Eppich concurred.

B R E A R C L I F F E, Presiding Judge:

¶1 Kari Lake appeals from the trial court's denial of her Rule 60(b), Ariz. R. Civ. P., motion for relief from the court's dismissals of Counts

II, V, and VI of her A.R.S. § 16-672 election contest.[1] Lake also appeals from the court's judgment as to Count III after a bench trial. For the following reasons, we affirm.

Factual and Procedural Background

¶2 Katie Hobbs received the most votes for the office of Governor of Arizona according to the canvass of the election returns following the general election on November 8, 2022. Hobbs was ultimately declared the winner of the race on December 5, 2022, over competitor Lake. Lake filed this election contest against Hobbs as contestee; the Arizona Secretary of State (now Adrian Fontes); and various Maricopa County elections officials (collectively "Hobbs," unless the actions of a particular party are discussed). *See Lake v. Hobbs*, 254 Ariz. 570, ¶ 2 (App. 2023), *vacated in part*, No. CV-23-0046-PR (Ariz. Mar. 22, 2023) (order); A.R.S. § 16-673(A). As explained in this court's prior opinion, Lake alleged ten counts under § 16-672(A), seeking "a declaration that she, not Hobbs, was the victor or, alternatively, an order invalidating the election results." *Lake*, 254 Ariz. 570, ¶ 2.

¶3 Hobbs moved to dismiss Lake's contest under Rule 12(b)(6), Ariz. R. Civ. P. The trial court dismissed eight of the ten counts "for failure to state a claim, for undue delay, as duplicative, as outside the scope of an election contest, or for some combination thereof." *Lake*, 254 Ariz. 570, ¶ 3; *see* A.R.S. § 16-675(A).

¶4 One of the dismissed counts was Count III, in which Lake alleged that "a material number of early ballots cast in the November 8, 2022 general election were transmitted in envelopes containing an affidavit signature that the Maricopa County Recorder or his designee determined did not match the signature in the putative voter's 'registration record.'" *See* A.R.S. §§ 16-550(A) (outlining signature verification procedures for receipt of early mail-in ballots by county recorder or other election officers), 16-672(A)(1) (election contest may be brought "[f]or misconduct on the part of election boards or any members thereof in any of the counties of the state,

[1]In 2016, former Rule 60(c) was reorganized as Rule 60(b) and (c) without substantive change. *See* Ariz. Sup. Ct. Order R-16-0010 (Sept. 2, 2016); *Gonzalez v. Nguyen*, 243 Ariz. 531, n.1 (2018). The grounds for relief under former Rule 60(c) are now in current Rule 60(b), while the deadlines under former Rule 60(c) are now found in current Rule 60(c). *See* Ariz. Sup. Ct. Order R-16-0010.

or on the part of any officer making or participating in a canvass for a state election").[2] Lake alleged the Maricopa County Recorder nonetheless "accepted a material number of these early ballots for processing and tabulation," resulting in an "outcome-determinative number of illegal votes." The trial court, construing the claim as targeting the validity of Arizona's early ballot procedures themselves, dismissed this count as barred by laches. It reasoned that Lake was "on notice (at a minimum) months before the election as to the nature of the ballot signature reconciliation process and chose not to challenge it then."

¶5 The trial court then held a bench trial on Lake's remaining claims, in accord with A.R.S. § 16-676(A). Following trial, the court concluded that Lake had failed to prove any element of the remaining claims and confirmed Hobbs's election as governor. *Lake*, 254 Ariz. 570, ¶ 3; *see* § 16-676(B). Lake appealed, and this court affirmed. *Lake*, 254 Ariz. 570, ¶ 1.

¶6 Lake petitioned for expedited review, which our supreme court granted, but only as to the dismissal of Count III. *Lake*, No. CV-23-0046-PR. The court determined that Lake's argument under Count III is a challenge to policies as applied and that "it was erroneous to dismiss this claim under the doctrine of laches because Lake could not have brought this challenge before the election." *Id.* Accordingly, the court vacated paragraphs 26-30 of this court's opinion in *Lake*, 254 Ariz. 570, addressing Count III, and remanded the matter to the trial court. *See Lake*, No. CV-23-0046-PR. It directed the trial court to determine:

> whether the claim that Maricopa County failed to comply with A.R.S. § 16-550(A) fails to state a

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[2]We apply the statutes in effect at the time of the election. *See Sherman v. City of Tempe*, 202 Ariz. 339, ¶ 12 & n.2 (2002) (applying statutes existing at time of election to election contest); *see also* 2022 Ariz. Sess. Laws, ch. 271, § 2 (version of § 16-550 in effect in November 2022). Section 16-550(A) has since been amended numerous times. *See* 2022 Ariz. Sess. Laws, ch. 358, § 1; 2023 Ariz. Sess. Laws, ch. 130, § 13; 2024 Ariz. Sess. Laws, ch. 1, § 6; 2024 Ariz. Sess. Laws, ch. 2, § 2. It now requires the county recorder to "compare the signature on the envelope with the signature of the elector on the elector's registration record as prescribed by [A.R.S.] § 16-550.01." § 16-550(A). Section 16-550.01 was added in 2024 and outlines specific signature verification processes. *See* 2024 Ariz. Sess. Laws, ch. 1, § 7.

> claim pursuant to Ariz. R. Civ. P. 12(b)(6) for reasons other than laches, or, whether [Lake] can prove her claim as alleged pursuant to A.R.S. § 16-672 and establish that "votes [were] affected 'in sufficient numbers to alter the outcome of the election'" based on a "competent mathematical basis to conclude that the outcome would plausibly have been different, not simply an untethered assertion of uncertainty."

Id. (first alteration added, second alteration in supreme court's order).

¶7 Our supreme court otherwise declined to review any other issues raised in Lake's Petition for Review, explaining, "The Court of Appeals aptly resolved these issues, most of which were the subject of evidentiary proceedings in the trial court, and [Lake's] challenges on these grounds are insufficient to warrant the requested relief under Arizona or federal law." *Id.*

¶8 On remand, Hobbs again moved to dismiss Count III of Lake's complaint for failure to state a claim. For her part, Lake moved under Rule 60(b) for relief from the trial court's original—pre-appeal and pre-review—judgment dismissing Counts II, V, and VI. The trial court denied both Hobbs's motion to dismiss and Lake's Rule 60 motion. In denying Hobbs's motion to dismiss, the court explained that Lake had validly stated a claim under Count III that Maricopa County failed to conduct signature verification on mail-in ballots as required by § 16-550(A). In denying Lake's motion, the court concluded that the new evidence she advanced, if admitted, would improperly amend her pleadings or would be cumulative to evidence already presented, the allegations of fraud were without support, and the motion otherwise failed to articulate grounds for relief.

¶9 Thereafter, the trial court held a bench trial on Count III. The court found that Lake failed to prove Count III by clear and convincing evidence, and again confirmed Hobbs's election as governor. The court entered final judgment in favor of Hobbs on all claims, and Lake appealed. We have jurisdiction pursuant to A.R.S. §§ 12-2101(A) and 12-120.21(A)(1).

Discussion

¶10 On appeal, Lake challenges the trial court's dismissal of her Rule 60(b) motion for relief from judgment as to Counts II, V, and VI, and its trial verdict on Count III. Hobbs contends in response that Lake's Rule 60(b) motion was "legally deficient," and that the court properly entered judgment against Lake as to Count III.

I. Lake's Rule 60(b) Motion

¶11 The extent of our power to review and upset the trial court's ruling on Lake's Rule 60(b) motion is limited. Because it was filed under Rule 60(b)(2), (3), and (6), we review the denial of Lake's motion for an abuse of discretion. *See Ezell v. Quon*, 224 Ariz. 532, ¶ 15 (App. 2010); *Woodbridge Structured Funding, LLC v. Ariz. Lottery*, 235 Ariz. 25, ¶ 21 (App. 2014) ("Trial courts enjoy broad discretion when deciding whether to set aside judgments" under Rule 60(b)). That is, where the trial court has resolved an issue by exercising discretion conferred to it by law, we will only reverse the court if it has, in that exercise, committed "an error of law in reaching a discretionary conclusion, it reaches a conclusion without considering the evidence, it commits some other substantial error of law, or 'the record fails to provide substantial evidence to support the trial court's finding.'" *Duckstein v. Wolf*, 230 Ariz. 227, ¶ 8 (App. 2012) (quoting *Flying Diamond Airpark, LLC v. Meienberg*, 215 Ariz. 44, ¶ 27 (App. 2007)). And in such review, "[w]e may affirm the trial court's ruling if it is correct for any reason apparent in the record." *Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9 (App. 2006).

¶12 We review issues of law, such as the interpretation of election laws, de novo. *See id.* In interpreting a statute, we strive to give effect to its plain meaning. *See State ex rel. Ariz. Dep't of Revenue v. Tunkey*, 254 Ariz. 432, ¶¶ 31-32 (2023) (Bolick, J., concurring); *Roberts v. State*, 253 Ariz. 259, ¶ 20 (2022) ("'[C]ourts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself,' and similarly the 'court will not inflate, expand, stretch or extend a statute to matters not falling within its expressed provisions.'" (quoting *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133 (1965))).

¶13 Under Rule 60(b), "[o]n motion and just terms, the court may relieve a party . . . from a final judgment" if the moving party establishes one or more of six enumerated grounds. Ariz. R. Civ. P. 60(b). Lake moved pursuant to Rule 60(b)(2), (3), and (6) for relief from the trial court's judgments pertaining to Counts II, V, and VI. The primary purpose of a

Rule 60(b) motion is "to allow relief from judgments that, although perhaps legally faultless, are unjust because of extraordinary circumstances that cannot be remedied by legal review." *Tippit v. Lahr*, 132 Ariz. 406, 408-09 (App. 1982). A Rule 60(b) motion like Lake's "is not a device for weighing evidence or reviewing legal errors." *Welch v. McClure*, 123 Ariz. 161, 165 (1979); *Tovrea v. Nolan*, 178 Ariz. 485, 491 (App. 1993) (Rule 60(b) "does not provide relief from judgment where a party merely asks the court to reconsider a previous legal ruling"). For the following reasons, the court did not abuse its discretion in denying Lake's Rule 60 motion.

A. Timeliness

¶14 A Rule 60(b) motion must be brought within a reasonable time, and for the grounds specified under Rule 60(b)(1), (2), and (3), "no more than 6 months after the entry of the judgment." Ariz. R. Civ. P. 60(c)(1). The trial court concluded that Rule 60(b) applied to this action and determined, in its discretion, that Lake had filed the Rule 60(b) motion as to Counts II, V, and VI within a reasonable time. *See Brooks v. Consol. Freightways Corp. of Del.*, 173 Ariz. 66, 71 (App. 1992) ("The trial court has discretion to determine whether or not a delay is reasonable."). As an initial matter, Hobbs argues that the trial court erred in not dismissing Lake's Rule 60(b) motion because the court's "jurisdiction on remand was explicitly limited by the terms of" our supreme court's mandate, and also because such motions are incompatible with the strict deadlines of our election-contest statutes. Lake asserts that Rule 60(b) motions are not unheard of in such cases. *See Moreno v. Jones*, 213 Ariz. 94, ¶ 16 (2006).[3] And indeed, our election-contest statutes do not expressly or categorically bar Rule 60(b) motions. *See id.* (although statute governing election contest to

[3]Hobbs contends that *Moreno* is dissimilar because it does not involve "an election contest," but rather a challenge to a "nomination petition." We generally take the term "election contest" to mean any contest provided for by a statute under Title 16 (itself titled "Elections and Electors") which permits a contestant to challenge some aspect of the election process, whether that be certain initial stages—like a contest to a nomination petition under A.R.S. § 16-351(A)—or a later stage, such as a challenge of the general election for the office of Arizona Governor under § 16-672. However, as we explain, it is unclear whether a Rule 60(b) motion was or could have been brought within a reasonable time during this § 16-672 election contest. Ultimately, we need not decide this issue or address Hobbs's argument that our supreme court's mandate precluded the filing of the motion

nominating petition provides short time limits, statute "does not categorically preclude" filing Rule 60(b) motion); A.R.S. §§ 16-672 to 16-678 (no reference to post-judgment Rule 60(b) motions).

¶15 We are skeptical that a Rule 60(b) motion can ever be deemed filed "within a reasonable time" in a contest post-election, given the very tight deadlines for raising and resolving election challenges. *See Donaghey v. Att'y Gen.*, 120 Ariz. 93, 95 (1978) (time provisions in election contest strictly applied due to Arizona's "strong public policy favoring stability and finality of election results"). Our supreme court has required "strict compliance with the time provisions" for election challenges, which demand parties act quickly even if not perfectly, so that elected officials can take office and govern with "independent judgment." *Id.* ("[A] successful challenge months or years after an election would seriously erode the stability of state and local governments by calling into question the legitimacy of any action taken by an office holder . . . ."); *see also* A.R.S. §§ 16-673(A) (contest initiated within five days of canvass completion and result declaration), 16-676(A), (B) (hearing held within ten days of contest's filing; extension for good cause not to exceed five days; court in session until all issues determined, and judgment pronounced within five days), 16-211 (general election must be held "[o]n the first Tuesday after the first Monday in November of every even-numbered year"); Ariz. Const. art. V, § 1(A) (governor holds office beginning first Monday of January following general election). And, while the legislative scheme for § 16-672 election contests does not contemplate appeals, the appeals of election challenges are typically expedited, especially when acceleration is requested. *See Lake v. Hobbs*, Nos. 1 CA-CV 22-0779, 1 CA-SA 22-0237 (Ariz. App. Jan. 9, 2023) (consol. order); *Lake*, No. CV-23-0046-PR. Allowing for post-judgment challenges under Rule 60(b) in election cases could wreak havoc on the delicate balance struck by our legislature between accuracy and finality. In any event, given our conclusion that Lake's motion failed on the merits, we need not resolve whether Rule 60(b) motions are per se impermissible in such contests. *See Harris v. Purcell*, 193 Ariz. 409, n.7 (1998).

B. Rule 60(b) motion for relief from judgment dismissing Count II

¶16 Lake moved pursuant to Rule 60(b)(2) for relief from the trial court's judgment dismissing Count II, on the basis of "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)(1)[, Ariz. R. Civ. P.]" Lake's "newly discovered evidence" included three things: (1) "voluminous

electronic data and records produced by Maricopa pursuant to multiple public records requests . . . through March 2023"; (2) the Maricopa County 2022 General Election Ballot-on-Demand Printer Investigation report issued in April 2023 ("Maricopa BOD report"); and (3) an analysis—in the form of a declaration—by Lake's expert, Clay Parikh, pertaining to the newly obtained records above, as well as system log files that Lake possessed "at the time of judgment." Lake argued that this newly discovered evidence also supported granting her relief pursuant to Rule 60(b)(3), because it demonstrated misconduct and misrepresentations on the part of Hobbs which interfered with Lake's ability to present her case. Finally, Lake argued that this same evidence justified relief pursuant to Rule 60(b)(6), a catch-all for "any other reason justifying relief," because her "new evidence of secret testing and the knowledge that the election system would fail on Election Day" qualified as exceptional circumstances.

¶17 At the beginning of this election contest, as to Count II, the trial court determined that Lake had stated a valid claim under § 16-672(A)(1).[4] Under § 16-672(A)(1), a contestant can challenge an election "[f]or misconduct on the part of election boards or any members thereof in any of the counties of the state, or on the part of any officer making or participating in a canvass for a state election." The court determined Lake had adequately "allege[d] that a person employed by Maricopa County interfered with BOD printers in violation of Arizona law, resulting in some number of lost votes for [Lake]." She would have to prove at trial "that 1) the malfeasant person was a covered person under (A)(1); 2) the printer malfunctions caused by this individual directly resulted in identifiable lost votes for [Lake]; and 3) that these votes would have affected the outcome of the election."

¶18 After the original bench trial on Count II, the trial court determined that Lake had failed to prove any aspect of the claim by clear and convincing evidence. We affirmed on appeal, noting that "at most, the evidence regarding misconduct was disputed, and ample evidence supported the [trial] court's conclusion that the printer/tabulator issues resulted from mechanical malfunctions that were ultimately remedied." *Lake*, 254 Ariz. 570, ¶ 14. We noted that Lake had "presented no evidence that voters whose ballots were unreadable by on-site tabulators were not

[4]Other claims within Count II of Lake's complaint were dismissed for failing to state a valid claim under § 16-672(A)(4), which dismissal was affirmed on appeal. *Lake*, 254 Ariz. 570, ¶¶ 1, 3-4.

able to vote," and only "sheer speculation" that issues on election day discouraged "a substantial number of predominantly Lake voters" from voting. *Id.* ¶¶ 15-16. Finally, we determined that Lake's expert witness—whose testimony amounted to an opinion that "a population equaling approximately 16% of the total election-day turnout across Maricopa County had been deprived of their right to vote, and that the deprivation derived from printer/tabulator issues"—had no reasonable basis for his claims of disenfranchisement. *Id.* ¶¶ 17-18. Following remand, Lake moved for relief from the trial court's denial of her motion under Rule 60(b)(2), (3) and (6), as to Count II, but the court denied the motion.

1. **Improper amendment to Count II**

¶19 The trial court concluded that Lake's motion would improperly amend her pleadings under Count II, explaining,

> Assuming that this evidence could not have been discovered before trial, it goes to a completely different set of election day processes than that alleged in Count II—suggesting that the tabulators were maliciously configured to not *read* ballots is different in kind from alleging that the printers could not *write* the ballots correctly.

Therefore, the court determined, the evidence Lake advanced in her Rule 60(b) motion was "not newly discovered evidence that goes to the claim as presented to the Court in December and reviewed on appeal, it is a wholly new claim, and therefore Count II remains unrevived."

¶20 Indeed, § 16-673 does not provide for amendments to the verified statement of election contest, which requires that such statement be filed within five days of canvass completion and declaration of the result. Thus, the statute did not permit Lake to amend her pleadings to assert a new claim after the time to bring an election contest had passed, even to conform to evidence presented at trial. *See Grounds v. Lawe*, 67 Ariz. 176, 185-87 (1948) (explaining that Arizona's election contests are purely statutory and therefore governed only by statutory provisions); *Kitt v. Holbert*, 30 Ariz. 397, 401-06 (1926). Although Count II of Lake's contest is titled "Illegal Tabulator Configurations" and refers to "tabulator issues," the substance of the claim is that "BOD printers involved in the tabulator problems" had vulnerabilities to hacking, and that the problems "were the result of intentional action." In her Rule 60(b) motion, Lake argued her new

evidence would show that Maricopa County had failed to conduct logic and accuracy testing on the tabulators in accordance with Arizona law, "and afterwards, secretly tested all 446 vote center tabulators" and had known that "260" of them would fail. This would be evidence outside of her original Count II pleadings, as the trial court determined.

¶21 But Lake also argued that her evidence would show that a Maricopa County official had falsely testified about BOD "printer failures" that, as alleged, caused tabulators to malfunction on election day. Given our notice-pleading standards, such evidence would pertain to the Count II claim broadly read. Therefore, dismissing the motion on the basis that this evidence amended Count II was error. *See Hancock v. Bisnar*, 212 Ariz. 344, ¶¶ 16-17 (2006) (notice pleading standards applicable to election contests); § 16-673 (requirements for statement of contest); Ariz. R. Civ. P. 8(a). Nonetheless, for reasons we explain below, the trial court correctly denied the motion. *See Forszt*, 212 Ariz. 263, ¶ 9 ("We may affirm the trial court's ruling if it is correct for any reason apparent in the record.").

2. **Rule 60(b)(2)—newly discovered evidence**

¶22 In her Rule 60(b)(2) motion, Lake contended that the information she had collected through public records requests, the "Maricopa BOD report," and an analysis then recently completed by her expert, would "demonstrat[e] Maricopa's misrepresentations during the bench trial on Count II." Notably, the trial court assumed that this evidence could not have been discovered before trial, although it concluded that Lake impermissibly sought to amend her pleadings. We conclude that the evidence Lake offered was not "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial." Ariz. R. Civ. P. 60(b)(2).

¶23 Lake contends that Parikh's analysis of system logs—which system logs Lake had in her possession at the time of the first trial—should be considered "newly discovered evidence." It specifically contends that Parikh's work could not be completed by the time of trial despite due diligence.

¶24 Parikh stated that he had performed "[a] thorough, months-long analysis of the tabulator system logs," which included "over thirty million lines . . . of system log entries," and required "several thousand-man hours in research, data analysis, interviews, testing and collaboration." We assume without deciding that Parikh acted diligently and that a thorough analysis of the system logs within the time our

legislature provided for an election contest would not have been feasible. However, such circumstances do not render the product of Parikh's analysis "newly discovered evidence." Rule 60(b)(2) refers to reasonable diligence in *obtaining or learning of* the evidence—that is to say, the system log evidence itself—not in the analysis of it. As stated above, our legislature chose very tight windows of time for an election contest to be conducted, which simply means that the breadth and depth of analysis that can be performed in an election contest is constrained. Regardless of the expert's diligence, Rule 60(b)(2) does not provide relief for one who possesses documents at the time of an election contest, but does not have the time, for whatever reason, to analyze them.

¶25 Further, to obtain relief under Rule 60(b)(2), the "newly discovered evidence" must have existed at the time of trial. *Birt v. Birt*, 208 Ariz. 546, ¶ 11 (App. 2004). As to the Maricopa BOD Report, Lake argues that it should be considered under Rule 60(b)(2) because it only became available to her recently. Because the report, along with the findings and conclusions relied on, was not published until after the time of trial, it cannot support Lake's Rule 60(b)(2) motion. Lake acknowledged as much in her own Rule 60(b)(6) arguments before the trial court, where she claimed that she could not have advanced the Maricopa BOD Report under Rule 60(b)(2) because "[n]either the Maricopa BOD Report nor the admissions in the Maricopa BOD Report existed at the time of trial and so must be evaluated under the catch-all in Rule 60(b)(6)."

¶26 Similarly, regarding the public records requests responses that Lake eventually obtained after the judgment, she states that these contained information about facts and circumstances that existed at the time of the judgment, but that she could not have obtained beforehand. Lake explained that her work analyzing system log files "benefited from additional evidence that Lake's team acquired by public records requests after the judgment." In a reply supporting her Rule 60(b) motion, Lake attached one public records request dated November 28, 2022. No response to this request is attached. Lake does not explain specifically when a response to this request ought to have been received such that she could employ it in her contest, or whether Maricopa County eventually failed to deliver a response in the manner provided by law. Even if this evidence qualified under Rule 60(b)(2), Lake articulates no basis for us to question the trial court's conclusion that it would be cumulative of evidence that had already been presented on the matter and would not change the result. *See Ashton v. Sierrita Mining & Ranching*, 21 Ariz. App. 303, 305 (1974) ("Cumulative evidence is insufficient to warrant setting aside a

judgment."); *Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 17 (App. 2007). Altogether, the court did not abuse its discretion in denying relief under Rule 60(b)(2).

3. **Rule 60(b)(3)—fraud, misrepresentation, or other misconduct**

¶27 The trial court also did not err in rejecting Lake's arguments that the evidence, described above, merits relief pursuant to Rule 60(b)(3). To justify relief under Rule 60(b)(3), Lake must show she had a meritorious claim that she was "prevented from fully presenting before judgment . . . because of the adverse party's fraud, misrepresentation, or misconduct." *Est. of Page v. Litzenburg*, 177 Ariz. 84, 93 (App. 1993). In rejecting Lake's Rule 60(b)(3) motion, the court stated, "Scienter—a knowing falsehood—is what is required to find fraud." On this basis, the court determined that Lake had advanced "additional evidence in an attempt to demonstrate fraud or misconduct," which amounted to "[m]ere contradiction," and that her "allegation of fraud leap[ed] over a substantial gap in the evidence presented." Lake fails to show that the court's conclusion—that she had not proved by clear and convincing evidence a knowing fraud by Maricopa County—was error. *See id.* at 92-93 (under Rule 60(b)(3) movant must show misconduct by clear and convincing evidence and "whether evidence is 'clear and convincing' is committed to the trial court").

¶28 Lake contends that she was not required to prove intentional fraud to obtain relief under Rule 60(b)(3)—rather, she argues she could demonstrate inadvertent omissions that deprived her of a fair trial. Lake is correct that knowing fraud is not required and that it is possible for a movant under Rule 60(b)(3) to obtain relief by showing unintentional misconduct. *See id.* at 93 ("'Misconduct' within [Rule 60(b)(3)] need not amount to fraud or misrepresentation, but may include even accidental omissions."); *Norwest Bank (Minn.), N.A. v. Symington*, 197 Ariz. 181, 186 (App. 2000) (party's "fail[ure] to disclose material that it was required to disclose," although presumed "inadvertent and . . . not motivated by bad faith," was "enough to warrant a finding of misconduct by clear and convincing evidence" under Rule 60(b)(3)); *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 923 (1st Cir. 1988) ("'Misconduct' does not demand proof of nefarious intent or purpose as a prerequisite to redress" under Rule 60(b)(3); the rule applies to "discovery responses which, though made in good faith, are so ineptly researched or lackadaisical that they deny the opposing party a fair trial."). However, Lake was still required to prove the alleged misconduct—whether knowing or inadvertent—by clear and

convincing evidence and to demonstrate that the misconduct substantially interfered with her ability to fully present her claims.[5] *See Est. of Page*, 177 Ariz. at 93 (rebuttable presumption of substantial interference arises if movant shows knowing misconduct; if cannot show knowing misconduct, movant must show by preponderance of evidence that misconduct substantially interfered).

¶29 In her motion, Lake asserted that she had obtained evidence that "show[ed] that Maricopa violated Arizona law and did not perform L&A testing on *any* vote center tabulators used on Election Day." And that "after Maricopa certified it passed L&A testing on October 11, 2022, Maricopa secretly tested all 446 vote center tabulators on October 14th, 17th, and 18th, and knew that 260 of the vote center tabulators would fail on Election Day." Demonstrating now a violation of the law or pre-election perfidy, by itself, is not the appropriate focus of a Rule 60(b)(3) motion; rather such is merely relitigating the underlying election contest itself. *See Welch*, 123 Ariz. at 165 (Rule 60(b) motion "is not a device for weighing evidence or reviewing legal errors"). The focus must rather be on the fraud or misconduct that prevents a litigant from trying otherwise meritorious claims. *See Est. of Page*, 177 Ariz. at 93-94.

¶30 To that end, and as relevant to a Rule 60(b)(3) claim, Lake argues that Jarrett gave false testimony at trial regarding whether nineteen-inch ballot images were printed on twenty-inch ballot paper; how many vote centers were affected by fit-to-page issues; and whether Maricopa County conducted proper logic and accuracy testing.

¶31 At trial, Jarrett testified that ballot tabulators are programmed to read ballots based on their "ballot definition" and that the size of the ballot definition to be used in the 2022 general election had been a "20-inch ballot." Accordingly, he explained, the tabulators had been programmed to "accept and read a ballot with a 20-inch image." Maricopa County had used a nineteen-inch ballot image during the August 2022 primary election,

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[5]The rules laid out here pertain to proving misconduct under Rule 60(b)(3)—this is misconduct that a party committed in the course of litigation that made the trial unfair to the movant. This is different and apart from proving "misconduct" in the course of conducting an election as alleged in Lake's complaint under § 16-672(A)(1). Again, a Rule 60(b) motion, such as Lake's, may not be employed to relitigate legal issues or reweigh evidence from trial. *See Welch*, 123 Ariz. at 165; *Tippit*, 132 Ariz. at 408.

but election officials "did not design a 2022 General Election on a 19-inch ballot. That ballot does not exist. The only ballot that exists is a 20-inch ballot." Accordingly, Jarrett did not "hear of any reports" of a "19-inch ballot image being placed on a 20-inch paper" during the 2022 general election. On this first day of trial, Jarrett was not asked about any printer setting issues that may have occurred with the twenty-inch ballots.

¶32 On the second day, Maricopa County called Jarrett back to the stand, and he testified, "[W]e did identify three different locations that had a fit-to-paper setting that was adjusted on Election Day." This sizing issue caused a twenty-inch ballot image design to be printed in a slightly smaller size. Jarrett explained that a ballot incorrectly printed in this manner was a mis-sized "20-inch" ballot image design, "not a 19-inch ballot" image, as had been used in past elections. Although the mis-sized twenty-inch ballots could not be tabulated on-site, a bipartisan team duplicated the ballot and it was "counted and tabulated." On cross-examination by Lake's counsel the following exchange occurred:

> Q. And yesterday you testified that a 19-inch ballot image being imprinted on a 20-inch ballot did not happen in the 2022 General Election.
>
> Do you recall that?
>
> [Jarrett]. Yes, I recall that there was not a 19-ballot definition in the 2022 General Election.
>
> Q. But that wasn't my question, sir. I asked you specifically about a 19-inch ballot image being imprinted on a 20-inch piece of paper.
>
> So are you changing your testimony now with respect to that?
>
> [Jarrett]. No, I'm not. I don't know the exact measurements of a fit to—fit-to-paper printing. I know that it just creates a slightly smaller image of a 20-inch image on a 20-inch paper ballot.
>
> Q. Slightly smaller image. How come you didn't mention that yesterday?
>
> [Jarrett]. I wasn't asked about that.

> Q. Well, I was asking you is 19 inches smaller than 20 inches? It is, isn't it? Sure.
>
> [Jarrett]. Yes.
>
> Q. So when I said, you know, asked you questions about a 19-inch ballot image being imprinted on a 20-inch piece of paper, and you denied that that happened in the 2022 General Election, did you not think it would be relevant to say, hey, by the way, you know, there was this fit-to-print image issue that we discovered?
>
> . . . .
>
> [Jarrett]. What I recall from yesterday's questioning was that there was a 19-inch definition, which that did not occur, ballot definition.
>
> Q. So . . . if the back and forth between our question and answer shows me asking you specifically about a 19-inch ballot image being printed on a 20-inch piece of paper, you are now saying that you interpreted that as a ballot definition issue?
>
> [Jarrett]. Yes, that's correct.

¶33 At best, this is a misunderstanding between an attorney and a witness that was ironed-out during a trial. Lake fails to show how this exchange constitutes misconduct, let alone misconduct that substantially interfered with her ability to fully litigate her claims. Lake also renews her argument that her new evidence "contradicts Jarrett's testimony that the 'fit-to-page' issue that arose on Election Day was caused by technicians changing printer settings on Election Day at three vote centers." This, too, is another attempt to offer new evidence to reweigh facts from trial, and is not proper under a Rule 60(b)(3) motion. *See Welch*, 123 Ariz. at 165; *Tippit*, 132 Ariz. at 408.

¶34 Finally, Lake argues that a declaration by Jarrett, which Maricopa County submitted in its response to Lake's Rule 60(b) motion, confirms "that Maricopa did not perform any L&A testing of the

vote-center tabulators in accordance with A.R.S. § 16-449." In this declaration, Jarrett refers to logic and accuracy testing that occurred on October 11, 2022. He also refers to testing that occurred from October 4 through 10, 2022, during which Maricopa County "thoroughly tested every Vote Center tabulator that would be used or that was prepared as a backup that could be used on Election Day at the 223 Vote Centers," and another "reprogramming" on "October 10, prior to the statutorily required Logic and Accuracy test." Jarrett also explained how memory cards had "needed to be reformatted with the certified election program that underwent the statutorily required Logic and Accuracy testing." Jarrett explained that when these memory cards had been "reinserted into each of the tabulators," "any logs predating October 14 [were] stored on the internal storage device located within the Vote Center tabulator," and "[t]hose logs were not requested by Lake." Lake fails to correlate this declaration with some kind of misconduct in the original trial such that Rule 60(b)(3) relief is justified—that is, she does not identify the evidence that was withheld from her or the kind of intentional or unintentional misrepresentation that impeded her ability to bring a meritorious claim. Lake does point to a records request dated November 28, 2022, where she requested "[a]ll tabulator logs" and "[a]ll S-logs." But again, Lake does not explain when her records request should have been received, and without more we cannot say whether the logs Jarrett refers to were improperly withheld.

¶35 Even so, we will accept without deciding that these allegations of inadvertent misconduct were proved by clear and convincing evidence—that Jarrett misrepresented the degree to which nineteen-inch ballot images were erroneously printed on election day and that Maricopa County did not perform logic and accuracy testing on voting center tabulators on the date certified. Nonetheless, Lake fails to show that this alleged misconduct would have substantially interfered with her ability to present a meritorious claim. *See Est. of Page*, 177 Ariz. at 93.

¶36 The requirement to demonstrate substantial interference with the ability to present a meritorious claim is essentially a requirement to demonstrate prejudice; that is, that, in the end, had the contestant been able to present his case undeterred by the misconduct, he could prevail in the election contest. In her Rule 60(b) motion, Lake argued that "the evidence shows that over 8,000 ballots, maliciously misconfigured to cause a tabulator rejection, were not counted." This is based on Parikh's declaration, attached to Lake's Rule 60 motion, in which Parikh suggests "a conservative estimate of 8,000 or more Election Day ballots" were "affected by the 19" ballot image issue." The trial court rejected Lake's assertion that

8,000 "affected" votes means 8,000 uncounted votes, and, based on the evidence presented at oral argument, found that Lake's argument was an "unsupported bare assertion[]." Lake fails to show how she would have overcome this conclusion if the alleged misconduct had not occurred.[6] Moreover, and perhaps most important, the vote differential between Lake and Hobbs in the election was over 17,000 votes. Even if 8,000 uncounted votes had all gone to Lake, it would have been insufficient to overcome this differential. On this basis alone we can conclude that the court did not err in denying the Rule 60(b)(3) motion on its merits.

4. **Rule 60(b)(6)—"catch-all"**

¶37 Nor did the trial court abuse its discretion in refusing to grant relief under Rule 60(b)(6), which permits it to grant relief for "any other" reason not listed in subsections (b)(1)-(5). *See Aloia v. Gore*, 252 Ariz. 548, ¶ 20 (App. 2022). Rule 60(b)(6) relief is appropriate when "[t]he need for finality . . . must give way in extraordinary circumstances." *Park v. Strick*, 137 Ariz. 100, 10 (1983). Here, in regards to Lake's new evidence and what she purports it shows, the court found its impact lacking. For example, the court concluded Lake's characterization of the Maricopa BOD Report's contents was inconsistent with what the report actually said; her expert had "conceded that ballots which were not read by tabulators at the voting centers were transposed to new ballots and counted at Maricopa County's downtown central facility later"; and Lake otherwise had attempted to "leap a gap in proof with unsupported bare assertions." These are not "extraordinary circumstances" that justify Rule 60(b)(6) relief. In sum, we

[6]What Lake needed to do at trial was provide competent evidence that the ballots did not match the canvass in numbers that could have resulted in her election day victory. *See Lake*, 254 Ariz. 570, ¶ 11; § 16-676(C) ("If in an election contest it appears that a person other than the contestee has the highest number of legal votes, the court shall declare that person elected and that the certificate of election of the person whose office is contested is of no further legal force or effect."). She failed to do so. She did attempt to demonstrate that sufficient voters were discouraged from voting by the long lines resulting from the voting center issues on election day, and that those discouraged voters would have otherwise voted for her. Although she presented at trial a statistical estimate based on exit polling data on this point, given the measure of proof needed, this evidence fell short.

cannot say the trial court abused its discretion in denying Lake's Rule 60(b) motion as to Count II.

C. Rule 60(b) motion for relief from judgment dismissing Counts V and VI

¶38 As the trial court noted, Lake's Rule 60(b) motion "does not grapple . . . with the *reason* the Court dismissed" Counts V and VI in the first place. (Emphasis added.) In Count V of her election contest—asserting an equal protection claim—Lake elaborated on her Count II allegation that a state actor had intentionally "caused the tabulator problems that certain Maricopa County vote centers experienced on election day." She argued that these acts had resulted in a disproportionate effect on Republican voters which "warrants a finding of intentional discrimination and a shift of the burden of proof to defendants." Lake asserted "[o]n information and belief" that the election day problems had affected Republican voters "more than 15 standard deviations than it burdened non-Republican" voters. In Count VI of her election contest, Lake again incorporated her Count II assertions to argue that the election had been patently and fundamentally unfair in violation of Republican voters' right to due process. The trial court dismissed these claims as cumulative, insufficiently pleaded, and otherwise beyond the scope of § 16-672. We affirmed the dismissal of these counts in Lake's first appeal because they "were expressly premised on an allegation of official misconduct in the form of interference with on-site tabulators—the same alleged misconduct as in [Count II]. Because these claims were duplicative of a claim that Lake had unsuccessfully pursued at trial, the superior court did not err by dismissing them." *Lake*, 254 Ariz. 570, ¶ 31.

¶39 On remand, while Lake moved under Rule 60(b) for relief "directly" from the trial court's judgment on Count II, she explained that the motion also sought relief from the court's judgment dismissing Counts V and VI "as applied to logic-and-accuracy testing and the tabulator issues that hampered voting on Election Day, as argued previously." She contends that she "still can bring a federal action—mirroring Counts V and VI—for the substantive violations at issue in Count II," but "Arizona's interest is better served by deciding this case correctly . . . so that resort to [42 U.S.C.] § 1983 becomes unnecessary." We cannot, on this basis, say the court abused its discretion in denying Lake's Rule 60(b) motion as to Counts V and VI.

¶40 As explained above, a Rule 60(b) motion is an improper vehicle for "reviewing or correcting legal errors that do not render the judgment void." *Tippit*, 132 Ariz. at 408. To some extent, Lake articulates

an argument for judicial efficiency, contending that the court ought to resolve Counts V and VI now because the cited errors could potentially be raised in the future through a 42 U.S.C. § 1983 claim. But judicial efficiency is not a ground for relief under Rule 60(b). And, since the trial court did not abuse its discretion denying relief from the dismissal of Count II, consequently the motion is ineffective for advancing Counts V and VI, which depend on Count II to be feasible in any event.

¶41 Lake attempts anew to argue that Counts V and VI were improperly dismissed by distinguishing the types of claims that Counts V and VI are, and offers her new evidence in support of the merits of those counts. Again, Lake's Rule 60(b) motion may not take the place of an appeal and may not be used now to reweigh the evidence and relitigate the court's past legal conclusions. *See Aloia*, 252 Ariz. 548, ¶ 20.

II. Bench Trial on Count III

¶42 We turn, finally, to the trial court's judgment against Lake on Count III after a bench trial. We view the facts in the light most favorable to upholding the court's judgment and defer to the court's findings of fact unless they are clearly erroneous. *Town of Florence v. Florence Copper Inc.*, 251 Ariz. 464, ¶ 20 (App. 2021); *Shooter v. Farmer*, 235 Ariz. 199, ¶ 4 (2014). A factual finding is not clearly erroneous if it is supported by substantial evidence, "even if substantial conflicting evidence exists." *Kocher v. Dep't of Revenue*, 206 Ariz. 480, ¶ 9 (App. 2003). We also defer to the trial court's weighing of evidence and resolution of "any conflicting facts, expert opinions, and inferences therefrom." *In re Gen. Adjudication of All Rts. to Use Water in Gila River Sys. & Source*, 198 Ariz. 330, ¶ 25 (2000). As stated above, we review questions of law, such as statutory interpretation and the legal conclusions that the trial court draws from its findings, de novo. And, in interpreting a statute, we strive to give effect to its plain meaning.

¶43 Lake's Count III, brought pursuant to § 16-672(A)(1), alleges that Maricopa County failed to conduct signature verification on "a material number of" mail-in ballots as required by § 16-550(A), which she contends resulted in a number of illegal ballots, changing the outcome of the election. The version of § 16-550(A) in effect at the time of the 2022 election outlined the process for accepting and processing early mail-in ballots. Upon receipt of "the envelope containing the early ballot and the ballot affidavit, the county recorder or other officer in charge of elections shall compare the signatures thereon with the signature of the elector on the elector's registration record." *Id.* Thus, after comparing the signatures, if the official determines the signatures are "inconsistent," then a process is

described to attempt to cure the ballot. *Id.* Otherwise, if the official is "satisfied that the signatures correspond," the ballot is accepted. *Id.*

¶44 On remand, Lake explained that her Count III is "a *Reyes* claim," by which "[s]he challenges Maricopa's failure to act" in implementing § 16-550(A). *See Reyes v. Cuming*, 191 Ariz. 91 (App. 1997). In *Reyes*, we concluded that an election had to be set aside because a county recorder's wholesale non-compliance with § 16-550(A) resulted in a number of illegally counted ballots that changed the outcome of an election. 191 Ariz. at 92-94. In her renewed motion to dismiss, Hobbs argued that Lake had not alleged a failure to comply with § 16-550(A), or advanced "any competent mathematical basis to argue that the results of the election were impacted." The trial court determined that Lake had stated a claim on which relief could be granted under Count III, and therefore denied the motion.

¶45 The court held a bench trial to determine whether Lake could prove, by clear and convincing evidence through a competent mathematical basis, whether Maricopa County's signature reviewers—at any level—"conducted no signature verification or curing and in so doing had systematically failed to materially comply with the law." Lake presented evidence purporting to describe the degree of signature verification that was required, including the training materials and guides Maricopa County relied on for its signature verification process as well as an expert witness's computation indicating that signature verification occurred at impossible speeds. Hobbs presented contradicting evidence through witness testimony tending to show that Maricopa County had complied with § 16-550(A).

¶46 After trial, the court found that Lake had failed to prove Count III by clear and convincing evidence. It found, according to testimony from multiple officials involved in the signature review process, which it weighed against testimony from Lake's expert and others, that signature verification had occurred at each required level in compliance with § 16-550(A). The trial court concluded, therefore, that no misconduct had occurred under § 16-672. The court reasoned that no statute or regulation specifically states what a suitable comparison of signatures entails—for example, § 16-550 does not delineate how much time must be spent comparing a voter's signature with a voter's records. The court interpreted § 16-550(A) as requiring the county recorder to "make some determination as to whether the signature is consistent or inconsistent with the voter's record," specifically "whether the signatures are consistent *to the*

satisfaction of the recorder, or his designee." Because the court found that comparisons had been performed in compliance with § 16-550(A), it distinguished *Reyes* as inapposite. That is, that there was no failure to comply with the law.

¶47 On appeal, Lake primarily contends that the trial court misinterpreted what kind of comparison is required by § 16-550(A), and that election workers failed to meet the required standard for signature comparison. As she argued below, Lake contends that training materials and guides published by the Secretary of State and Maricopa County inform what a proper "objective" comparison requires, which includes evaluating broad or local characteristics before approving a signature. Lake argues that the workers performing signature verification did not necessarily follow such standard in every case. Rather, they instead began with a "subjective" determination of the signatures' consistency with the voter's registration record.

¶48 However, we cannot interpret the version of § 16-550(A) in effect at the time of the election as requiring adherence to guides and training materials, whether issued by the Secretary of State or otherwise. The plain meaning of § 16-550(A) is not ambiguous, and no special meaning of "compare" is indicated such that external manuals and guides are needed. By its ordinary and plain meaning, "compare" means: "[t]o examine in order to note the similarities or differences of." *Compare*, The American Heritage Dictionary (5th ed. 2011). In performing a comparison, a signature verification worker need only examine the signatures, and note the similarities or differences between the two. The result of this work, for each ballot, is either the worker's satisfaction that the signatures correspond, or dissatisfaction followed by an attempt to cure. § 16-550(A). In any given election a questionable or even outright fraudulent signature may slip through, and some may have slipped through here. But Lake did not show that the applicable signature verification procedures were not performed, let alone that non-performance affected an outcome-determinative number of votes. *See* 191 Ariz. at 93-94. We cannot say the trial court erred in finding that Maricopa County workers complied with the statute's comparison requirement.

¶49 Lake also argues that the evidence showed that even if signature verification occurred, it was done so quickly that compliance was meaningless. Lake's assertions regarding the speed of verification are premised on demonstrative evidence offered at trial through her expert's opinion. Lake argues the trial court "ignored the testimony" of her expert

witness and others on this point. The court did not ignore the evidence Lake offered; Lake's expert's methodology was contradicted at trial by election officials put forward by Hobbs. In the court's ruling, it specifically weighed Lake's evidence against testimony offered by election officials, and found that the election officials' testimony—that meaningful verification had occurred—was more credible. The court's conclusion was supported by substantial evidence—namely testimonial evidence that was not facially unreliable. *See Castro v. Ballesteros-Suarez*, 222 Ariz. 48, ¶ 11 (App. 2009) (trial court's factual finding only erroneous if unsupported by evidence that reasonable person could rely on to reach same result, even in presence of contradictory evidence). Therefore, we cannot say the trial court's determination was clearly erroneous. *See id.* We do not reweigh that evidence, or re-evaluate the credibility of the witnesses on appeal. *See In re Gila River Sys.*, 198 Ariz. 330, ¶ 25.

¶50 Lake argues that the trial court misapplied *Reyes* when it determined her claim was outside of *Reyes*'s scope. She maintains that because *Reyes* is not limited to "situations where non-compliance with signature-verification requirements is total," and "there is no valid reason why verifying only a fraction of early ballot affidavit signatures should somehow excuse potentially pervasive non-compliance with verification requirements as to the remainder." But this mischaracterizes the court's conclusions. In its ruling, the court's distinction between *Reyes* and this case is based on its findings that "timely verification" or "curing of about 1.4 million voter signatures" occurred, was performed by "153 level one reviewers, 43 level two reviewers, and two ongoing audits," and satisfied § 16-550(A). Pervasive non-compliance was not found, let alone excused.

Disposition

¶51 We affirm the judgment of the trial court.