



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS**

10,005 E. OSBORN RD. SCOTTSDALE, AZ 85256 (480) 362-6315

JEANNE M. KEIL,

Appellant,

-vs-

ISAAC JAMES,,

Appellee.

Case No.: **APC-16-0002**

ORDER

2016 OCT 28 PM 9:24

FILED
SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY COURT

I. SUMMARY

This matter is before the Court pursuant to an Order of the Community Court dismissing Appellant's petition for comity. Appellant seeks review of the dismissal and has asked us to 1) recognize, as a matter of comity, a civil judgment awarded to her in the amount of \$200,000.00 (Two Hundred Thousand Dollars) by the Maricopa County Superior Court, State of Arizona; and 2) enforce the judgment by garnishing Appellee's tribal per capita distribution or to enforce it in another manner.

For the reasons that follow, we remand with instructions.

II. BACKGROUND

On November 22, 2010, Appellant was awarded a civil judgment by default for damages against Appellee in the amount of \$200,000.00 (Two Hundred Thousand Dollars) in the Maricopa County Superior Court, Arizona. The court also awarded her costs incurred in the case.

On April 24, 2015, Appellant filed a petition for comity with the Community Court. In that filing, she requested the court to recognize, through the principles of comity, the default judgment. She also requested the court to execute the judgment by garnishing Appellee's per capita distribution.

On July 15, 2015, Appellee filed his response to the comity petition requesting the court to deny it because, due to a lack of resources, he was not able to defend himself in the original civil matter filed in the Maricopa County Superior Court. Appellee has been serving a term of imprisonment for the past seven (7) years. His scheduled release date is January 15, 2017. Appellee also wrote in his Answer that upon his release from incarceration he planned to file documents with the Maricopa County Superior Court to set aside the default judgment.

On October 1, 2015, the court held a hearing to address the petition for comity. All parties were present at the hearing either in person or by telephonic appearance. During the hearing Appellant requested execution of the judgment by garnishing Appellee's per capita or perhaps to enforce the judgment another way. She told the court the judgment could be paid in a manner, "...whatever would be acceptable to the courts...[or] to be paid however." Appellant stated that her legal counsel served Appellee with the initial court documents noticing him of the law suit against him. However, when the court asked her whether she served the judgment onto Appellee after it was awarded, she responded that such effort was only made upon filing the petition for comity with the Tribal Court of the Salt River Pima Maricopa Indian Community.

Appellee asked the court to deny the petition. He did not deny receiving initial notice of the law suit filed against him. However, he explained that Appellant did not contact him after the judgment was awarded to her. He told the court that had Appellant contacted him to inform him about the judgment, the two of them could have worked something out. He said, "We could have done a payment plan—anything could have been done." Appellant responded that she did not make an effort to notice Appellee about the judgment because she did not know how to find him, she did not know where he was and because she was computer illiterate. According to Appellant, she believed that he knew about the judgment because he received initial notice of the civil law suit.

The court first acknowledged that the judgment at issue in the case was issued by a foreign jurisdiction. However the court denied the petition for comity for a few reasons. First, there was no evidence that Appellee was served notice of the judgment. Second, the court concluded it lacked authority under the laws of the Salt River Pima-Maricopa Indian Community to garnish a tribal member's per capita distribution because there were no garnishment laws in the Community's Law and Order Code. The court explained that the only manner to garnish per capita distribution checks is if someone owes child support arrearages or if a tribal member voluntarily agrees to contribute his per capita distribution to satisfy a debt. Finally, in its order, the court noted that upon his release from incarceration, Appellee intends to challenge the validity of the default judgment in the Maricopa County Superior Court and depending on that outcome he could still petition the court to voluntarily have money withheld from his per capita distributions to satisfy the judgment.

III. DISCUSSION.

As we review this case we first find that the petition for comity includes two distinct requests. It requests recognition of the Maricopa County Superior Court judgment through comity and it also requests that the court execute said judgment by garnishing Appellee's per capita distribution. We first address the issue of comity.

The court properly declared the judgment at issue to be one of a foreign jurisdiction. However, the court made no effort beyond that to examine the judgement to determine whether it could be acknowledged for the purposes of comity. At its most general definition comity is the judicial process for recognizing a foreign judgment. Upon reviewing the court's record, it is not entirely clear to us why the judgement was not recognized. The court seemed to reason that the petition was a single request for garnishment and that, since garnishment was not possible, the petition for comity must be denied. This reasoning was incorrect because exploring the process of comity, even if it would not likely result in execution of the judgment, is an independent process from execution of the judgment. Accordingly, we find there is a lack of evidence to support the denial of comity.

Next, we examine the request to execute the judgment. The court denied the request on a few grounds. Among them was that the laws of the Community did not authorize the court to garnish a tribal member's per capita distribution unless it was to pay child support arrearages or unless a tribal member volunteered garnishment out of his per capita distribution to satisfy a debt. We find no provisions in the current law permitting garnishment of a tribal member's per capita distribution. However, we take judicial notice of administrative order issued by the Community Court (number 07-0005) on November 30, 2006. That order mentions the historical practice of the court in recognizing orders from a foreign jurisdiction. The order also notes that comity is a principle of common law within the Community. In addition, we take judicial notice of an administrative policy effective October 24, 2001. That policy authorizes the Community's Finance Department to accept a final order or judgment, including one granting comity of a foreign order or judgment, issued by the Salt River Pima Maricopa Indian Community Court to satisfy child support arrearages.

We find the voluntary garnishment possibility raised by the court particularly relevant to these proceedings because the Appellee mentioned during the hearing that he was open to working out a payment plan to satisfy the judgment. Yet the court never explored this proffer. The court should have addressed this statement further during the hearing to determine if Appellee was still willing to make arrangements to satisfy the judgement. Because this was not done the question remains unanswered.

Further, we would be remiss if we did not discuss the issue of service of process. The court found there was no evidence that Appellant served Appellee with notice of the judgment. Appellant's statements during the hearing tend to support this notion. However,

there is no doubt that Appellee is now aware of the civil judgment including its amount. But, because it appears that service of the civil judgment must predate the comity request Appellant would be wise to comply with that requirement in a subsequent petition for comity. We do note the court, through its dismissal *without* prejudice, gives Appellant the opportunity to refile the comity petition.

Equally important is that Appellee has an opportunity to challenge the validity of the default judgment upon his release from incarceration and that he has expressed his intention to do so. However, execution of the judgment is still a possible outcome in this case, which raises another issue. It must be understood by both parties that there are legal methods other than garnishment to enforce a civil judgment. And, while garnishment was the specific method expressed in the petition we note that the request for execution was not limited to garnishment. Appellant clearly told the court that the judgment could be paid in whatever manner would be acceptable to the court.

CONCLUSION

For the reasons set forth in this order we remand this case back to the trial court with instructions to examine petitioner's request for comity as a separate matter from her request for execution of the judgment. It is also necessary to explore whether Appellee is still willing to resolve this matter by voluntarily agreeing to garnish his per capita distribution. In addition, because Appellee intends to challenge the judgment we think a stay in these proceedings, for a reasonable amount of time to permit that challenge, is in order. Finally, we note that, if Appellant wishes to pursue the petition for comity, that petition should be updated because it currently refers to rules of civil procedures that no longer exist.

IT IS ORDERED.

Issued this 28th day of October, 2016.

Electronically approved 10/28/16

/s/

Justice Paul Bender

Electronically approved 10/28/16

/s/

Justice Denise Hosay

Electronically approved 10/28/16

/s/

Justice Jan Morris

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INDIAN COMMUNITY COURT

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