



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

10,005 E. OSBORN RD. SCOTTSDALE, AZ 85256 (480)362.6315

COUNTRY CLUB CARS,

Appellee,

-V-

STEPHANIE HONEYCUTT

Appellant.

Case No.: **APC-18-0001**

(Case below No. C-17-0098)

MEMORANDUM AND ORDER

Appellant purchased a used vehicle from Appellee, executing a sales contract containing a payment schedule and which specified the amount of each payment. Appellant defaulted on the contract and Appellee obtained a judgment against Appellant. At an execution of judgment hearing, the trial court ordered a new payment schedule and payment amount. Appellant appealed the execution of judgment order claiming error in the application of a civil procedure rule.

FACTS

Appellant Stephanie Honeycutt does not contest the factual findings of the trial court, so this Court will rely on the facts as detailed in the Civil Complaint Judgment entered September 5, 2017, and the Order entered September 19, 2017, resulting from the Execution of Judgment Hearing. Consequently, those findings need not be repeated here.

DISCUSSION

Appellant asserts that it was error for the trial court to enter an execution of judgment order requiring Appellant to make payments to satisfy the judgment in excess of her self-proclaimed financial ability. Specifically, Appellant claims that the trial court's execution of judgment order violates civil procedure rule S.R.O. § 5-24(g)(3) requiring the trial court to inquire into a party's financial capacity.

Appellant signed a contract for quarterly payments in the amount of \$1,200.00. Appellee requested quarterly payments of \$1,000.00 to satisfy the judgment. The trial court, after inquiring into Appellant's financial capacity, ordered quarterly payments in the amount of \$500.00. It appears that the trial court gave due consideration to Appellant's ability to pay when it reduced the judgment payments to 59% ~~less~~ than the payment she originally agreed to pay in the contract, and 50% of the amount requested by Appellee at the Execution of Judgment Hearing. In any event, S.R.O. § 5-24(g)(3) is applicable only to a party's request for a stay of execution of judgment, not to the amount or method of payment in satisfaction of a judgment.

Appellant, without citing any examples or other evidence whatsoever, also claims that the trial court has "engaged in a pattern of using S.R.O. § 5-24(g) as a tool to garnish tribal members' per capita disbursements for civil judgments." Appellant's Brief at p.6. While admitting that the trial court does not actually order garnishment of per capita disbursements, Appellant claims this alleged practice constitutes an impermissible *de facto* per capita garnishment. We need only address this claim with regard to this case, and in this case, the simple fact that the timing of the dates of payments ordered to satisfy the judgment coincide with the dates of per capita disbursement does not require Appellant to apply, or mean that Appellant must utilize, her per capita disbursement, but it certainly affords Appellant a convenient schedule for payment as opposed to requiring monthly payments. The choice to use per capita to make civil judgment payments remains entirely at the discretion of the judgment debtor.

CONCLUSION

It is unfortunate that Appellant entered into a contract whose payment provisions she apparently did not have the financial ability to meet from the inception of the contract. It is unfortunate that, if there was an agreement regarding the vehicle and its payments between Appellant and her daughter, Appellant did not file a third-party or collateral claim against her daughter. It is unfortunate that Appellant did not have a mechanic inspect the vehicle prior to purchase. It is unfortunate that Appellant did not make any active effort to determine the value of the vehicle prior to purchase by using web-based resources such as Kelly Blue Book (kbb.com). It is unfortunate that Appellant did not make any effort to rescind, terminate, cancel or revoke the contract if, in fact, she believed it to be unconscionable prior to Appellee's original civil claim. But a series of unfortunate circumstances does not constitute grounds that justify reversal of a valid civil judgment and a reasonable court order to satisfy that judgment. Appellant's request should be denied and the judgment and execution order affirmed.

IT IS THE ORDER OF THIS COURT that:

1. Appellant's request for reversal of the execution of judgment order is **DENIED**;
2. The execution of judgment order is **AFFIRMED**.

ISSUED this 3rd day of January, 2018.

Electronically approved 1/3/2018

/s/

Jan Morris, Justice

Electronically approved 1/3/2018

/s/

Mary Guss, Justice

Electronically approved 1/3/2018

/s/

Judith Dworkin, Justice

SEAL

FILED
CLERK OF DISTRICT COURT
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