



SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS
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In the Matter of:

ELYSE LESLIE ANDREAS,

Petitioner,

and

BRANDON LEE SATCHELL,

Respondent.

Case No. APC 18-0009

(No. D-16-0018 below)

OPINION AND ORDER

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SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY COURT

This appeal grows out of a divorce case originally filed in early 2016. A Decree of Divorce was entered by Judge Joseph Manuel on May 25, 2016. Slightly over a year later, on September 27, 2017, Appellant petitioned for modification of the Divorce Decree. A hearing on that Petition was scheduled for December 6, 2017. On November 2, 2017, after learning that Judge Anthony Little had been assigned to replace Judge Manuel on the case, Appellant moved for Change of Judge pursuant to Section 4-36(a) of the Salt River Code of Ordinances. At the December 6 hearing, Judge Little declined to grant Appellant's Notice of Change of Judge. Appellant has appealed that refusal.

Having reviewed Appellant's Brief, Judge Little's opinion denying the Notice of Change of Judge and the record below, we reverse the decision of the trial court and remand the case with directions to grant Appellant's Notice of Change of Judge.

FACTUAL and PROCEDURAL BACKGROUND

The original Divorce Complaint was filed in the trial court on March 22, 2016, and was assigned to Judge Joseph Manuel. Judge Manuel conducted a divorce hearing on May 25 and entered a Dissolution of Divorce Order on the same day. The divorce was relatively simple and straightforward. A Decree of Divorce bearing the signature of Chief Judge Andrews, was signed on June 22, 2016.

Following entry of the Divorce Decree, the case sat dormant until September 28, 2017, when appellant filed a Petition for Modification of Divorce Order, raising issues concerning marital debt and a vehicle. Appellant's Petition for Modification was set for a hearing on the 6th of December, and the notice of that calendar setting listed Judge Anthony Little as a new judge assigned to the case. Upon receipt of that information, Appellant filed a Notice of Change of Judge on November 2, 2017.

Nothing was done with respect to the Notice of Change of Judge between the time it was filed and the December 6 hearing. At the outset of the hearing, Appellant asked Judge Little to grant the change of judge without proceeding to the merits of the Petition for Modification. Believing that the time

limits established in Section 4-36(a) mandated that a Notice of Change of Judge be filed within five days after the date on which the answer to a complaint is to be filed, Judge Little denied the requested change. Judge Little stated that the five days began to run when the original divorce complaint was filed and that, unless the Notice of Change of Judge was filed within five days after the answer to that complaint was due, the Notice must be denied as untimely. A written order memorializing this decision was signed by Judge Little on December 6, 2017.

Appellant timely filed a Notice of Appeal from that decision and submitted a brief on appeal. No brief has been filed by Appellee.

The standard of review in this appeal is De Novo, as the appeal is concerned with the interpretation and application of Section 4-36 of the Salt River Code of Ordinances.

DISCUSSION

Section 4-36 of the Salt River Code of Ordinances addresses Notice(s) of Change of Judge. The time limit for filing such a notice is set out in subsection (d): "No requests for change of judge ... shall be filed more than five days after the date on which the answer to the complaint is to be filed." As this Court has stated in several previous cases concerning Notices of Change of Judge, if the notice is timely and the judge to be changed has not ruled on substantive matters in the case, the Notice shall be "immediately honored." (Subsection (a)(1)).

Issues regarding the Change of Judge rule arise in situations that are not specifically addressed or answered by the language of Section 4-36. In the present case there is just such a non-specifically-addressed situation: the appointment of a new judge during the course of a case, long after the original complaint was filed and judgment entered, but while the trial court still has continuing jurisdiction over the case.

This Court does not believe that the Change of Judge rule is intended to allow parties to challenge only the first judge assigned to a case, especially when more than one judge has been assigned in succession. This Court has stated (in the Enos case, No. 17-0019), that "Notices of Change of Judge are individual; they apply only to the particular judge assigned to a case. It is therefore impossible to file a notice of change of judge until the parties know the identity of that judge." (p.3)

Other jurisdictions have solved this problem by having the filing deadline relate to the date on which a specific judge is actually assigned to the case. For example, the Alaska Rules of Civil Procedure provide that, "Notice of change of judge is timely filed if filed before the commencement of trial and within five days after notice that the case has been assigned to a specific judge." (Rule 42(c)(3))

There is no form or procedure for assigning a specific judge in the Salt River trial court. What often happens – and what happened here – is that a party first learns from the calendar setting who the judge is going to be. If it is a

new judge in the proceeding, we believe that Section 4-36 entitles a party to file a Notice of Change of the new judge if the party has not previously filed such a Notice in the case.

Section 4-36(a)(1) states that, "In any civil action pending in the Community court, the parties are entitled as a matter of right to a change of judge." In our view, that language means that each party may exercise one judicial disqualification in the course of a case. If a party has not exercised that right when a new judge is appointed to a case, the right may be exercised at that time – even if the new judge is assigned long after the answer to the original complaint was due. The right to file a Notice of Change of Judge is not restricted to the first few weeks of a case if a new judge is appointed to that case months or years later. Such a restriction would render the rule too narrow to accomplish its obvious purpose.

The record in the present case does not reveal the date on which the court below distributed the calendar notice which listed Judge Little as the new judge for the December 6 hearing. The record does reveal, however, that Appellant filed her Notice of Change of Judge well over a month before the date of that hearing. In denying the Notice for Change of Judge, Judge Little did not suggest that Appellant had unnecessarily delayed filing the Notice after becoming aware of the assignment of the new judge. Judge Little based the denial of Appellant's request for a change of judge on the fact that the request had not been made at the outset of the divorce proceeding, not on any delay

on Appellant's part in requesting a change of judge after becoming aware of the identity of the new judge. In order to serve its intended purpose, we believe that, in order to effectuate the Code provision that parties are "*entitled as a matter of right* to a change of judge," a party must be allowed one request for a change of judge when a new judge is assigned to a case, so long as the party has not previously requested a change of judge in the case.

CONCLUSION

For the reasons stated above, it was error to deny appellant's Notice of Change of Judge at the December 6, 2017 hearing. Therefore;

IT IS HEREBY ORDERED that the December 6 decision denying Appellant's Notice of Change of Judge is reversed. The case is remanded for the immediate assignment of a new judge to the ongoing divorce action.

Dated this 12th day of March, 2018.

Electronically approved 3/12/2018

/s/
Paul Bender, **Justice**

S E A L

Electronically approved 3/12/2018

/s/
Mary E. Guss, **Justice**

Electronically approved 3/12/2018

/s/
Jan Morris, **Justice**