



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

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

In the Matter of:

TESS MARIE ENOS,

An Incompetent Member.

SARAH DE OLIVEIRA,

Petitioner/Guardian Ad

Litem/Appellant.

Case No.: **APC 17-0019**

(C-17-0119)

ORDER

**ON MOTION FOR
CLARIFICATION AND
MOTION TO STRIKE**

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The Court Solicitor, on behalf of the Chief Judge of the Community Court, has moved for clarification of the Opinion and Order that we filed on December 7, 2017, remanding the case to the Community Court for reassignment of judge. Appellant Guardian Ad Litem (GAL) has moved to strike that Motion.

In our December 7 Opinion and Order we held that the Guardian Ad Litem "was entitled to an immediate change of judge in this case on August 29 [2017]." The Court Solicitor seeks clarification of whether, in so holding, we meant to "vacate, set aside, or reverse" the dismissal of the guardianship petition that Judge Little entered in the case on August 29 after incorrectly denying the GAL's request for change of judge. In this Order we clarify that, in holding that the GAL's request for change of judge should have been granted immediately by Judge Little on August 29, we necessarily held that all Orders subsequently entered by Judge Little in the case, including Judge Little's dismissal of the guardianship petition, were vacated as having no legal effect.

The Court Solicitor is therefore incorrect in contending that "the Community Court does not have jurisdiction over the case because the trial court judge dismissed the guardianship petition." As we explain in the preceding paragraph, Judge Little had no authority to dismiss the guardianship petition after the GAL requested a change of judge. The case has therefore not been dismissed. On remand, the Community Court has jurisdiction to reassign the case to a new judge as required by law and our December 7 Order. After remand, the newly assigned judge will have jurisdiction to consider all issues in the case.

The Motion for Clarification also asks that we clarify whether it is necessary, before a case is reassigned by a trial judge in response to a request for a new judge, for the trial judge to determine "whether he has ruled in an earlier related case or proceeding." In our December 7 Order, we held that "Judge Little had not ruled on any substantive matter or in any earlier related case or proceeding before August 29." The Motion for Clarification presents no evidence to the contrary, nor did Judge Little deny the request for change of judge because of any prior ruling. There is no reason for us to clarify or reconsider our December 7 holding that Judge Little was not precluded from granting the GAL's request for change of judge because of a prior substantive ruling.

Finally, the Motion for Clarification asks for "clarification concerning whether a guardianship petition does or does not constitute a civil action under S.R.O. Sec. 4-36 . . . thereby triggering a change of judge, as a matter of right." We clearly held in our December 7 Order that the GAL's request for change of judge in this case "triggered" the GAL's request for a change of judge as a matter of right. No clarification of that holding is necessary to enable our remand reassignment Order to be carried out.

CONCLUSION AND ORDER

The Motion for Clarification is **GRANTED**. We clarify that our Order of December 7 necessarily vacated Judge Little's August 29 dismissal of this case. In view of this clarification, we **AFFIRM** that this case is remanded to the Community Court for immediate reassignment. Since we grant the Motion for Clarification, we **DENY** the Motion to Strike that Motion.

ISSUED this 23rd day of January, 2018

SEAL

Electronically approved 1/23/2018

/s/

Paul Bender, **Justice**

Electronically approved 1/23/2018

/s/

Mary Guss, **Justice**

Electronically approved 1/23/2018

/s/

Siera Russell, **Justice**

FILED
CLARK COUNTY CLERK
2018 JAN 23 AM 9:28