



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

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FILED
2016 JUN -2 A 9 15
SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY COURT

**LESA ENGLE, SRPMIC LEGAL
SERVICES,**

vs.

**BRANDEE BURKE (MOTHER) &
JORDAN BUTLER (FATHER),**

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

Trial Court Case No.: **J-16-0050/0051/0052**

OPINION AND ORDER

STATEMENT

This is an appeal from an Order of the Juvenile Court summarily dismissing a Juvenile Dependency Petition. The Petition was filed on November 13, 2015, on behalf of three juveniles, aged 9, 6 and 3. The Petition was filed by the children's guardian ad litem, an employee of the Salt River Pima-Maricopa Legal Services Office. The children reside on the Salt River Pima-Maricopa Reservation and are members of the Salt River Pima-Maricopa Indian Community. At the time the Petition was filed, the children were in the care of a paternal aunt and her husband, who had been designated on July 17, 2015, to serve as their temporary guardians. A Guardianship proceeding in which the temporary guardians were parties was in progress when the Dependency Petition was filed.

The Dependency Petition alleged that the children's parents were unable to care for them safely. It asked the Juvenile Court to find that the children were dependent children, to consolidate the Dependency proceeding with the pending Guardianship proceeding, to award temporary care and custody of the children to the Salt River Department of Social Services, and to conduct a hearing regarding where the children should be placed on a more permanent basis.

The Juvenile Court summarily dismissed the Dependency Petition on the basis of its finding that "the Salt River Pima Maricopa Indian Community Code of Ordinances does not authorize a guardian ad litem, by and through the Legal Services Office, to file a dependency

petition on behalf of the Community." In so concluding, the Juvenile Court relied upon Code section 11-159(a), which provides that "[f]ormal child dependency proceedings shall be commenced by a petition filed by the Community prosecutor, social worker, or other interested person on behalf of the Community and in the best interests of the child" The guardian ad litem who filed the Dependency Petition in this case was neither a prosecutor nor a social worker. The Juvenile Court concluded that the Guardian did not qualify as an "interested person," acting "on behalf of the Community and in the best interests of the child," because section 11-160, the provision of the Code that authorizes the appointment of guardians ad litem, does not specify the filing of dependency petitions as one of the things that a guardian ad litem is authorized to do. The Court also noted that Code section 11-160(e)(1) provides that "the court must appoint a guardian ad litem in all dependency cases." The Court concluded that it would therefore "seem that granting the guardian ad litem the authority to investigate and file a dependency petition would run contrary to their already clearly established role in dependency cases."

DISCUSSION

The Juvenile Court's reading of the relevant Code provisions seems to us to be unnecessarily technical. Section 11-160(a) of the Code establishes the guardian ad litem program within the Community's Legal Services Office. Section 11-160(g)(3) provides that "[t]he guardian ad litem may file petitions, motions, responses or objections as necessary to represent the individual's best interests." That authority would seem to include authorization for the filing of dependency provisions, when the guardian ad litem believes that it is the child's best interests to do so. If so, a guardian ad litem is an "interested person," acting "on behalf of the Community" within the meaning of section 11-159(a). The fact that a guardian ad litem must be appointed after a dependency petition is filed by someone other than the guardian ad litem should not preclude a guardian ad litem from filing a dependency petition when no such petition has been filed, and when the guardian ad litem believes that filing a dependency petition will serve a child's best interests.

CONCLUSION AND ORDER

The decision of the Juvenile Court, dismissing the Dependency Petition on the ground that the guardian ad litem had no authority to file the Petition, is REVERSED. The case is

remanded for further proceedings consistent with this Opinion.

ISSUED this 2 day of June, 2016

Electronically approved 6/2/2016

Paul Bender, Justice

Electronically approved 6/2/2016

Judith Dworkin, Justice

Electronically approved 6/2/2016

Jan Morris, Justice

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