



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

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SALT RIVER PIMA-MARICOPA  
INDIAN COMMUNITY COURT

2016 JUN 22 P 3:10

FILED

In the Matter of:

Case No.: APJ-16-0003/0004

A.P.,

DOB: 01/25/2016,

**DECISION**

**The Minor Child.**

This matter is before the Court on the consolidation of two appeals relating to Notices of Removal and Child Dependency Petitions filed by the Community for the minor child, A.P., born January 25, 2016. The Court heard oral argument on May 23, 2016, and we took the matter under advisement. In deciding this case we considered Appellant's brief, the trial court proceedings and the full trial court file. It should be noted that Appellee's brief on appeal was filed after the filing deadline and was not considered by the Court in this decision.

Based on all of the above, the Court affirms the decisions of the juvenile court.

**FACTUAL and PROCEDURAL BACKGROUND**

The minor, A.P., was born on January 25, 2016. Tests conducted on the day of his birth were negative for illegal substances for both A.P. and his mother. Two days after A.P.'s birth the Salt River Pima Maricopa Indian Community ("Community") filed a Notice of Removal of A.P. with the court. On January 29<sup>th</sup>, a Juvenile Dependency Petition was filed, alleging that the mother used illegal substances during the first two trimesters of her pregnancy and A.P. was in danger. On the same day, the Community filed a Motion to set the matter for a protective custody hearing. That hearing was ultimately held on February 10, 2016.

On the afternoon of February 9, one day prior to the hearing, the Community received and disclosed to respondent's counsel evidence relating to the possible drug use by the child's mother during her first two trimesters. The Community sought to introduce this evidence during the hearing; opposing counsel objected. After listening to the argument from both parties, the court sustained the objection and it did not consider the evidence at the February 10<sup>th</sup> hearing.

It should be noted that the Community requested to make an Offer of Proof at that hearing. The parties approached the bench to discuss the request, but no formal offer was placed on the record.

The court did hear testimony from the social worker and the mother in addressing the removal and the petition. At the end of the hearing, the court concluded that the Community failed to meet its evidentiary burden for initially removing A.P. and placing him in protective custody. As a result, the Petition was dismissed and the child was ordered to be returned to his mother.

The Community did not comply with the court's order to return the child to his mother. Rather, it filed another Notice of Removal concerning A.P. a few hours after the court dismissed the first petition. This Notice included the drug-use allegations which were excluded from the February 10<sup>th</sup> hearing. In response, opposing counsel filed a request for an emergency status hearing on this new case, and the hearing was held on February 11<sup>th</sup>.

At the conclusion of the February 11 proceeding, the court reiterated its previous order and ordered that the child be return to his mother. The court further found that "the child was never returned to the physical custody of the Mother so there was no actual second physical removal." (Order Affirming Court's February 10, 2016 Order/Emergency Status Hearing Regarding CPS'S Refusal to Return Child, paragraph 8.) A Protective Custody hearing was held on February 19 on the second Petition (which had been filed on February 16); that hearing post-dated the appeals filed by the Community and evidence and orders from that hearing are not before this Court.

The Community timely filed appeals challenging the trial court's orders following both the February 10 and February 11 hearings. This Court ordered the two separate appeals consolidated and we address them both in this decision.

### **DISCUSSION**

Although the Community's brief raises four issues on appeal, we find the appeal has only one fundamental question: Did the juvenile court err by excluding evidence that was disclosed a day before the February 10th hearing. Both parties agreed at oral argument before this Court that without that evidence, there was an insufficient factual basis for the Community's petition. We review a trial court's evidentiary rulings for an abuse of discretion. See *Gemstar Ltd. v. Ernst & Young*, 185 Ariz. 493, 506, 917 P.2d 222, 235 (1996).

We first consider the law in this matter, Section 11-157(d) of the Salt River Pima Maricopa Indian Community Code of Ordinances addresses the grounds for emergency removal of children; it provides:

*Grounds for emergency removal.* A child may be removed from the home of the child's parent...without the consent of the parent...absent a specific order of the juvenile court when:

- (1) Failure to remove the child may result in a substantial risk of death, severe or permanent injury, or serious emotional harm; or
- (2) The parent...is absent and it appears from the circumstances that the child is unable to provide for his or her own basic necessities of life, and that no satisfactory arrangements have been made by the parent ... to provide for such necessities.

In addition, Section 11-161(a) provides that the purpose of protective custody hearings is "to review the decision to remove the child from the home and to determine whether it is reasonable to believe that continued absence from the home is necessary to protect the well-being of the child."

We also acknowledge that with protective custody hearings, the rules of evidence are relaxed. See Rule 102(c) of the SRE (providing when the rules of evidence are applicable); see also SRPMIC Code § 11-161(d) (providing that the hearsay evidence is admissible under specific circumstances). As a result rulings regarding the admissibility of evidence are within the province of the trial court's sound discretion. See SRE Rule 104(a).

We find that the juvenile court sufficiently considered the interests of both parties during the February 10 hearing in determining whether evidence obtained by the Community and provided to the mother's counsel the previous afternoon should be admitted. The court declined to admit the evidence for two reasons: First, the evidence was not timely disclosed to opposing counsel. Second, it was not relevant under Section 11-157. We will affirm a trial court's evidentiary ruling if it was legally correct for any reasons supported by the record. *State v. Childress*, 222 Ariz. 334, 338, 214 P.3d 422, 426 (App. 2009). Here, we find the court's ruling was legally correct and supported by the record. In addition, we find a third reason to affirm the court's exclusion of the evidence. That is, had the evidence been admitted there was clear danger that the mother would have been unfairly prejudiced by having insufficient time to respond to it or obtain rebuttal evidence.

We further find that the general purpose of the disclosure rules is to provide both parties an opportunity to respond or to obtain rebuttal evidence; this in turn assists in resolving the issue. See, e.g., SR-R.Civ.P. 5-18; SR-RCP 15-15.7 (providing requirements for disclosure). Because the trial court has broad discretion in making these decisions and due to the fact that the evidence was not timely disclosed, we hold the juvenile court did not err. In keeping with the holding in *Childress*, *supra*, we also determine that the second basis for the juvenile court's exclusion of the evidence need not be addressed here.

Nor do the other issues on appeal listed in Appellant's brief or raised at oral argument require review here, as stated above.

We think it is important to point out that there were a number of possible

Options open to the Community once the late-received evidence was excluded and the petition dismissed. A request for continuance of the hearing would be one, allowing the mother time to deal with the new evidence. Yet another option was to coordinate the return of the child to his mother and then initiating new paperwork seeking his removal, effectively starting a whole new case.

It is clear that the Community's practice has not mandated that removal of a child must mean the narrow act of physically taking him or her from the arms or the residence of the parent. Children can be removed from schools, day care, relatives' homes and thereby be taken from the care and control of the parent. The broader reading of the removal provisions has been the one used and it is appropriate to continue in that vein.

Finally, it would be remiss of this Court if we did not caution all parties that non-compliance with a court order may be cause for contempt proceedings.

### CONCLUSION

For the reasons outlined above, the decisions of the trial court are affirmed.

**ISSUED** this 22<sup>nd</sup> day of June, 2016.

Electronically approved 6/22/16

/s/

Mary E. Guss, **Justice**

Electronically approved 6/22/16

/s/

Denise Hosay, **Justice**

Electronically approved 6/22/16

/s/

Siera Russell, **Justice**

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