



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

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SALT RIVER PIMA-MARICOPA
INDIAN COMMUNITY COURT

In the Matter of:

I. C.,

ZI. C.,

ZA. C.,

AN. C.,

AM. C.,

C. C.,

AL. C.,

Minors,

And concerning

**MICA LLERANDI, SRPMIC LEGAL
SERVICES,**

Appellant,

and

**RAINA THOMAS (MOTHER) &
LEANDER CARLISLE (FATHER).**

Case No.: APJ-16-0006

Trial Court Case No.: JV -15-0243 - 0249

OPINION AND ORDER

STATEMENT

This is a matter that arose from an oral Order of the Juvenile Court summarily denying Appellant's Motion for Change of Judge. We have determined that several matters need to be addressed in order to effectively resolve the specific issue raised. The original Juvenile Dependency Petition was filed on August 25, 2015. Judgment was entered by the Hon. Victor Antone regarding Raina Thomas on February 26, 2016 with a determination of dependency of

each of the children as to Ms. Thomas. Judgment was entered by Judge Antone regarding Leander Carlisle on February 26, 2016 with a determination of dependency of each of the children as to Mr. Carlisle.

At disposition, the children were placed out-of-home with a stipulated case plan identifying services that Ms. Raina was to complete in order to facilitate return of custody of the children to her. The record does not indicate that a disposition was entered regarding Mr. Carlisle. Sometime around the beginning of March 2016, a new judge was assigned to this case. The record below does not indicate that a review hearing was conducted regarding Ms. Raina's progress on the case plan prior to March 25, 2016. On that date, Appellant filed a Notice of Change of Judge pursuant to S.R.O. § 4-36(a)(1). The Notice of Change of Judge was addressed by the court at a hearing on March 28, 2016, at which time the newly assigned judge orally refused to recognize or honor the Notice and continued to preside over the case. It appears from the record that a first formal review hearing was not conducted until late April 2016.

DISCUSSION

Nature of the Action.

First we must identify the nature of the action in order to determine whether we can assert appropriate jurisdiction. S.R.O. Chapter 5 (Rules of the Community Court) at Article V (Rules of Civil Appellate Procedure) provides guidance. Rule 2(a) permits any party aggrieved by the verdict or final judgment to bring an appeal. Rule 2(b) permits parties to bring a special action to appeal a nonfinal order or judgment under certain conditions. The title page of Appellant's Opening Brief characterizes the instant case as an "Appeal from a Judgment," but subsequently asserts this Court's jurisdiction pursuant to Rule 2(b) *Special Actions*. See, *Opening Brief*; Statement of the Case at p.1. This action most closely fits the designation of a special action since it is not an appeal of the final judgment of the dependency case. We further conclude that all three of the criteria delineated in Rule 2(b) have been met. Therefore, we shall grant review of the matter as a special action, noting that proper pleading practice should demonstrate consistency within the pleading for clarification of asserted jurisdiction.

Also troubling for us is the lack of distinction regarding the procedures between the two categories of cases we can hear. The procedure spelled out in some detail in the Rules of Appellate Procedure to guide us in determining appeals from final orders and judgments seems

reasonably sufficient. But special actions are not controlled by such particular procedures. Because special actions may come before us during the pendency of a matter that is still in the Community Court (as in the instant case) and the issue and our decisions regarding the same may have a significant impact on the case still ongoing in the Community Court, it seems appropriate that there should be a faster track for us to hear and decide special actions rather than following the more time-consuming procedure for deciding appeals from final orders or judgments. For this reason, we encourage the Community Court and Community Council to develop and approve a more streamlined process for hearing special actions, much as the State of Arizona has done. See, 17B A.R.S. Special Actions, Rules of Procedure. This would help ensure that crucial issues can be heard (if appropriate) and decided without undue delay.

Right to Change of Judge.

The Juvenile Court is a division of the Community Court. S.R.O. § 11-23. The jurisdiction of the juvenile court shall be civil in nature. *Id.* S.R.O. § 4-36(a)(1) provides:

In any civil action pending in the Community court, the parties are entitled as a matter of right to a change of judge. The right may be exercised by either party. A party wishing to exercise the right to change of judge shall file a pleading entitled "Notice of Change of Judge." * * * The request for change of judge shall be immediately honored.

This right, however, has certain time limitations when the right may be exercised during the pendency of a case as explained in S.R.O. § 4.36(d), which sets out a bifurcated restriction. The first restriction provides that the right to a change of judge may not be exercised "more than five days after the date on which the answer to the complaint is to be filed." *Ibid.* As we previously noted in our decision in *In the Matter of D.B.*, APJ-13-0002 (2013), since dependency actions in the Juvenile Court require no written answers, this restriction is inapplicable. The second restriction seems to be at issue here. It provides in pertinent part that "No request for change of judge . . . shall be filed after the *assigned* judge has ruled on any *substantive matter* in the proceeding" S.R.O. § 4.36(d). (Emphasis added).

We note that in instances where there may be a change of assigned judge in a pending case, it is difficult at best to ascertain when there has been a change since the Community Court apparently does not utilize a formal notice of change of assigned judge. We strongly suggest that the Community Court implement such a formal notice so that parties and counsel can clearly

pinpoint when a different judge has been assigned to a pending case.¹ In the instant case, we have surmised the approximate date when the current judge was assigned from the date of the orders entered. In this case, when rejecting Appellant's Notice of Change of Judge at the hearing held on March 28, 2016 (three days after the Notice was filed), the judge opined that "you don't get a change of judge in the middle of a case." *Court recording* at 6:27. This declaration is inconsistent with a plain reading of the law.

A dependency case in the Juvenile Court is commenced by a petition filed on behalf of the Community. S.R.O. § 11-159(a). The petition must contain a statement of the facts upon which specific allegations of dependency are based. S.R.O. § 11-159(c)(3). After the filing of a dependency petition, a formal trial *on the issues* must be held within 60 days of the filing of the petition. S.R.O. § 11-163(a). At the trial, "witnesses must be called and evidence presented *to substantiate the allegations of dependency*." S.R.O. § 11-163(b) (emphasis added). Thus, the *issues* or *substance* of a dependency case is whether or not a child is a "dependent child" as defined at S.R.O. § 11-2. If an adjudication of dependency is made, the Juvenile Court will then consider the post-adjudicative issue of child placement. If the child had been removed from the home prior to adjudication, after a judgment of dependency is rendered, an appropriate disposition will be determined pursuant to S.R.O. § 11-165(e) and (f). If the disposition included continued out-of-home placement, the case will be scheduled for a review hearing pursuant to S.R.O. § 11-167. "A child *shall be returned* to the home of the parent, guardian or custodian from a finding made at the review hearing, *unless the court finds that a reason for placement outside the home still exists*." S.R.O. § 11-167(b) (emphasis added). Post-adjudication, then, the only *substantive* issue is whether there exists a reason for continued out-of-home placement.

In reviewing the orders signed by the current judge between the time of case assignment at the beginning of March, 2016 until the review hearing on March 28, 2016, we find that the three orders signed by that judge addressed either court scheduling or authorization for medical/dental care for the minors. The current judge did not make a ruling regarding return of the children or continued out-of-home placement. We are informed regarding the difference between substantive matters and procedural matters by the test set forth in *Erie RR. v. Tomkins*, 304 U.S. 64 (1938) which states in essence that an issue that clearly addresses legal rights (in this

¹ For convenience, we have appended to this decision a draft notice for consideration.

case, a parent's right to custody of their child) is substantive, whereas issues that clearly pertain to the judicial process alone (i.e., scheduling) are procedural. This concept appears logical and reasonable, and we are persuaded to apply that concept here. Applying that concept, it is clear that the current judge had not ruled on any substantive matter in the proceedings when Appellant filed the Notice of Change of Judge. Consequently, the second restriction on filing for change of judge in S.R.O. § 4-36(d) does not apply.

We also note that, prior to the assignment of the current judge to the case in early March 2016, Appellant had not exercised the right to change of judge. The issue of whether or not the law allows a party to exercise that right whenever a different judge is assigned to a case if that party has *previously* exercised that right in that case is not before us, and we decline to address it now. We find it significant, however, that Appellant had not previously exercised the right to a change of judge in this case.

CONCLUSION AND ORDER

SRPMIC law provides a party the right to a change of judge assigned to the party's civil case provided that certain time and activity limitations are met. In this case, neither restriction in S.R.O. §4-36(d) applied at the time Appellant filed the Notice of Change of Judge. The judge erred by not immediately honoring the Notice of Change of Judge. This case is remanded to the Juvenile Court for re-assignment to a different judge.

ISSUED this 30 day of August, 2016.

Electronically approved 8/30/2016

Mary Guss, Justice

Electronically approved 8/30/2016

Judith Dworkin, Justice

Electronically approved 8/30/2016

Jan W. Morris, Justice

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