



**SALT RIVER
PIMA-MARICOPA INDIAN COMMUNITY
Court of Appeals**

10,005 E. OSBORN RD. SCOTTSDALE, AZ 85256 (480) 850-8115

In the Matter of:

J. S. (d.o.b. 5/5/00),

a minor.

Case No.: APJ-13-0004

Case below: J-13-0024

OPINION

Before Jan W. Morris, Judge Pro Tempore, Anthony F. Little, Judge Pro Tempore

BACKGROUND

{1} On November 28, 2012, J. S. was placed in Child Protective Services custody.

{2} On December 3, 2012, the Salt River Prosecutor's Office filed with the Juvenile Court a Juvenile Dependency Petition and Motion to Set Protective Custody Hearing.

{3} On December 4, 2012, The Prosecutor filed a Notice of Change of Judge pursuant to S.R.O. § 4-26(a) believing a change of judge pursuant to this authority was a matter of right.

{4} At a Protective Custody Hearing on December 5, 2012, the judge addressed the Notice of Change of Judge and denied the same, asserting that § 4-26(a) is qualified by § 4.26(d) in this instance, and that a request for change of judge is not

permissible at a protective custody hearing because there is no requisite "answer" to a "complaint" in a protective custody hearing subsequent to the filing of a dependency petition.

{5} On appeal, the Community claims that the judge erred by denying the request for a change of judge as a matter of right pursuant to § 4-26(a).

STANDARD OF REVIEW

{6} On appeal, this Court will review an allegation of legal err *de novo*.

DISCUSSION

{7} Pursuant to § 11-2, "The jurisdiction of the juvenile court shall be civil in nature" Thus, dependency cases in the Juvenile Court are civil actions.

{8} A peremptory change of judge in civil actions is a matter of right, established by § 4-26(a). If the rationale of the juvenile court judge in denying the request were controlling, there could *never* be a change of judge as a matter of right in *any* civil case (not just dependency actions) in which the ordinances or court rules do not require the filing of a "complaint" and an "answer." Such a result would be absurd, and might well implicate due process guarantees if, in fact, there are different "classes" of civil cases, all of which may be initiated by the filing of a petition (as opposed to a complaint) but some of which may not be subject to § 4-26(a) as a result of mere judicial fiat.

CONCLUSION

{9} Consistent with our decision in APJ-13-0002, it is clear that the juvenile judge erred in his conclusion of law. The denial of the request for change of judge is reversed.

{10} The matter is remanded to the Juvenile Court for reassignment to a different judge. If the case has already been transferred to a different judge, then no further action is required by this order and the dependency case may proceed in the Juvenile Court.

{12} **IT IS SO ORDERED this 12th day of July, 2013.**

APJ-13-0002

In The Matter of J.S.

Electronically approved 7/19/2013

Jan W. Morris, Judge Pro Tempore

I CONCUR:

Electronically approved 7/19/2013

Anthony F. Little, Judge Pro Tempore

FILED

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SALT RIVER PINA-MARICOPA
INDIAN COMMUNITY COURT