SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS
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IN THE MATTER OF:

P.M.R.,
Juvenile-Petitioner,

And Concerning:

SRPMIC Juvenile Court,
Case No. JV-23-3037

Case No.: AP-24-0001

OPINION AND ORDER

Before, AUSTIN, CLINTON, and DWORKIN, Justices of the SRPMIC Court of Appeals.

A special action appeal from the SRPMIC Juvenile Court, concerning Case No.: JV-23-3037, the Honorable Judge Darayne Achin presiding.

Diane Enos and Sabrina Fisher, Defense Advocate Office, for the Juvenile-Petitioner.

Geoffrey Denight, SRPMIC Office of the Prosecutor, the Community Prosecutor

OPINION AND ORDER DELIVERED BY JUSTICE AUSTIN.

This Matter comes to us on Petitioner's *Notice of Filing Petition for Special Action*, filed on October 19, 2023. Petitioner is a juvenile and represented by the Defense Advocate Office in a case currently pending in the Juvenile Court, Case No. JV-23-3037. In that case, the Community Prosecutor initially charged Petitioner with numerous offenses, some of which were Class A offenses. The Petition was later amended to remove one count and reclassify another, dropping it from Class A to Class B. Petitioner still faces one charge for a Class A offense.

Since the inception of his case, Petitioner consistently maintained that a licensed judge must preside over his case pursuant to Section 4-31(a) of the Salt River Pima-Maricopa Indian Community Code of Ordinances ("Code"). That Section mandates that a licensed judge shall hear "all criminal cases in which a defendant is charged with at least one Class A Offense or

where the maximum punishment could exceed one year of incarceration." The difference between a lay/associate judge and a licensed judge is that a licensed judge is a graduate from an accredited law school and licensed to practice law in a state jurisdiction. Section 4-32(c)(2)-(3). Petitioner made an oral request for a licensed judge to preside over his case and later briefed the Juvenile Court in writing. The Community Prosecutor is indifferent on the issue but submitted briefs nonetheless.

The Juvenile Court denied Petitioner's request for a licensed judge, and Petitioner subsequently sought to appeal the Juvenile Court's denial through a special action pursuant to Rules 2.1 and 2(b) of the Rules of Criminal Appellate Procedure ("Rule(s)"). Before Petitioner submitted his brief, he filed a *Motion for Permission to Exceed Page Limit*. In our Order granting the *Motion*, we included a request for Petitioner to brief us on whether we had jurisdiction to hear a special action that originated from a juvenile case. If so, we requested that Petitioner address whether he met the requirements for a special action under Rule 2(b)(1)-(3). For the reasons set forth below, we hold that we do not have jurisdiction under Rule 2.1 or Rule 2(b) to hear special actions that originate from juvenile cases being adjudicated pursuant to Section 11-25(a)(1) of the Code.

Section 11-23 of the Code established the Juvenile Court of the Community. The Juvenile Court has original jurisdiction over "any child who is alleged to have violated any Community, federal, state or local law or municipal ordinance, which violation if committed by an adult would be a crime." Sec. 11-25(a)(1). These are usually known as juvenile delinquency cases and follow the procedures set forth in Chapter 11, Article VI, titled "Juvenile Justice." Section 11-29 states that a juvenile's "right to appeal, grounds for appeal and procedures for appeal" can be found in Chapter 5. Chapter 5 contains all rules of civil and criminal procedure for the trial courts and appellate court. Accordingly, the rights of appeal for a juvenile offender are in our rules of appellate procedure.

Rule 1 of the Rules of Criminal Appellate Procedure ("Rule(s)") states that the Rules "govern the appeal procedure in all criminal cases and juvenile cases adjudicated under chapter 11, article VI, Juvenile Justice." There are separate rules for criminal cases and juvenile delinquency cases regarding appellate review. Rule 2 applies to criminal cases in the trial court. That Rule allows a party to appeal final orders of the trial court as well as non-final orders

through the special action process outlined in Rule 2(b). Rule 2.1, which applies to juvenile delinquency cases, does not contain any language allowing a party to bring a special action in this Court. The Rule only allows a party to appeal final orders or judgments: "A party aggrieved by a final order, decree, or judgment in a juvenile proceeding adjudicated under section 11-25(a)(1) may file an appeal."

In *In the Matter of the Estate of Lopez*, we held that final orders and judgments "are typically issued after a case has been decided on the merits and there are no further proceedings in the lower court." AP-23-3002/3003 at pg. 2. We also made clear that if "a party attempts to bring an appeal from a non-final order and there are further proceedings to be had in the lower court, it is an interlocutory appeal and must be dismissed." *Id.* Non-final orders and judgments may only be appealed through the special action or extraordinary writ process. The issue here, then, is whether the applicable Rules afford Petitioner the right to bring a special action to review the non-final order of the Juvenile Court.

Petitioner contends that he has the right to bring a special action because "the criminal law provisions of the Code and . . . Rule 2(b), are borrowed and applied to juvenile offender matters." We disagree. Petitioner's case is a juvenile delinquency case and therefore subject to Rule 2.1. Rule 2.1 only allows for the appeal of final orders; it does not allow for special actions. Without the permissible language, this appeal is an interlocutory appeal, and interlocutory appeals are prohibited under our holding in *Lopez*.

If the Community Council intended for parties in juvenile delinquency cases to have the right to bring special actions, then it would have either stated so explicitly in Rule 2.1 or completely omitted Rule 2.1. If Rule 2.1 did not exist, then Rule 2 would apply to juvenile delinquency cases in its entirety thereby allowing for special action review. Instead, the Community Council created two separate and distinct rules: Rule 2, titled "Appeal rights in criminal cases," and Rule 2.1, titled "Appeal rights in juvenile cases." For whatever reason, the Community Council chose to omit special action review in Rule 2.1.

Petitioner nonetheless urges this Court to extend special action review to juvenile delinquency cases, citing to Rule 1 which states that the Rules "shall be liberally construed to promote substantial justice and fairness to parties." Petitioner highlights the importance of

children to the Community and argues that the Community's cultural values and "*Himthug*" require a heightened level of respect, protection, and reverence for children, especially those involved in court cases. Thus, if adult defendants are afforded the right to file a special action, then "the Community's common law principle of valuing its children, ensuring them fair protection under the law, and its concept of substantial justice and fairness would ensure a juvenile offender the ability to file a Special Action."

We agree with the Petitioner that the protection and well-being of children are extremely important to the Community. This concept is not only embedded in our common law, but also our statutory law: "Community children are the most vital and valued resource to the continued existence, the future, and integrity of the Community. The Community has a compelling interest in promoting and maintaining the health and well-being of all Community children." Sec. 10-1; *see* Sec. 11-1(1)-(7). As Petitioner points out, this sentiment is shared by other indigenous nations as well like the Navajo Nation. In fact, indigenous nations have developed comprehensive codes governing the rights of children in and out of the court system. The Community is no exception. So, we must trust that the laws that the Community Council chose to enact or not enact are for the benefit of the Community's children.

Indeed, we used Rule 1 in prior opinions and orders to construe rules of procedure to achieve substantial justice and fairness. *See generally Sidoma v. Gomez*, APC-21-0001; *Panzullo v. SPRMIC Gaming Enterprise*, APC-22-0001. However, Rule 1 has its limitations. We will construe the language of a rule liberally, if necessary, to achieve substantial justice and fairness to the parties. However, we will not construe a rule so liberally that it loses its original intent, and we will not use language in a rule to create something that never existed. Therefore, we cannot stretch Rule 2(b) to include juvenile delinquency cases because that was never the intent of the Rule. Moreover, we cannot create a special action rule for juvenile delinquency cases in Rule 2.1 because then we would be legislating from the bench. Creating rules and laws is the primary role and responsibility of the Community Council which this Court cannot usurp.

Petitioner nonetheless argues that Rule 2.1 has no language prohibiting special actions in juvenile delinquency cases so it must be allowable. This is not how the rule of law works. Laws are interpreted and applied by the plain language on their face. When a law is silent on whether a party can act, one can indeed argue that the silence means there is no prohibition. However, one

can also argue that the silence means there is no permission. Rather than trying to construe the silence of a law, we will apply the plain language of the law and interpret the stated language to achieve substantial justice and fairness. It is the duty of the Community Council to fill the gaps in the law, if it deems it necessary.

Lastly, even if Petitioner was able to bring a special action, he would not meet the necessary requirements. Rule 2(b) states that in order for a party to bring a special action, the party must show that: (1) the non-final order conclusively determines the disputed question; (2) the non-final order resolves an important issue separate from the merits of the case; and (3) the petitioning party will not have the issue reviewable on appeal after final judgment. Petitioner meets the first two requirements, but fails to meet the third. Petitioner provides no convincing argument that the issue of having a licensed judge preside over his case will not be reviewable on appeal after final judgment. There is nothing that would prevent Petitioner from appealing the Juvenile Court's decision denying Petitioner's request for a licensed judge. That issue is very much within our jurisdiction to review on appeal after the case is over.

This case is dismissed.[1]

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[1] We take this opportunity to highlight some of the issues with special actions on appeal. There are no rules of procedure for special actions that govern filing or pleading requirements. Therefore, special actions play out much the same way as an appeal from a final order which is an unnecessarily long, drawn out process for many of the issues raised in special actions. We made this known in a case from 2016, called *In the Matter of I.C. et al.*, APJ-16-0006. In that case, we issued a decision that noted the difficulties of handling special actions:

> "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 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 specials 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."

We again reiterate our recommendation to enact rules for special actions and also extraordinary writs so that petitioning parties can receive rulings swiftly. As a suggestion, parties seeking special action review or an extraordinary writ need only to file a petition, not briefs, requesting relief. Along with the petition, the petitioning party would include the lower court's order for review and any other pleadings or orders necessary to render a decision. In most instances, the respondent would be the lower court and presiding judge. Therefore, a response from the other party would not be necessary. The lower court and presiding judge may be afforded the opportunity to respond to the petition.

SO ORDERED this 15th day of December, 2023.

Electronically Approved 12/15/23

/s/
Joseph Austin, **Justice**

Electronically Approved 12/15/23

/s/
Robert Clinton, **Justice**

Electronically Approved 12/15/23

/s/
Judith Dworkin, **Justice**

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