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**IN THE SUPREME COURT
STATE OF ARIZONA**

VICTOR SANCHEZ-RAVUELTA and
JANETTE DODGE, a married couple, on
behalf of themselves and their minor
children ELIJAH SANCHEZ and AMELIA
SANCHEZ,

Plaintiffs/Appellants,

v.

YAVAPAI COUNTY; TOWN OF
DEWEY-HUMBOLDT; STATE OF
ARIZONA; JOHN and JANE DOES I-X,
ABC Corporations, XYZ Partnerships,

Defendants/Appellees.

Case No. CV-24-0093-PR

Arizona Court of Appeals
Case No. 2 CA-CV 2023-0059

Maricopa County Superior Court
Case No. CV 2022-051670
(Hon. Melissa Julian)

**RESPONSE TO TOWN OF
DEWEY-HUMBOLDT'S
PETITION FOR REVIEW**

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Introduction

The petition for review does not present a dispute suitable for resolution through a petition for review. After all, the Town of Dewey-Humboldt (“Town”) won at the trial court, which dismissed the Complaint that the claimants had filed against it, and the Town won again at the Court of Appeals. Those victories leave no immediate justiciable dispute requiring this Court’s intervention and resolution.

But for the Town, victory at the superior court followed by victory at the Court of Appeals were not enough. The Town now seeks an advisory opinion that the minor Plaintiffs’ voluntary dismissal of their complaint against the Town should have been with prejudice instead of without prejudice. In the future, if the need arises, a superior court can decide if the minor Plaintiffs may file new notices of claim and if the minor Plaintiffs may file another lawsuit against the Town. But however interesting that possible future scenario might be, that is a hypothetical and not an actual problem for this Court to ponder and decide.

At present, there is no case or controversy to support grant of a petition for review. “Unlike the federal constitution, the Arizona Constitution does not have a case or controversy requirement.” *Mills v. Arizona Bd. of Technical Registration*, 253 Ariz. 415, 423 ¶ 23 (2022) (quoting *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 279 ¶ 35 (2019)).

Despite that, this Court traditionally applies “the doctrines of standing and

ripeness as a matter of judicial restraint to ensure courts ‘refrain from issuing advisory opinions, that cases be ripe for decision and not moot, and that issues be fully developed between true adversaries.’” *Id.* (quoting *City of Surprise v. Arizona Corp. Comm’n*, 246 Ariz. 206, 209 ¶ 8 (2019)). Here there is no need to create an advisory opinion because, after all, the Town won at the trial court and won at the Court of Appeals. Thus, there is no present case or controversy between the minor Plaintiffs and the Town. The Court should therefore decline to grant the petition for review and save its time and resources for actual cases and controversies.

Legal Argument

- 1. Plaintiffs cautiously followed the “Chicago method” in filing a notice of appeal whenever it appeared that the trial court may have filed a new final and appealable Judgment.**

Although Chicago Mayor Richard J. Daly (1902-1976) is often regarded as having created the “Chicago method” of encouraging voters to “vote early and vote often,” it appears that credit for creating that phrase may rest with inventive partisans in the American north. The credit for popularizing it may belong to South Carolina Representative William P. Miles (1822-1899), who claimed in a speech at the United States House of Representatives on March 15, 1858, that the advice openly displayed on election banners in one of the northern cities was: “Vote early and vote often.” *Bartlett’s Familiar Quotations* 533:4 (17th ed. 2002).

A published letter that Richard Henry Dana, Jr. (1815-1882), the famous

author of *Two Years Before the Mast* (1840), wrote in 1859 on misuse of the ballot in the United States explained that: “The war cry, ‘Vote early and vote often!’ and the familiar problem, ‘how to cast the greatest number of votes with the smallest number of voters.’ indicate the direction in which the dangers lie.” Richard Henry Dana, Jr., “The Ballot in the United States,” *The Times* [London, England] 9 (Aug. 27, 1859).

Whatever its origin of the advice to “vote early and vote often,” counsel for the Plaintiffs followed that advice in the legal arena in complete good faith by filing several notices of appeal after the superior-court judge sequentially filed what appeared to be final and appealable Judgments.

After all, not filing a timely notice of appeal can be a disaster, since a notice of appeal is jurisdictional. *See, e.g., In re Marriage of Gray*, 144 Ariz. 89, 90 (1985) (The “timely filing of a notice of appeal is a jurisdictional prerequisite to appellate review.”). So counsel for Plaintiffs decided that, even if it made him look like a fussbudget, it was best to “vote early and vote often” whenever an apparently final and appealable Judgment appeared. Here, there were several Judgments that appeared to be final and appealable, and there were thus several notices of appeal.

First judgment. On October 17, 2022, the superior court filed a signed “Judgment (Dismissal).” The signed and filed Judgment stated that: “No further matters remain pending, and this judgment is entered under Rule 54(c).” [[ROA 111](#)

ep 2] To deal with that October 17, 2022 Judgment and protect their appellate rights, Plaintiffs filed a Motion for New Trial on October 21, 2022. [\[ROA 114\]](#) At that point, the need was for the superior court to consider the briefing related to the motion for new trial and not file any more Judgments.

Second Judgment. But on November 22, 2022, although the October 21, 2022 motion for new trial was still pending, the trial court filed another “Final Judgment” that appeared to supersede the original Judgement.).” [\[ROA 118\]](#) The November 22, 2022 “Final Judgment” stated that: “No further matters remain pending, and this judgment is entered under Rule 54(c).” [\[ROA 118 ep 2-3\]](#) On its face, that new Judgment also looked final and appealable

First notice of appeal. To protect their rights, on December 8, 2022, Plaintiffs filed a “Notice of Appeal” [\[ROA 123\]](#) from the signed, purported Rule 54(c) “Final Judgment” that the trial court filed on November 22, 2022 [\[ROA 118\]](#).

Based on later procedural events, however, Plaintiffs decided to abandon this first appeal through failing to pay the appellant’s fee. And so, on February 3, 2023, the Court of Appeals ruled that the original appeal “has been abandoned.” [\[ROA 133, ep 1\]](#)

Third Judgment. Before abandonment of the first appeal, however, on January 25, 2023, the superior court filed a signed Rule 54(b) “Judgment of Dismissal and Order Granting in Part, and Denying in Part, Plaintiffs’ First

Amended Motion for New Trial.” [\[ROA 131\]](#) This iteration of an apparently final and appealable Judgment indicated that the superior court “finds no just reason for delay and enters this judgment of dismissal as to those claims pursuant to Rule 54(b).” [\[ROA 131\]](#) ep 3]

Second notice of appeal. To protect their appellate rights, after the original appeal had been deemed abandoned on February 3, 2023 [\[ROA 133\]](#), on February 23, 2023, Plaintiffs filed a new “Notice of Appeal” [\[ROA 135\]](#) This new “Notice of Appeal” [\[ROA 135\]](#) was from the superior court’s January 25, 2023, signed Rule 54(b) “Judgment of Dismissal and Order Granting in Part, and Denying in Part, Plaintiffs’ First Amended Motion for New Trial.” [\[ROA 131\]](#)

Fourth Judgment. On March 9, 2023, the trial court filed another signed purported Rule 54(c) “Judgment” [\[ROA 137\]](#).

Third notice of appeal. Once again, in an effort to protect their appellate rights, on March 10, 2023, Plaintiffs filed a “Notice of Filing First Amended Notice of Appeal” [\[ROA 138\]](#) from the Judgment filed on March 9, 2023. [\[ROA 137\]](#). That “Notice of Filing First Amended Notice of Appeal” [\[ROA 138\]](#) was the final notice of appeal.

The Court of Appeals observed that the “litigation ultimately resulted in the [superior] court entering four different final judgments, each purporting to amend the previous judgment.” *Mem. Dec.* ¶ 6. The Court of Appeals then ultimately

concluded that the Plaintiffs had timely filed a notice of appeal from the third “final” judgment and that, therefore, “their appeal is not defeated on the basis of timeliness.” *Mem. Dec.* ¶ 10. In a procedurally confusing situation, the “vote early and vote often” practice had indeed protected the clients’ right of appeal.

Nothing in the tangled petition for review defeats the Court of Appeals’ common-sense, reasonable, and practical resolution of the procedural traffic jam created by the four judgments that the superior court filed and by the three notices of appeal that the Plaintiffs filed to protect their appellate rights. There is no reason to grant the petition for review. The Court of Appeals adequately handled this unusual situation.

The Town’s petition for review tries to create an appealable issue by arguing that its cross-appeal challenged jurisdiction over the entire appeal because of “procedural irregularities” that “invoke interpretation of” Ariz. R. Civ. App. Proc. 9(e). *Pet. Rev.* at 6. The procedural irregularity was the failure to provide notice to the Court of Appeals that a motion for new trial from the first judgment was still pending before the superior court when an appellate case number had been assigned for that first appeal.

But the Court of Appeals explained that because the motion for new trial was pending—and the superior court had already issued an order vacating the second purported final judgment—those proceedings were part of the superior-

court record when the Court of Appeals received the superior-court record, so the Court of Appeals could “see no reason to have required the appellant to provide separate notice.” *Mem. Dec.* ¶ 9.

“The record itself,” the Court of Appeals further explained, “gave this court notice of the pending motion” and “in view of the superior court having vacated its earlier purported final judgment, that court could have dismissed the appeal.” *Mem. Dec.* ¶ 9.

Then, the superior court entered its third final Rule 54(b) Judgment, which was a Rule 54(b) Judgment because “although the adult plaintiffs’ claims were dismissed with prejudice, the minor plaintiffs’ claims were all dismissed without prejudice, and thus, there was no final judgment as to the minor plaintiffs’ claims.” *Mem. Dec.* ¶ 10. The “time for the plaintiffs to file a notice of appeal therefore began when the court entered the third final judgment. Because the plaintiffs filed a timely notice from that judgment, their appeal [was] not defeated on the basis of timeliness,” and the Court of Appeals had “jurisdiction over the plaintiffs’ appeal.” *Mem. Dec.* ¶ 10.

There is, in short, no procedural irregularity of such magnitude that this Court needs to grant the petition for review. Indeed, as far as the Town is concerned, at this point there are no viable, significant issues requiring review.

2. The superior court properly exercised discretion in deciding that the dismissal of the minor Plaintiffs’ claims should be without prejudice.

The Town argues that the superior court supposedly erred by changing dismissal of the minor Plaintiffs from “with prejudice” to “without prejudice.” *Pet. Rev.* 14-17; *AB* 37-43. On August 20, 2022, Elijah Sanchez and Amelia Sanchez (the “minor Plaintiffs”) had filed an Ariz. R. Civ. Proc. 41(a) “Notice of Dismissal Without Prejudice” for their claims against the State, the County, and the Town. [\[ROA 90\]](#)

Then, after realizing that, unlike the other Defendants, the Town had filed an Answer on August 30, 2022 [\[ROA 52\]](#), the minor Plaintiffs filed a “Motion to Dismiss Without Prejudice as to Defendant Town of Dewey-Humboldt Only” in accordance with Ariz. R. Civ. Proc. 41(a)(2). [\[ROA 93\]](#)

In its August 31, 2022 response to that motion, the Town admitted that “only the most extraordinary circumstances will justify the trial court in refusing to grant a motion by a plaintiff to dismiss without prejudice.” [\[ROA 94](#) at ep 3] (quoting *Goodman v. Gordon*, 103 Ariz. 538, 541 (1968)). But the Town argued that “extraordinary circumstances” had existed because the minor Plaintiffs were supposedly trying to avoid adjudication on the merits through pending dispositive motions. [\[ROA 94](#) at ep 3-4] The minor Plaintiffs filed their reply on September 1, 2022. [\[ROA 95\]](#)

In an “Order Re: Dismissal without Prejudice” filed on September 19, 2022, the trial court directed that: “**IT IS ORDERED** that Plaintiffs ELIJAH SANCHEZ

and AMELIA SANCHEZ are dismissed as Plaintiffs in this cause without prejudice.” [ROA 105] In a “Case Dismissed – Partial” that the trial court filed on September 19, 2022, the trial court stated that: “**IT IS ORDERED** dismissing this case without prejudice as to **Plaintiffs Elijah Sanchez and Amelia Sanchez only**, all in accordance with the formal written Order Re: Dismissal Without Prejudice, signed by the Court on September 15, 2022, and filed (entered) by the clerk on September 19, 2022.” [ROA 104] (bolding and underlining in original).

In an “Order Re: Dismissal Without Prejudice” filed on September 23, 2022, the trial court also directed that: “IT IS ORDERED that Plaintiffs ELIJAH SANCHEZ and AMELIA SANCHEZ are dismissed as Plaintiffs in this cause without prejudice as to Defendants STATE OF ARIZONA and YAVAPAI COUNTY only.” [ROA 107 ep 2]

On October 31, 2022, all Plaintiffs filed a “Motion for New Trial,” arguing, among other things, that the trial court had erred by failing to grant the minor Plaintiffs’ motion to dismiss their claims against the Town without prejudice under Ariz. R. Civ. Proc. 41(a)(2), which provides that:

Except as provided in Rule 41(a)(1) [dismissal of right by the plaintiff], an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper. . . . Unless the order states otherwise, a dismissal under this Rule 41(a)(2) is without prejudice.

[ROA 114 ep 6] (quoting Ariz. R. Civ. Proc. 41(a)(2)).

On December 1, 2022, the Town filed a response. [[ROA 121](#)] On December 30, 2022, the Plaintiffs filed a reply in support of their motion. [[ROA 126](#)]

In an Order filed on January 25, 2023, the trial court directed that: “Plaintiffs Amelia and Elijah Sanchez’s claims against the Town of Dewey-Humboldt are dismissed without prejudice.” [[ROA 131](#) ep 3]

The Town admitted at the Court of Appeals that the “right to dismiss after an answer had been filed is discretionary with the trial court.” *AB* at 47. Here, the trial court properly exercised its discretion in directing that dismissal of the minor Plaintiffs’ claims against the Town should be without prejudice. First, when ruling on a voluntary motion to dismiss without prejudice, a trial court must determine if the dismissal without prejudice would violate any substantial rights of a defendant. *See Schoolhouse Educ. Aids, Inc. v. Haag*, 145 Ariz. 87, 90 (App. 1985); *Penunuri v. Superior Court*, 115 Ariz. 399, 401 (App. 1977).

Turning to substance, the Town argues that is some sort of violation of its substantial rights if the minor Plaintiffs’ claims are dismissed without prejudice. But the concept of violation of substantial rights in this context does not include: (1) the prospect of a second lawsuit; (2) the expense and delay that might be incurred by granting the dismissal; or (3) the need for extensive preparation for trial. *Crawford by and through Crawford v. Superior Court*, 144 Ariz. 498, 499 (App. 1984).

Indeed, “only the most extraordinary circumstances will justify the trial court in refusing to grant a motion by a plaintiff to dismiss without prejudice.” *Goodman v. Gordon*, 103 Ariz. 538, 541 (1968). In the present case, there were have never been such extraordinary circumstances. This is a routine case where the trial court granted the minor Plaintiffs’ motion to dismiss their claims voluntarily without prejudice. That was a proper order within the trial court’s discretion.

Because Elijah Sanchez and Amelia Sanchez are minors and the Town refused to settle the notice of claim, the minor Plaintiffs have the right to withdraw their original notice of claim and file a new one. A.R.S. § 12-821.01(D) (A minor “may file a claim within one hundred eighty days after the disability ceases.”).

The minor Plaintiffs have a correlative right to file a lawsuit against the Town within one year after they reach the age of eighteen. A.R.S. § 12-502 (“If a person entitled to bring an action . . . is at the time the cause of action accrues . . . under eighteen years of age . . . , the period of such disability shall not be deemed a portion of the period limited for commencement of the action. Such person shall have the same time after removal of the disability which is allowed to others.”); A.R.S. § 12-821 (“All actions against any public entity or public employee shall be brought within one year after the cause of action accrues and not afterward.”).

But the important point is abuse of discretion. The trial court had the discretion to make dismissal without prejudice—and reasonably exercised that

discretion. Whether the minor Plaintiffs will file new notices of claim against the Town and then file a lawsuit against the Town are matters that are not properly before the Court because those events have not happened.

If and when those events happen, the trial court will decide whether the notice of claim was timely and will decide the merits of any claims. If the Court of Appeals rules against the Town on any issues raised and decided at the superior court, the Town may then justifiably file a petition for review with this Court. But at this point, the Town is asking this Court for an advisory opinion on issues that have not yet reached the point where a petition for review would be proper.

Conclusion

The Town seeks a premature and unneeded advisory opinion. The Town won at the superior court and won at the Court of Appeals. The Divisions of the Court of Appeals have filed no conflicting decisions. This routine, run-of-the-mill case presents no important or novel issues of statewide interest or importance. As some might say, it is not “petition worthy.”

Because there is no meaningful or compelling reason to grant the petition for review in this matter, Plaintiffs ask the Court to decline to grant it. Plaintiffs also respectfully ask the Court to award to them the reasonable costs incurred in responding to the petition for review, in accordance with A.R.S. §§ 12-331, 12-332, 12-341, 12-342, and Ariz. R. Civ. App. Proc. 21.

DATED this 29th day of May 2024.

AHWATUKEE LEGAL OFFICE, P.C.

/s/ David L. Abney, Esq.
David L. Abney
Attorney for Plaintiffs/Appellants

Certificate of Compliance

This document: (1) uses Times New Roman 14-point proportionately spaced typeface for text *and* footnotes; (2) contains 2,956 words (by computer count); and (3) averages less than 280 words per page, including footnotes and quotations.

Certificate of Service

On this date, this document was electronically filed with the Clerk of the Arizona Supreme Court and copies were delivered to:

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