

IN THE SUPREME COURT

STATE OF ARIZONA

SANCHEZ-RAVUELTA et al,
Plaintiffs/Appellee,

vs.

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

Defendants/Appellants.

Arizona Supreme Court
Case No.: CV-24-0093-PR

Court of Appeals
Division Two
No.: 2 CA-CV 23-0059

Maricopa County Superior Court
Case No.: CV2022-051670

APPELLANT'S SUPPLEMENTAL BRIEF

William H. Doyle, #007285
Brandon D. Millam, #034696
Emily S. Morgan, #035413
wdoyle@doylelawgroup.com
bmillam@doylelawgroup.com
emorgan@doylelawgroup.com
DOYLE HERNANDEZ MILLAM
Firm Bar No. 00497700
11811 N. Tatum Blvd., Suite 2900
Phoenix, Arizona 85028
Telephone: (602) 240-6711
Fax No.: (602) 240-6951
**Attorneys for Appellant Town of
Dewey-Humboldt**

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I. INTRODUCTION

The Town of Dewey-Humbolt (Town) asks this Court to review Division Two's decision to dismiss the Town's cross-appeal for lack of timeliness. Despite Plaintiffs' attempt to argue "the Chicago Method" of filing as many appeals as possible, creating several procedural irregularities, the Arizona Rules of Civil Procedure are still applicable and cannot be circumvented. The cross-appeal challenged jurisdiction over the entire appeal due to procedural irregularities that invoke interpretation of ARCAP 9(e), which this Court has not yet done. Amendments have been made to ARCAP 9(e), *see* R-13-0005, and Division Two's opinion conflicts with the adoption of the amendment.

Resolving the above issue will show that the superior court did not have jurisdiction to rule on Plaintiffs' motion for new trial since jurisdiction had vested with Division One.

II. BACKGROUND

A. Relevant Facts.

Plaintiffs were involved in a motor vehicle accident that occurred in April 2021, with non-party David Browne, who left the parking lot of Billy Jack's Saloon and Grill while intoxicated. Browne caused a multi-vehicle

accident on SR-69. All four plaintiffs brought an action for damages.

B. Relevant Procedural Facts.

Plaintiffs Victor Sanchez-Ravuelta and Jannette Dodge, along with their children, Elijah and Amelia Sanchez (Minor Plaintiffs), filed four complaints in the superior court, naming the Town, State of Arizona (State), and Yavapai County (County). The Town answered. All three defendants filed dispositive motions. The superior court held oral arguments on fully briefed dispositive motions on August 26, 2022.

On August 30, 2022, Plaintiffs filed a notice of dismissal purporting to voluntarily dismiss Minor Plaintiffs' claims against all defendants. Then, Plaintiffs filed a notice of errata and a Rule 41(a)(2) motion to dismiss Minor Plaintiffs' claims *without prejudice* as to the Town (since the Town answered). The next day, the Town responded to the Rule 41(a)(2) motion. The day following, September 2, 2022, Minor Plaintiffs replied but then the clerk filed the superior court's order, dated August 31, 2022, which granted the State, County, and Town's pending dispositive motions, finding in favor of all defendants and against all plaintiffs. Plaintiffs subsequently, and without explanation, filed an unauthorized second reply in support of their Rule 41(a)(2) motion to dismiss *without prejudice*. On September 27, 2022, the

superior court denied the Rule 41(a)(2) motion as *moot*, in light of its grant of the Town's motion.

Throughout the appeal, the Town has asserted that the superior court's denial for mootness was appropriate and legally correct. The Town has also asserted that the reversal of that decision by the superior court, later, was a legal error. Plaintiffs' Rule 41(a)(2) motion was, as a matter of law, *moot* before being briefed and therefore properly denied. It was a legal error for the superior court to essentially reverse its own ruling. In sum, Plaintiffs used Rule 41(a)(2) to evade a granted dispositive motion. Plaintiffs later filed a notice of appeal, transferring jurisdiction of this case to Division One. While jurisdiction vested there, the superior court ruled on a pending motion for new trial, but the required notice under ARCAP 9(e) had not been submitted and it did not have jurisdiction to make that ruling.

The Town contends that without that notice, ARCAP 9(e) vested jurisdiction in Division One until it later found the appeal to be abandoned and the superior court lacked jurisdiction to modify its prior dismissal of Minor Plaintiffs' claims *with prejudice*, because Division One properly had jurisdiction over this case. Compounding the procedural confusion, Division Two's opinion that Rule 54(b) judgment perfected the time to appeal is also

a legal error that conflicts with Division One's jurisprudence. The error was later rectified in the fourth and final Rule 54(c) judgment that Plaintiffs appealed and the Town cross-appealed on.

III. ARGUMENT

The Town answers this Court's questions regarding whether the court of appeals erred by dismissing the Town's cross-appeal on the ground that the court of appeals lacked appellate jurisdiction because the Town's notice of cross-appeal was untimely in the affirmative, which coincides and answers the Court's second question of whether the superior court had jurisdiction to rule on Plaintiffs' motion for a new trial in the negative.

Division Two used a defective Rule 54(b) judgment as the basis to perfect the time to file a notice of appeal and erred when it held "the plaintiffs perfected their appeal by filing a notice of appeal from the third final judgment." If Division Two's determination is upheld, it will cause considerable confusion in the future about appealing judgments.

- A. **Division Two's decision to dismiss the Town's notice of cross-appeal based on timeliness was based on a defective Rule 54(b) judgment entered after the superior court had lost jurisdiction due to ARCAP 9(e).**

The Town's cross-appeal challenged jurisdiction over the entire appeal

due to procedural irregularities that invoke interpretation of ARCAP 9(e), which this Court has not yet done. This Court’s opinion in *Craig v. Craig*, stated,

We also reject Wife’s suggestion that we today read ARCAP 9(b) as *in haec verba* with Federal Rule of Appellate Procedure 4(a)(4)(B)(i).

....

Whatever the conceptual merits of the federal rule, the language of ARCAP 9(b) is different, and Arizona jurisprudence interpreting our rule has taken a diametrically opposite approach for some thirty years. A dramatic change to Arizona appellate procedure should occur through rulemaking, not through an opinion effectively rewriting our appellate rules and abandoning settled precedent.

227 Ariz. 105, 107 ¶ 15 (2011). That is exactly what happened three years later. *See* R-13-0005. Effectively, the rules were amended to model the appeal process after federal rules.¹ When interpreting state procedural rules based on and adopted from analogous federal rules, Arizona courts generally accord “great weight” to the federal interpretations of the rules. *Camasura v.*

¹ <https://www.azcourts.gov/rules/Recent-Amendments/Rules-of-Civil-Appellate-Procedure> (accessed 1/9/25) (“Order amending...Rule 9, Rules of Civil Appellate Procedure (modeling appeal process after federal rules)”)

Camasura, 238 Ariz. 179 ¶ 8 (2015). In *New Technology Elec. Contractors, Inc. v. Milestone Inv. Co., LLC*, the Ninth Circuit found “the Appellants’ notice of appeal did not mention the order denying their motion for reconsideration (as required by Rule 4(a)(4)(B)(i)), they were required to file an amended or separate notice of appeal to properly challenge that order. As Appellants never completed this procedural step, the court lacks jurisdiction to review the order denying their motion to reconsider.” 289 Fed.Appx 629, 631 (9th Cir. 2008). Therefore, the old jurisprudence in this state conflicts with how the federal counterpart is interpreted, with weight given to the words and meaning within the Rule.

ARCAP 9(e)(2) was added, which provides that,

If a party files a notice of appeal before the timely filing of one of the motions identified in Rule 9(e)(1) or if a notice of appeal is filed during the pendency of such motion, the appellant must notify the appellate court of the pending motion or motions when the appellate court assigns a case number under Rule 12(a). ***Upon the appellate court’s receipt of such notice, the appeal will be suspended*** until the last motion is decided. The appellant must notify the appellate court when all such motions have been decided, and the appeal will be reinstated as of the entry of the order disposing of the last remaining motion.

(emphasis added). Now, the party who files a notice of appeal during the

pendency of a Rule 59(a) or Rule 59(d) motion “must notify the appellate court of the pending motion or motions when the appellate court assigns a case number...” ARCAP 9(e)(3). “Upon the appellate court’s receipt of such notice, the appeal will be suspended until the last such motion is decided.”

Id.

In the case at hand, Division Two’s opinion conflicts with the plain language of the Arizona Rules of Civil Appellate Procedure that were amended to remedy the issue that this Court identified in *Craig*. Specifically, Division Two is circumventing the notice requirement in ARCAP 9(e). Here, Division Two found, “At that time, the motion for new trial was pending, and the superior court had issued its order vacating the second purported final judgment. As those proceedings were part of the record at the time we received it, we see no reason to have required the appellant to provide separate notice.” Despite being part of the record, no such notice was given in this case, therefore, the first appeal was never suspended. Consequently, the superior court modified its prior judgment without jurisdiction because jurisdiction had properly vested with Division One. To read otherwise would hold that a case can be simultaneously venued in two levels of the State court system, allowing the trial court to modify the scope of an appeal

and modify the effect of an appeal by continuing to make substantive rulings after a final judgment had been already entered.

B. The superior court lost jurisdiction over Plaintiffs' motion for new trial once jurisdiction vested in Division One.

The superior court did not have jurisdiction to rule on the Plaintiffs' motion for new trial, as jurisdiction had vested in Division One. After jurisdiction vested in Division One, the superior court ruled on a pending motion for new trial which it could not do. Ultimately, the November 22, 2022 Rule 54(c) judgment is the final appealable order in this matter. *See State v. Hill*, 174 Ariz. 313, 323 (1993). ("A motion that is not ruled on is deemed denied by operation of law.") If the November 22, 2022 order is treated as a denial of the motion for new trial, then appellate jurisdiction vested in the Court of Appeals with Plaintiffs' December 8, 2022 notice of appeal. That, in turn, would render the superior court's subsequent rulings void under *Budreau v. Budreau*, 134 Ariz. 539, 541 (App. 1982). Under *Budreau* the superior court loses its jurisdiction over a given case while an appeal is pending. *Id.* at 541. However, ARCAP 9(e) now requires an appellant to notify the Court of Appeals if a notice of appeal is filed while a time extending motion remains pending. ARCAP 9(e)(2).

IV. CONCLUSION

This Court should clarify the issues identified above, cure legal errors, and resolve the conflict in jurisprudence between the Divisions of the Court of Appeals.

RESPECTFULLY SUBMITTED this 13th day of January, 2025.

DOYLE HERNANDEZ MILLAM

By: /s/ Brandon D. Millam

William H. Doyle, #007285

Brandon D. Millam, #034696

Emily S. Morgan, #035413

Firm Bar No. 00497700

11811 N. Tatum Blvd., Suite 2900

Phoenix, Arizona 85028

wdoyle@doylelawgroup.com

bmillam@doylelawgroup.com

emorgan@doylelawgroup.com