



ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY



SUE LYNN CRAIG v. ROGER THOMAS CRAIG  
CV-10-0397-PR

**PARTIES:**

*Petitioner:* Sue Lynn Craig (“Wife”)

*Respondent:* Roger Thomas Craig (“Husband”)

**FACTS:**

The family court issued its decree of dissolution of the parties’ marriage on September 9, 2008. Husband filed a motion for new trial or to amend the decree on September 24, 2008, which effectively extended the time for filing a notice of appeal. *See* Rule 9(b)(3), (4), Arizona Rules of Civil Appellate Procedure. Husband and Wife filed their respective notices of appeal on October 8, 2008, and October 17, 2008, while Husband’s new trial motion was still pending. The family court denied the motion for new trial in a signed order on November 7, 2008. Neither party filed a notice of appeal from that ruling or an amended notice of appeal.

In an opinion filed October 28, 2010, after all briefing had been completed, the court of appeals *sua sponte* dismissed both parties’ appeals for lack of jurisdiction because they were filed during the pendency of Husband’s time-extending motion for new trial or to amend the decree. Judge Kessler dissented, inviting the Supreme Court to resolve the tension between the *Smith*<sup>1</sup> and the *Performance Funding*<sup>2</sup> lines of cases. Op. ¶ 7. Moreover, Judge Kessler would have held that the court had jurisdiction because at the time the appeals were taken, “*Performance Funding* had not been overruled, questioned, or vacated.” *Id.* ¶ 8.

On December 21, 2010, Wife filed her petition for review in this Court.

**ISSUES:**

1. Whether the court of appeals incorrectly held that this Court’s decision in *Smith* made *Performance Funding* no longer controlling law, even though *Smith* presented an entirely different procedural question, and never mentioned *Performance Funding*.

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<sup>1</sup> Referring to *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, 132 P.3d 1187 (2006).

<sup>2</sup> Referring to *Performance Funding LLC v. Barcon Corp.*, 197 Ariz. 286, 289 3 P.3d 1206 (App. 2000).

2. Whether petitioner properly relied on *Performance Funding*, a controlling decision, to believe that her notice of appeal was valid and effective, and, therefore, whether her right to appeal had vested before the court of appeals questioned that case.

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