

**1 CA-CV 02-0138**

**CANADY v. PRESCOTT CANYON**

<b>Appellate Case Information</b> Case Filed: 27-Feb-2002 Case Closed: 24-Jan-2003	<b>Dept/Composition</b> <b>Department D</b> Hon. William F Garbarino Hon. Susan A Ehrlich Hon. Jon W Thompson
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**CASE DECISION**

26-Nov-2002 **OPINION**

Author: SAE  
Concur: WFG,JWT  
Dissent:  
Result: RV RM

Filed: 26-Nov-2002      Mandate:

Disposition of Decision
<i>Reversed</i>
<i>Remanded</i>

Susan Ehrlich..... Author  
William Garbarino..... Concur  
Jon Thompson..... Concur

**REGISTERED LONG CAPTION**

001.	SCOTT CANADY, an unmarried individual	)	Court of Appeals
002.	RALPH and MARGARET CANADY, husband and	)	Division One
003.	wife, and PAMELA GARAPICH, an unmarried	)	1 CA-CV 02-0138
004.	individual,	)	
005.		)	Maricopa County
006.	Intervening Plaintiffs-	)	Superior Court
007.	Appellants,	)	CV 00-013941
008.		)	
009.	v.	)	
010.		)	
011.	PRESCOTT CANYON ESTATES HOMEOWNERS	)	
012.	ASSOCIATION, PRESCOTT CANYON ESTATES	)	
013.	HOMEOWNERS ASSOCIATION BOARD OF	)	
014.	DIRECTORS, and DON LARSON, President,	)	
015.		)	
016.	Defendants-Appellees.	)	
017.		)	

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Ntc App - Trial	08-Jan-2002	Filed/Docketed:	27-Feb-2002
Cross-Appeal			
Docket Statmt Due:		Docket Statmt	11-Mar-2002
First Letter Sent:		Notice to Counsel:	06-Mar-2002
Costs Response	23-Dec-2002	Cost Response	20-Dec-2002
Costs Reply Due:	06-Jan-2003	Costs Reply Filed:	06-Jan-2003
Costs Denied:	30-Dec-2002	Rule 29 Filed:	
Opening Brief	05-Apr-2002	Opening Brief Due:	08-Apr-2002
Answer Brief	15-May-2002	Answer Brief Due:	20-May-2002
Reply Brief Filed:	07-Jun-2002	Reply Brief Due:	10-Jun-2002
Answer/XOpen		Answer/XOpen Due:	
Reply/XAnswer		Reply/XAnswer Due:	
XReply Filed:		XReply Due:	
Record Filed:	27-Feb-2002	Record Due:	
At-Issue No.	02234	At Issue:	07-Jun-2002
OA Request Filed:	10-Apr-2002	OA Request Due:	
Calendar Date:	02-Oct-2002	OA Denied:	
Time:		OA Granted:	
Decision Date:	26-Nov-2002	Under Advisement:	02-Oct-2002
Req Atty Fees		Costs Filed:	11-Dec-2002
MR Filed:		MR Due:	11-Dec-2002
MR Response Filed:		MR Response Due:	
MR Granted:		MR Denied:	
PR Filed:		PR Due:	26-Dec-2002
PR Granted:		PR Sent:	
Stay Request		PR Denied:	
		Stay/Writ Cert	
		Mandate:	24-Jan-2003
Terminate:			

**Side 1. SCOTT CANADY, an unmarried individual RALPH and MARGARET CANADY, husband and wife, and PAMELA GARAPICH, an unmarried individual,, Plaintiff/Appellant**

**(Litigant Group) SCOTT CANADY, an unmarried individual RALPH and MARGARET CANADY, husband and wife, and PAMELA GARAPICH, an unmarried individual,**

**Attorneys for Plaintiff**

**(Litigant Group) Intervening Plaintiffs- Appellants**

**Attorney for Intervening Plaintiffs-Appellants**

Julianne H Carter, Esq. (AZ Bar No. 16876)

**Side 2. PRESCOTT CANYON ESTATES HOMEOWNERS ASSOCIATION, PRESCOTT CANYON ESTATES HOMEOWNERS ASSOCIATION BOARD OF DIRECTORS, and DON LARSON, President,, Defendant/Appellee**

**(Litigant Group) PRESCOTT CANYON ESTATES HOMEOWNERS ASSOCIATION, PRESCOTT CANYON ESTATES HOMEOWNERS ASSOCIATION BOARD OF DIRECTORS, and DON LARSON, President,**

**Attorneys for Defendant/Appellee**

James A Simmons, Esq. (AZ Bar No. 2659)

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1. 27-Feb-2002 FILED: INDEX OF RECORD (Cost Bond filed 1/8/02)
2. 27-Feb-2002 FILED: FIRST LETTER (2/27/02)
3. 6-Mar-2002 FILED: RECEIPT, #0200401, \$140.00, Check #016876, Appellant Filing Fee, paid by Julianne H. Carter, Arizona Center for Disability Law, for Appellant Canady/Garapich.
4. 6-Mar-2002 FILED: NOTICE TO COUNSEL
5. 11-Mar-2002 FILED: DOCKETING STATEMENT (Notice of Appeal)(Appellant)
6. 11-Mar-2002 FILED: RECEIPT, #0200437, \$70.00, Check #3158, Appellee Filing Fee paid by James A. Simmons for Appellee Prescott Canyon Estates
7. 5-Apr-2002 FILED: APPELLANTS OPENING BRIEF.
8. 5-Apr-2002 FILED: APPENDIX TO APPELLANTS OPENING BRIEF
9. 10-Apr-2002 FILED: REQUEST FOR ORAL ARGUMENT (Appellants)
10. 15-May-2002 FILED: APPELLEES ANSWERING BRIEF.
11. 20-May-2002 FILED: ORDER - the Clerk of MARICOPA County Superior Court has to/ including 6/4/02 to transmit record on appeal. (G. Clark, Clerk)
12. 31-May-2002 FILED: RECORD ON APPEAL (Instruments/Minute Entries - 3 Volumes)
13. 7-Jun-2002 FILED: APPELLANTS REPLY BRIEF.
14. 19-Jun-2002 FILED: ORDER - granting the request for oral argument. (E. Voss, Chief Judge)
15. 3-Sep-2002 CALENDARED: ORAL ARGUMENT, Dept D, 10-2-02, 9:30 a.m., Courtroom 2, each side 20 mins.
16. 6-Sep-2002 FILED: ORAL ARGUMENT, Dept. D, 10/2/02, 9:30 a.m., Courtroom 2, each side has 20 minutes
17. 10-Sep-2002 FILED: LETTER, 9/9/02, to court from Julianne H. Carter, RE: enclosed acknowledgment of receipt of Notice of Oral Argument. Will require reasonable accomodation by the Court for attorney has a significant hearing loss.
18. 10-Sep-2002 FILED: RECEIPT OF ORAL ARGUMENT, 10/2/02, signed by Julianne Carter on 9/9/02
19. 10-Sep-2002 FILED: NOTICE OF ORAL ARGUMENT, 10/2/02, signature illegible, Attorney for Appellees, signed on 9/9/02
20. 11-Sep-2002 FILED: EXPEDITED MOTION TO CONTINUE ORAL ARGUMENT (Appellees)
21. 11-Sep-2002 FILED: RESPONSE TO DEFENDANTS' EXPEDITED MOTION TO CONTINUE ORAL ARGUMENT (Appellants)
22. 12-Sep-2002 FILED: SUPPLEMENTAL INDEX OF RECORD - Item 67A "Motion to Certify Judgment as Final in Accordance with Arizona Rule of civil Procedure 54(B); Item 67B "Defendant's Response to Intervening Plaintiffs' Motion to Certify Judgment as Final in Accordance with A.R.Civ.P.54(B); Item 67C Minute Entry - Nunc Pro Tunc; Item 69 "Defendant's Expedited Motion for Reconsideration; Item 70 "Proposed Form of Judgment"; Item 71 "Opposition to Motion for Reconsideration and Objections to Proposed Form of Judgment"; Item 72 "Judgment Nunc Pro Tunc (unsigned); Item 73 "Amended Judgment"; Item 74 "Amended Judgment (Unsigned)

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23. 23-Sep-2002 FILED: ORDER - vacating oral argument. The matter will be conferenced on 10/2/02. (Dept. D, W. Garbarino, Presiding Judge)
24. 2-Oct-2002 FILED: ORDER - under advisement (Dept. D, Judges Garbarino, Thompson, Ehrlich)
25. 26-Nov-2002 FILED: ORDER - MEMORANDUM DECISION (REVERSED AND REMANDED) (Dept. D, Judge Ehrlich, CONCURRING: Judge Garbarino, Judge Thompson)
26. 11-Dec-2002 FILED: MOTION FOR PUBLICATION (Appellants)
27. 11-Dec-2002 FILED: REQUEST FOR ATTORNEYS' FEES & COSTS ON APPEAL (Appellants)
28. 19-Dec-2002 FILED: RESPONSE TO MOTION FOR PUBLICATION (Appellees)
29. 20-Dec-2002 FILED: OBJECTION TO REQUEST FOR ATTORNEYS' FEES & COSTS ON APPEAL (Appellees)
30. 20-Dec-2002 FILED: ORDER - the decision of this court herein, which was filed on 11/26/02, as a Memorandum Decision be designated as an Opinion rather than as a Memorandum Decision and be published in the usual course of events. FURTHER directing the clerk of this court to delete the designation "Memorandum Decision" and the accompanying parenthetical material from the caption of this decision and to substitute the designation "Opinion". FURTHER that copies of this order and the revised decision be distributed to all persons who received copies of the original Memorandum Decision. (Dept. D, S. Ehrlich, Judge)
31. 20-Dec-2002 FILED: LETTER, 12/20/02, to Mead Data Central, RE: Enclosed order re redesignation of the court's MEMORANDUM DECISION filed 11/26/02, as an OPINION.
32. 20-Dec-2002 FILED: LETTER, 12/20/02, to West Publishing Company, RE: Enclosed order re redesignation of court's MEMORANDUM DECISION filed 11/26/02, as an OPINION.
33. 20-Dec-2002 FILED: FEDEX RECEIPT, #835848833783, to West Publishing Corp.
34. 20-Dec-2002 FILED: GENERAL DISTRIBUTION LIST
35. 24-Dec-2002 FILED: DHL RECEIPT, #8514657605, to Lexis Nexis
36. 27-Dec-2002 FILED: APPELLEES' EXPEDITED MOTION FOR RECONSIDERATION RE PUBLICATION
37. 30-Dec-2002 FILED: ORDER - granting Intervening Plaintiffs-Appellants attorney's fees in the amount of Eight Thousand Eight Hundred and Fifty Dollars (8850.00); FURTHER granting Intervening Plaintiffs-Appellants costs in the amount of Three Hundred Seventy-Four Dollars and One Cent (\$374.01). (Dept. C, S. Ehrlich, Judge)
38. 31-Dec-2002 FILED: ORDER - denying the Motion for Reconsideration RE: Publication (Dept. D, S. Ehrlich, Judge)
39. 6-Jan-2003 FILED: PLAINTIFFS' EXPEDITED MOTION FOR RECONSIDERATION RE: ATTORNEYS' FEES AND COSTS (Appellants)
40. 6-Jan-2003 FILED: REPLY TO OBJECTION TO REQUEST FOR ATTORNEYS' FEES & COSTS ON APPEAL (Appellants)
41. 15-Jan-2003 FILED: ORDER - denying the motion for reconsideration RE: Attorney's Fees and Costs. (Dept. D, S. Ehrlich, Judge)

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42. 24-Jan-2003 FILED: LETTER, 1/24/03, to Clerk, Maricopa County Superior Court, RE: Enclosed Original MANDATE, Copy of Opinion, Instruments/ Minute Entries (Three Volumes Combined) and Certified Copy of ORDER RE Granting Fees and Costs
43. 24-Jan-2003 FILED: LETTER, 1/24/03, to The Bureau of National Affairs, Inc., RE: Case mandated on 1/24/03, Court of Appeals, Division One, Phoenix
44. 24-Jan-2003 FILED: LETTER, 1/24/03, to Mead Data Central, RE: Opinion filed 11/26/02
45. 24-Jan-2003 FILED: LETTER, 1/24/03, to West Publishing Company, RE: Opinion filed 11/26/02
46. 24-Jan-2003 FILED: DHL RECEIPT, #8514657561, to Lexis Nexis
47. 24-Jan-2003 FILED: FEDEX RECEIPT, #835848833831, to West Publishing Co.
48. 27-Jan-2003 FILED: PLAINTIFFS-APPELLANTS' MOTION FOR DE NOVO OF ATTORNEYS' FEES AND COSTS UNDR A.R.C.A.P. 21
49. 30-Jan-2003 FILED: ORDER - denying the motion for De Novo Review of Attorneys' Fees and Costs. (Dept. D, S. Ehrlich, Judge)
50. 26-Mar-2003 FILED: APPELLEES' EXPEDITED MOTION FOR CLARIFICATION AND STAY OF TRIAL COURT PROCEEDINGS
51. 28-Mar-2003 FILED: ORDER - that Appellees' Expedited Motion For Clarification and Stay of Trial Court Proceedings is dismissed. (Dept. D, S. Ehrlich, Judge)

**MASTER DISTRIBUTION LIST**

C. COUNSEL	D. COUNSEL	E. JUDGE
Julianne H Carter Arizona Center for Disability Law Phoenix Office Suite 202 5025 East Washington Street Phoenix AZ 85034	James A Simmons 107 N Cortez Suite 300 Prescott AZ 86301-3000	Hon Colleen McNally, Juvenile Presiding Judge Maricopa County Superior Court Central Court Building 201 W Jefferson St Phoenix AZ 85003-2243
Michael K Jeanes, Clerk Maricopa County Superior Court Court Records and Exhibits, 4th Floor Exhibits, 4th Floor 175 West Madison Phoenix AZ 85003		