

**1 CA-CV 02-0403****SHAMROCK v. WAGON WHEEL****Appellate Case Information**

Case Filed: 12-Jun-2002  
Case Closed: 10-Oct-2003

**Dept/Composition**

**Department A**  
Hon. Daniel A Barker  
Hon. Ann A. Scott Timmer  
Hon. William F Garbarino

**CASE DECISION****26-Aug-2003 OPINION**

Author: AST  
Concur: DAB,WFG  
Dissent:  
Result: AF PT RV PT RM

Filed: \_\_\_\_\_ Mandate: \_\_\_\_\_

## Disposition of Decision

***Affirmed in Part***  
***Reversed in Part***  
***Remanded***

**Ann Timmer**..... Author  
**Daniel Barker**..... Concur  
**William Garbarino**..... Concur

Pacific Reporter: 75 P.3d 132  
Arizona Reports: 206 Ariz 42

**REGISTERED LONG CAPTION**

001.	JOHN W. SHAMROCK, a single man; ARTHUR )	Court of Appeals
002.	A. and LOIS J. GILCREASE FAMILY TRUST )	Division One
003.	by ARTHUR A. AND LOIS J. GILCREASE, )	1 CA-CV 02-0403
004.	Trustees; DAVID H. HEMMINGS, a single )	
005.	man; THE POLLARD FAMILY TRUST by JAMES )	Navajo County
006.	E. and MARIE T. POLLARD, Trustees; J.C.)	Superior Court
007.	& C. INVESTMENTS, L.L.C. by ROBERT )	CV01-0102
008.	OLIVER CROMWELL partner; EDWARD E. )	
009.	SMITH and MARGARET SMITH, husband and )	
010.	wife; LEWIS REVOCABLE TRUST by FRANCIS )	
011.	W. LEWIS and MARLENE C. LEWIS, )	
012.	Trustees, JOE KACZMARSKI and ADA )	
013.	KACZMARSKI husband and wife; and )	
014.	WILLIAM R. DETOR, a single man, )	
015.	)	
016.	Plaintiffs-Appellees, )	
017.	)	
018.	v. )	
019.	)	
020.	WAGON WHEEL PARK HOMEOWNER'S )	
021.	ASSOCIATION, a nonprofit Arizona )	
022.	corporation, )	
023.	)	
024.	Defendant-Appellant. )	
025.	)	

**1 CA-CV 02-0403****SHAMROCK v. WAGON WHEEL****SPREADSHEET PAGE 1 of 1 (Division One Civil Spreadsheet)****CIVIL SPREADSHEET Page 1**

Ntc App - Trial Ct: 22-Apr-2002	Filed/Docketed: 12-Jun-2002
Cross-Appeal Filed:	
Docket Statmt Due:	Docket Statmt Filed: 12-Jun-2002
First Letter Sent:	Notice to Counsel:
Costs Response Due: 17-Sep-2003	Cost Response Filed: 17-Sep-2003
Costs Reply Due: 29-Sep-2003	Costs Reply Filed: 22-Sep-2003
Costs Denied: 08-Oct-2003	Rule 29 Filed:
	Opening Brief Due: 16-Sep-2002
Opening Brief Filed: 16-Sep-2002	Answer Brief Due: 31-Oct-2002
Answer Brief Filed: 18-Oct-2002	Reply Brief Due: 12-Nov-2002
Reply Brief Filed: 12-Nov-2002	Answer/XOpen Due:
Answer/XOpen Filed:	Reply/XAnswer Due:
Reply/XAnswer Filed:	XReply Due:
XReply Filed:	Record Due:
Record Filed: 12-Jun-2002	
	At Issue: 12-Nov-2002
At-Issue No. 02418	OA Request Due:
OA Request Filed: 03-Dec-2002	OA Denied:
Calendar Date: 18-Feb-2003	OA Granted:
Time:	Under Advisement: 18-Feb-2003
Decision Date: 26-Aug-2003	
	Costs Filed: 05-Sep-2003
Req Atty Fees Filed:	
	MR Due: 10-Sep-2003
MR Filed:	MR Response Due:
MR Response Filed:	MR Denied:
MR Granted:	
	PR Due: 25-Sep-2003
PR Filed:	PR Sent:
	PR Denied:
PR Granted:	Stay/Writ Cert Due:
Stay Request Filed:	
	Mandate: 10-Oct-2003
Terminate:	

**Side 1. JOHN W. SHAMROCK, a single man; ARTHUR A. and LOIS J. GILCREASE FAMILY TRUST by ARTHUR A. AND LOIS J. GILCREASE, Trustees; DAVID H. HEMMINGS, a single man; THE POLLARD FAMILY TRUST by JAMES E. and MARIE T. POLLARD, Trustees; J.C & C. INVESTMENTS, L.L.C. by ROBERT OLIVER CROMWELL partner; EDWARD E. SMITH and MARGARET SMITH, husband and wife; LEWIS REVOCABLE TRUST by FRANCIS W. LEWIS and MARLENE C. LEWIS, Trustees, JOE KACZMARSKI and ADA KACZMARSKI husband and wife; and WILLIAM R. DETOR, a single man,, Plaintiff/Appellee**

**(Litigant Group) JOHN W. SHAMROCK, a single man; ARTHUR A. and LOIS J. GILCREASE FAMILY TRUST by ARTHUR A. AND LOIS J. GILCREASE, Trustees; DAVID H. HEMMINGS, a single man; THE POLLARD FAMILY TRUST by JAMES E. and MARIE T. POLLARD, Trustees; J.C & C. INVESTMENTS, L.L.C. by ROBERT OLIVER CROMWELL partner; EDWARD E. SMITH and MARGARET SMITH, husband and wife; LEWIS REVOCABLE TRUST by FRANCIS W. LEWIS and MARLENE C. LEWIS, Trustees, JOE KACZMARSKI and ADA KACZMARSKI husband and wife; and WILLIAM R. DETOR, a single man,**

**Attorneys for Plaintiff/Appellee**

James L Tanner, Esq. (AZ Bar No. 4078)

**1 CA-CV 02-0403****SHAMROCK v. WAGON WHEEL****Side 2. WAGON WHEEL PARK HOMEOWNER'S ASSOCIATION, a nonprofit Arizona corporation,, Defendant/Appellant  
(Litigant Group) WAGON WHEEL PARK HOMEOWNER'S ASSOCIATION, a nonprofit Arizona corporation,****Attorneys for Defendant-Appellant**

Jonathan J Olcott, Esq. (AZ Bar No. 14859)

William F Shore, III, Esq. (AZ Bar No. 7728)

**52 PROCEEDING ENTRIES**

1. 8-Oct-2000 FILED: costs as it relates to post-judgment proceedings in the superior court (A. Timmer, Judge)
2. 12-Jun-2002 FILED: INDEX OF RECORD (Docketing Statement filed 4/22/02)
3. 12-Jun-2002 FILED: FIRST LETTER (6/12/02)
4. 1-Jul-2002 FILED: LETTER, 7/1/02, to Clerk of Maricopa County Superior Court, RE: Pursuant to A.R.S. 12-322A record on appeal returned. Appeal shall be deemed abandoned.
5. 8-Jul-2002 FILED: LETTER, 7/5/02, to court from Jonathan Olcott, OLCOTT & SHORE, PLLC, RE: Motion to Reinstate appeal.
6. 9-Jul-2002 FILED: RECEIPT, #0201223, \$140.00, Check #8212, Appellant Filing Fee, paid by Jonathan J. Olcott, Attorneys, PLLC, for Appellant Wagon Wheel Park
7. 10-Jul-2002 FILED: CERTIFICATE OF MAILING - LETTER DATED JULY 5, 2002 (Request to Reinstate Appeal)
8. 15-Jul-2002 FILED: ORDER - reinstating this appeal. FURTHER that appellant's opening brief shall be filed on/before 8/16/02. (Dept. M, J. Gemmill, Presiding Judge)
9. 13-Aug-2002 FILED: NOTICE OF FILING STIPULATION AND ORDER TO EXTEND DEADLINE FOR APPELLANT TO FILE OPENING BRIEF (Appellant)
10. 15-Aug-2002 FILED: STIPULATION TO EXTEND DEADLINE FOR APPELLANT TO FILE OPENING BRIEF (Appellant)
11. 19-Aug-2002 FILED: ORDER - extending the time to file the opening brief to/ including 9/16/02. (P. Urry, Judge Pro Tem)
12. 16-Sep-2002 FILED: APPELLANTS OPENING BRIEF.
13. 16-Sep-2002 FILED: APPENDIX TO APPELLANT'S OPENING BRIEF
14. 18-Oct-2002 FILED: APPELLEES ANSWERING BRIEF.
15. 23-Oct-2002 FILED: ORDER - the Clerk, Navajo County Superior Court has to/ including 11/7/02 to transmit record on appeal. (G. Clark, Clerk)
16. 28-Oct-2002 FILED: LETTER, 10/28/02, to James L. Tanner, RE: Upon review of record, the \$70.00 appellee's filing fee was due on/before 7/29/02. Unless fee is paid, appellee shall not be entitled to be heard. (G. Clark, Clerk)
17. 31-Oct-2002 FILED: RECEIPT, #0201963, \$70.00, Check #23285, Appellee Filing Fee, paid by James L. Tanner, JACKSON WHITE GARDNER, for Appellee John Shamrock
18. 1-Nov-2002 FILED: RECORD ON APPEAL (Instruments/Minute Entries - 4 Volumes) (Reporter's Transcripts - 1 Vol. 11/29/01)
19. 12-Nov-2002 FILED: APPELLANTS REPLY BRIEF.
20. 3-Dec-2002 FILED: REQUEST FOR ORAL ARGUMENT (Appellant)

**1 CA-CV 02-0403****SHAMROCK v. WAGON WHEEL****52 PROCEEDING ENTRIES**

21. 31-Dec-2002 CALENDARED: CONFERENCE, Dept A, 2-18-03. costs as it relates to post-judgment proceedings in the superior court (A. Timmer, Judge)
22. 7-Jan-2003 FILED: NOTICE OF CONFERENCE, Dept. A, 2/28/03
23. 18-Feb-2003 FILED: ORDER - under advisement (Dept. A, Judges Barker, Timmer, Garbarino)
24. 20-Feb-2003 FILED: ORDER - denying request for oral argument. (Dept. A, E. Voss, Chief Judge)
25. 11-Jul-2003 FILED: APPELLEES' SUPPLEMENT TO ANSWERING BRIEF
26. 15-Jul-2003 FILED: ORDER - designating the supplement to the answering brief as a supplemental citation of legal authority. (Dept. A, A. Timmer, Judge)
27. 6-Aug-2003 FILED: RESPONSE TO APPELLEES' SUPPLEMENT (Appellant)
28. 15-Aug-2003 FILED: REPLY TO RESPONSE APPELLEE'S SUPPLEMENT TO ANSWERING BRIEF
29. 26-Aug-2003 FILED: ORDER - OPINION (AFFIRMED IN PART; REVERSED IN PART; REMANDED) (Dept. A, A. Timmer, CONCURRING Judges Barker, Garbarino)
30. 26-Aug-2003 FILED: ORDER - MEMORANDUM DECISION (AFFIRMED IN PART, REVERSED IN PART, REMANDED) (Dept. A, Judge Timmer, CONCURRING: Judges Barker, Garbarino)
31. 26-Aug-2003 FILED: LETTER, 8/26/03, to Mead Data Central, RE: OPINION filed 8/26/03.
32. 26-Aug-2003 FILED: LETTER, 8/26/03, to West Publishing Co., RE: OPINION filed 8/2/03.
33. 26-Aug-2003 FILED: DHL RECEIPT, #7713667776, to Lexis Nexis
34. 26-Aug-2003 FILED: FEDEX RECEIPT, #841380669029, to West Group.
35. 26-Aug-2003 FILED: GENERAL DISTRIBUTION LIST
36. 5-Sep-2003 FILED: RULE 21 A.R.C.A.P. APPLICATION FOR AWARD OF ATTORNEYS' FEES AND OUT-OF-POCKET EXPENSES (Appellees)
37. 5-Sep-2003 FILED: AFFIDAVIT IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEYS' FEES AND OUT-OF-POCKET EXPENSES (Appellees)
38. 5-Sep-2003 FILED: STATEMENT OF COSTS (Appellees)
39. 5-Sep-2003 FILED: ORDER - directing the clerk of the court to delete the following text on page 11, FURTHER directing the clerk of this court to add the following text in its place: for these reasons, A.R.S. 10-3304 did not apply to deprive appellees of standing to maintain this lawsuit. In light of our decision, we do not address appellees' additional arguments concerning the applicability of 10-3304. (Dept. A, A. Timmer, Presiding Judge)
40. 5-Sep-2003 FILED: LETTER, 9/5/03, to Mead Data Central, RE: ORDER amending this court's OPINION filed 8/26/03.
41. 5-Sep-2003 FILED: LETTER, 9/5/03, to West Publishing Co., RE: enclosed ORDER amending this court's OPINION filed 8/26/03.
42. 5-Sep-2003 FILED: DHL RECEIPT, #7713667732, to Lexis Nexis
43. 5-Sep-2003 FILED: FEDEX RECEIPT, #841380669073, to Opinions Clerk

**1 CA-CV 02-0403****SHAMROCK v. WAGON WHEEL****52 PROCEEDING ENTRIES**

44. 5-Sep-2003 FILED: GENERAL DISTRIBUTION LIST
45. 17-Sep-2003 FILED: OBJECTION TO APPELLEES' APPLICATION FOR AWARD OF ATTORNEYS' FEES AND OUT-OF-POCKET EXPENSES (Appellant)
46. 22-Sep-2003 FILED: REPLY TO OBJECTION TO APPELLEES' APPLICATION FOR AWARD OF ATTORNEYS' FEES AND OUT-OF-POCKET EXPENSES (Appellees)
47. 8-Oct-2003 FILED: ORDER - granting Appellees' application for attorneys' fees and out-of-pocket expenses in the total amount of \$8,899.18 (\$8,702.00 attorneys fees and \$197.12 out-of-pocket costs) FURTHER, granting Appellees taxable costs in the amount of \$234.35. FURTHER, denying Appellees' request for fees and
48. 10-Oct-2003 FILED: AMENDED ORDER - granting Appellees' application for attorney's fees and out-of-pocket expenses in the total amount of \$8,899.18 (8,702.00 attorneys' fees and \$197.18 out-of-pocket costs). FURTHER granting Appellees taxable costs in the amount of \$234.35. FURTHER denying Appellees' request for fees and costs as it related to post-judgment proceedings in the superior court. (Dept. A, A. Timmer, Judge)
49. 10-Oct-2003 FILED: LETTER, 10/10/03, Original MANDATE, Copy of Opinion, and Record, returned to clerk, Navajo County Superior Court.
50. 10-Oct-2003 FILED: LETTER, 10/10/03, to The Bureau of National Affairs, Inc. RE: Case mandated on 10/10/03, from Court of Appeals Div. One Phoenix.
51. 10-Oct-2003 FILED: LETTER, 10/10/03, West Publishing Co., RE: Opinion Filed 8/26/03.
52. 10-Oct-2003 FILED: LETTER, 10/10/03, to Mead Data Central, RE: Opinion filed 8/26/03.

**MASTER DISTRIBUTION LIST**

<b>1. SOLEPRAC</b> 22351 James L Tanner 1451 N Del Mar Mesa AZ 85203-3804	<b>2. FIRMATTY</b> 81690 Jonathan J Olcott Jonathan Olcott Attorneys PLLC 3401 North 32nd Street Phoenix AZ 85018	<b>3. FIRMATTY</b> 74173 William F Shore III Burdman & Shore PLLC Suite 535 2999 North 44th Street Phoenix AZ 85018
<b>4. JUDGE</b> 74396 Dale K Patton Jr, Judge Navajo County Superior Court Navajo County Complex 100 East Code Talkers Drive Holbrook AZ 86025-0668	<b>5. KEYPOSTN</b> 56021 Clerk Navajo County Superior Court Navajo County Complex 100 East Code Talkers Drive Holbrook AZ 86025-0668	