

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000034-001 DT

08/09/2012

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
K. Waldner
Deputy

SUNRISE MEADOWS ESTATES
COMMUNITY ASSOCIATION

CHANDLER W TRAVIS

v.

ERLINDA B ISIP (001)

MELANIE C MCKEDDIE

FINANCIAL SERVICES-CCC
REMAND DESK-LCA-CCC
SAN MARCOS JUSTICE COURT

RULING / REMAND

Lower Court Case No. CC2010-519258

The attorney for Defendant-Appellee Erlinda B. Isip (Isip) has filed with the San Marcos Justice Court a Motion To Dismiss Appeal noting Plaintiff-Appellant Sunrise Meadows Estates Community Association (SMECA) is attempting to appeal the November 7, 2011, Order denying SMECA's Motion for New Trial, and contending SMECA's notice of appeal filed November 23, 2011, was untimely. On April 27, 2012, this Court had filed a Minute Entry ordering Isip's attorney to file with this Court certain documents so this Court could determine when the November 7, 2011, Order denying SMECA's Motion for New Trial was actually filed. Since that time, this Court has received the following documents filed on the following dates:

May 18, 2012 Declaration of Anna (Kristi) Hageman. (Filed by Isip.)

June 6, 2012 Response to Declaration. (Filed by SMECA.)

June 12, 2012 Motion To Strike Response to Declaration. (Filed by Isip.)

June 15, 2012 Response to Motion To Strike. (Filed by SMECA.)

Within these documents, the parties dispute when the operative events in this matter happened. This Court concludes it must remand this matter to the San Marcos Justice Court for a determination of certain operative facts.

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The time to take an appeal is “within 14 calendar days after the **entry** of the order, ruling, or judgment appealed from” Rule 4(a), Superior Court Rules of Appellate Procedure—Civil (SCRAP–Civ.) (emphasis added). “Entry of judgment” means “a judgment which has been signed by the judge and **filed with the court.**” Rule 1(f), SCRAP–Civ. (emphasis added). Thus, in order to resolve a motion to dismiss an appeal as untimely, this Court would have to know **two** dates: (1) The date the “order, ruling, or judgment appealed from” was “filed with the court” and (2) the date the Notice of Appeal was “filed with the court.”

IT IS THEREFORE ORDERED remanding this matter to the San Marcos Justice Court.

IT IS FURTHER ORDERED the Justice of the San Marcos Justice Court shall issue and forward to this Court a Ruling/Order answering the following questions:

1. In general, what action does the Court/Clerk of the San Marcos Justice Court take to “file [] with the court” an “order, ruling, or judgment”?

2. In general, what action does the Clerk of the San Marcos Justice Court take to show when an “order, ruling, or judgment” was actually “filed with the court” (file stamp, handwritten docket entry, computerized docket entry, some other indication)?

3. In general, what action does the Clerk of the San Marcos Justice Court take to advise the parties that an “order, ruling, or judgment” was actually “filed with the court” so that a party who wishes to appeal will know when the 14-day period has begun to run?

4. In this particular case, what action did the Court/Clerk of the San Marcos Justice Court take to “file [] with the court” the November 7, 2011, Order denying SMECA’s Motion for New Trial?

5. In this particular case, what action did the Clerk of the San Marcos Justice Court take to show when the November 7, 2011, Order denying SMECA’s Motion for New Trial was actually “filed with the court”?

6. In this particular case, what action did the Clerk of the San Marcos Justice Court take to advise the parties that the November 7, 2011, Order denying SMECA’s Motion for New Trial was actually “filed with the court”?

7. In this particular case, on what date was the Notice of Appeal “filed with the court”?

IT IS FURTHER ORDERED the Justice of the San Marcos Justice Court may take any actions deemed appropriate to answer the above questions, such as holding a hearing or obtaining affidavits.

IT IS FURTHER ORDERED the Justice of the San Marcos Justice Court may include any other information deemed appropriate for this Court to resolve the Motion To Dismiss Appeal.

IT IS FURTHER ORDERED the Justice of the San Marcos Justice Court shall cause to be filed with the San Marcos Justice Court a signed copy of the court’s Ruling/Order.

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IT IS FURTHER ORDERED, if either party disagrees with the findings of the Justice of the San Marcos Justice Court and wishes to appeal that ruling to this Court, that party will have to file a separated Notice of Appeal within 14 days of the date the Ruling/Order of the Justice of the San Marcos Justice Court is filed with that court.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen

THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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