

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2012-000034-001 DT

01/14/2013

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
J. Eaton
Deputy

SUNRISE MEADOWS ESTATES
COMMUNITY ASSOCIATION

CHANDLER W TRAVIS

v.

ERLINDA B ISIP (001)

MELANIE C MCKEDDIE

REMAND DESK-LCA-CCC
SAN MARCOS JUSTICE COURT

MINUTE ENTRY

On December 14, 2011, attorneys for Defendant-Appellee Erlinda B. Isip (Isip) filed with the San Marcos Justice Court a Motion To Dismiss Appeal, noting Plaintiff-Appellant Sunrise Meadows Estates Community Association (SMECA) was 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 December 21, 2011, attorneys for SMECA filed a Response to Motion To Dismiss Appeal, contending the Clerk of the San Marcos Justice Court did not file that Order until November 10, 2011, thus the November 23, 2011, Notice of Appeal was timely. On August 9, 2012, this Court issued its Ruling remanding this matter to the San Marcos Justice Court so the Justice of the Peace could answer certain questions about that court's procedure in general and that court's procedure in this particular case. On October 18, 2012, Justice of the Peace R.I. Karp filed with this Court Findings of Fact. On December 18, 2012, SMECA filed a Supplemental Response to Motion To Dismiss Appeal.

I. FACTUAL BACKGROUND.

As noted above, on December 14, 2011, Isip filed with the San Marcos Justice Court a Motion To Dismiss Appeal, which is a procedural motion that must be sent to the superior court for ruling. A lower court does not sent the record to the superior until the appeal is perfected, which includes the filing of Briefs (Appellate Memoranda), thus a superior court must rule on a procedural motion without the benefit of the record from the lower court. As a result, this Court has attempted to discern the operative filing dates from the material submitted to this Court.

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SMECA filed its notice of appeal on November 23, 2011. 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). The applicable statute requires a justice court to do the following:

The judgment shall be recorded at length in the docket and signed by the justice of the peace. The judgment shall clearly state the determination of the rights of the parties, who shall pay the costs, and shall direct issuance of such process as necessary to carry the judgment into execution.

A.R.S. § 22–242. Justice Karp signed the Judgment on November 7, 2011, and Clerk “MLR” mailed a copy of the Judgment to the parties on November 10, 2011. Attached to Isip’s Motion To Allow Limited Reply to Motion To Dismiss, filed January 9, 2012, with the Justice Court is Exhibit “a,” which is a copy of the Justice Courts Case Information–Case History. Under “Judgments” on that Case History are two entries for November 7, 2011, one for costs and one for attorney fees. Attached to the Declaration of Anna (Kristi) Hagemari, filed in this Court on May 18, 2012, by Isip is a copy of the Calendar Events and Hearings from the San Marcos Justice Court, which has an entry showing an “Event” of a “NEW TRIAL” and showing it was denied November 7, 2011. The Event Date is listed as 10/07/2011, which is apparently a typographical error and probably should read 11/07/2011.

On June 6, 2012, SMECA filed a Response to Declaration, and attached to that is a Declaration of Melissa Lavonier. Attached to that is a screen shot of the computer system details, and based on that, Ms. Lavonier stated Monica inputted the Ruling into the computer system on November 10, 2011.

As noted above, on October 18, 2012, Justice of the Peace R.I. Karp filed with this Court Findings of Fact, which included the following:

In general, the court staff of the San Marcos Justice Court does not take any action to “file with the court” an “order, ruling or judgment” i.e. there is no file stamp, handwritten docket entry, computerized docket entry, etc. that constitutes such a filing.

(F. of F. #3.)

Although one of the court staff of the San Marcos Justice Court does input data to iCIS, this action is an informational and administrative function, not a filing function, of the Justice Court.

(F. of F. #4.)

In the San Marcos Justice Court, when a party desires to file an appeal, the date on which the Justice of the Peace signs the “order, ruling or judgment” is the date that begins the 14 calendar days period in which a party may file a Notice of Appeal.

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(F. of F. #5.)

As described in the preceding Findings, in this particular case and all other cases, the San Marcos Justice Court staff does not take any action to “file with the court the November 7, 2011, Order denying SMECA’s Motion for New Trial” because the Justice of the Peace’s signature is the only action that constitutes a filing of the Order denying SMECA’s Motion for New Trial.

(F. of F. #7.)

As described in the preceding Findings, in this particular case and all other cases, the San Marcos Justice Court staff does not take any action to “show when the November 7, 2011, Order denying SMECA’s Motion for New Trial was actually filed with the court” because the Justice of the Peace’s signature is the only action that constitutes a filing of the Order denying SMECA’s Motion for New Trial.

(F. of F. #8.) On December 18, 2012, SMECA file a Supplemental Response to Motion To Dismiss Appeal.

II. DISCUSSION.

As noted above, “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). The applicable statute requires a justice court to do the following:

The judgment shall be ***recorded*** at length in the docket and signed by the justice of the peace. The judgment shall clearly state the determination of the rights of the parties, who shall pay the costs, and shall direct issuance of such process as necessary to carry the judgment into execution.

A.R.S. § 22–242 (emphasis added). It is clear from the above that Justice Karp signed the Judgment on November 7, 2011. What is not clear is whether the judgment was either “filed with the court” or “recorded at length in the docket.” This raises the following possible scenarios:

1. The Judgment/Order was never filed or recorded, thus there is in effect no final order of the court that is appealable.

2. Something was done with the Judgment/Order that has the legal effect of having the Judgment/Order filed or recorded, but that was done on or before November 8, 2011, thus the Notice of Appeal filed November 23, 2011, was untimely, and therefore this Court does not have jurisdiction in this appeal.

3. Something was done with the Judgment/Order that has the legal effect of having the Judgment/Order filed or recorded, and that was done on or after November 9, 2011, thus the Notice of Appeal filed November 23, 2011, was timely and this Court does have jurisdiction in this appeal.

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Because this Court does not have the record in this matter, this Court is not inclined to dismiss the appeal at this point, and thus will deny Isip's Motion To Dismiss Appeal. This denial will be, however, without prejudice to Isip's raising on appeal the contention that the Notice of Appeal was untimely and thus this Court does not have jurisdiction. If Isip does raise that issue on appeal, this Court will have the complete Record on Appeal and will have the attorneys' arguments based on that complete record, and thus will be in a better position to address that issue.

III. CONCLUSION.

This Court considers the record before it not sufficiently complete to make a final determinative ruling on Isip's Motion To Dismiss Appeal, and thus denies that Motion without prejudice to Isip's raising on appeal the contention that the Notice of Appeal was untimely and therefore this Court does not have jurisdiction in this appeal.

IT IS THEREFORE ORDERED denying Isip's Motion To Dismiss Appeal without prejudice to Isip's raising on appeal the contention that the Notice of Appeal was untimely and thus this Court does not have jurisdiction in this appeal.

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