

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2019-000424-001 DT

03/03/2020

HONORABLE DOUGLAS GERLACH

CLERK OF THE COURT
J. Eaton
Deputy

JOYCE H MONSANTO

JOYCE H MONSANTO
10907 W EDGEWOOD DR
SUN CITY AZ 85351

v.

FOUR SEASONS AT THE MANOR
HOMEOWNERS ASSOCIATION (001)

JONATHAN D EBERTSHAUSER

JUDGE GERLACH
OFFICE OF ADMINISTRATIVE
HEARINGS
REMAND DESK-LCA-CCC

MINUTE ENTRY

Relying on Rule 11 of the Arizona Rules of Civil Appellate Procedure, appellant Joyce Monsanto has filed a request to "augment" the record on appeal. This is a case in which an appeal has been taken from the decision of an administrative agency. As such, the rules applicable to this matter are the Rules of Procedure for Judicial Review of Administrative Decisions and not the Arizona Rules of Civil Appellate Procedure. Accordingly, the motion is denied.

That said, this court is in receipt of transcripts from hearings conducted on May 30, 2019, and October 21, 2019, both of which appear to have been prepared by certified court reporters. The first page (after the cover page) of the May 30 transcript that has been submitted to the court begins with a question directed to Monsanto. In other words, what has been submitted is not a

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complete transcript of the May 30 hearing, and therefore, it will not be treated as part of the record on appeal.¹ The October 21 transcript appears to be complete, and therefore, it will be considered part of the record on appeal.

SO ORDERED.

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.

¹ In any event, the May 30 transcript is not relevant. The Department of Real Estate granted Monsanto's request for a rehearing, which resulted in a second evidentiary hearing that was held on October 21. As such, what transpired during the May 30 hearing is of no consequence. What has happened in this case is no different from a case in which a judgment is reversed and a new trial ordered, the effect of which is to nullify the judgment and place the parties in the position of no trial having taken place. *United States v. Ayres*, 76 U.S. (9 Wall.) 608, 610 (1869) (dismissing an appeal from a judgment that had been followed by an order for a new trial: "[I]t is quite clear, that the order granting the new trial has the effect of vacating the former judgment, and to render it null and void, and the parties are left in the same situation as if no trial had ever taken place in the cause"); *United States v. Recio*, 371 F.3d 1093, 1105 n.11 (9th Cir. 2004) (same).