

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2024-000143-001 DT

06/21/2024

HONORABLE JULIE A. LAFAVE

CLERK OF THE COURT  
S. Motzer  
Deputy

PALM VALLEY COMMUNITY ASSOCIATION    TREVOR L ASH

v.

CYNTHIA A MCALISTER (001)  
MARK A MCALISTER (001)

WILLIAM R RICHARDSON

COMM. LAFAVE  
REMAND DESK-LCA-CCC  
WHITE TANK JUSTICE COURT

MOTION TO RECONSIDER GRANTED-RULING JUDGMENT AFFIRMED

White Tank Justice Court Case No. CC2015-095536

On May 14, 2024, this Court entered its Ruling reversing the trial court's granting of a default Judgment against Appellant **MARK A. MCALISTER**. On May 24, 2024, Appellee filed a Motion for Rehearing ("Motion"). Appellee properly argued that the Court vacated the Ruling based on a *de novo* review of Arizona Rule of Civil Procedure ("ARCP") Rule 4.1(1). *See* Motion.

Appellee's seeks reconsideration of the Ruling arguing this Court applied an incorrect version of the rule. *Id.* While the Ruling is being vacated on the sole issue of that misapplication, the procedural history and discussion remain salient and are incorporated herein. The case was filed on May 28, 2015. *See* Complaint. At that time, ARCP Rule 4.1(1) read in relevant part as follows:

(1) Service by Publication; Return. Where the person to be served is one whose residence is unknown to the party seeking service but whose last known residence address was within the state, or has avoided service of process, and service by publication is the best means practicable under the circumstances for providing notice of the institution of the action, then service may be made by publication in accordance with the requirements of this subpart. ..*The party or officer*

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*making service shall file an affidavit showing the manner and dates of the publication and mailing, and the circumstances warranting the utilization of the procedure authorized by this subpart, which shall be prima facie evidence of compliance herewith. A printed copy of the publication shall accompany the affidavit. If the residence of the party being served is unknown, and for that reason no mailing was made, the affidavit shall so state.*

As noted in the Ruling, the current version of ARCP Rule 4.1(l) requires a motion prior to effectuating service. The earlier version did not. The record indicates Appellee complied with the requirement to serve by publication and presented valid argument in its Motion for Default and Affidavit of Service to satisfy the requirements in effect at the time. The trial court considered those arguments and found service by publication was proper.

On June 11, 2024, Appellant filed his Response to Motion for Rehearing/Reconsideration (“Response”). It argues only that there was a change in the law and provides the Court with the basis for that change and rationale for same. *See* Response. In fact, this case may well be the type that led to the very change the Response outlines. Appellant argues that under subsequent case law, service by publication would still not have been sufficient. *Id.* Unfortunately, the case relied upon also was not authored prior to the current litigation and thus is not authoritative. In addition, the briefing provided to the trial court in the matter indicate Appellee had made diligent efforts at service, and the trial court, in its discretion, agreed.

In 2015 when this case was filed and served, Appellee complied with the law. The Ruling applied an erroneous later version in its decision and therefore this Court must reverse the Ruling to comply with the law as it applied at the time.

Accordingly,

**IT IS THEREFORE ORDERED** granting Appellee’s Motion.

**IT IS FURTHER ORDERED** affirming the Judgment of the White Tanks Justice Court.

**IT IS FURTHER ORDERED** remanding this matter to the White Tanks Justice Court.

**IT IS FURTHER ORDERED** denying Appellant’s Application for Attorneys’ Fees and Costs as he is not the prevailing party on appeal.

**IT IS FURTHER ORDERED** Appellee file any request for Fees and Costs pursuant to Superior Court Rule of Appellate Procedure Rule 13 within ten days of this Order.

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



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THE HON. JULIE A. LAFAVE  
Judicial Officer of the Superior Court

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.