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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

The Housing Department of the)	
Pascua Yaqui Tribe of Arizona,)	
A federally recognized Tribe.)	
Plaintiff)	NO. <u>CV-01-026</u>
)	
VS.)	
Gonzales Jesus William)	ORDER
<u>Respondent</u>)	

The trial Court on January 8, 2001 awarded judgement by default to the Plaintiff in the above matter.

The Court finds that the Respondent filed an appeal of the trial Court's judgment with the Court of Appeals; that the Court of Appeals on February 26, 2001 issued an Interim Order ordering the Respondent-Appellant Jesus William Gonzales to tender to the Clerk of the Appeals Court the amount of \$1000.00 as bond due before the close of business on March 5, 2001 and also ordered the Respondent-Appellant to submit to the Clerk of the Court an Amended Notice of Appeal regarding errors of fact or the mistakes in Conclusions of Law due on March 5, 2001 in the event that the bond was posted and further ordered that failure of the Respondent-Appellant to submit the bond and amended notice by the deadlines would result in the appeal being deemed abandoned and the matter would be remanded back to the trial Court for execution of the judgment issued on January 8, 2001 ; that the trial Court has been informed by the Clerk of the Appeals Court that the Respondent-Appellant has failed to abide by the Interim order as he has failed to post the bond and has failed to submit the Amended Notice of Appeal; that the trial Court will issue it's order for execution of the trial Court's order as Respondent-Appellant has failed to abide by the Interim order issued by the Court of Appeals; that the Court will set a date for the Respondent and his family to vacate the premises.

IT IS ORDERED THAT the trial Court judgment issued on January 8, 2001 shall be fully executed and the Respondent and family shall vacate the premises and shall surrender the premises located at 5202 West Toroko Vampo on or by **MARCH 15, 2001** and the Respondent shall be liable for any an all costs of the repairs for damages incurred by the Respondent that go beyond normal wear and tear, reasonable attorney' fees and Court cost, and back payments owed to the Pascua Yaqui Housing department.

SO ORDERED THIS 8th DAY OF March, 2001.
Cornelia J. Co
Judge, Pascua Yaqui Tribal Court

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CC:

Date: 3/8/01

Plaintiff/Petitioner Defendant/Respondent Other *Housing Authority*

CMW
Clerk

**IN THE PASCUA YAQUI COURT OF APPEALS
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

Docket No. CA-01-001

The Housing Department of the)
Pascua Yaqui Tribe of Arizona,)
Complainant-Appellee)
v.)
Jesus William Gonzales,)
Respondent-Appellant)

INTERIM ORDER

This Court having received a Notice of Appeal in the above-captioned case, and this Court having considered the merits of the claim raised therein, hereby issue this Interim Order, to serve the interests of justice pending a full consideration of this matter.

The Notice of Appeal argues that the basis for the appeal is that Jesus Gonzales was “not properly notified” of the date and time of the hearing on the Complaint for Forcible Detainer which resulted in the Order of January 8, 2001.

This allegation submitted by the appellant that he did not received proper notice of the trial court hearing is starkly contradicted by his own Request to the Court tendered on January 5, 2001, in which he requests a continuance of the hearing set for January 8 “to give [him] more time to look for an attorney”, and, by the trial court’s finding “that the Respondent was duly served notice of today’s hearing as the procedures for service required by the Law and Order Code were followed”.

The claim that a person was not properly notified of a hearing, ordinarily, will cause an instant reversal by an appellate court of a trial court decision. But with this contradictory evidence readily available to us, we are hesitant to act abruptly. The Respondent-Appellant cited no errors in the findings of fact entered by the trial court. He does not point out any mistakes the court might have made in entering its conclusions of law.

In spite of the apparent inconsistency in the record, this Court considers the loss of home to be a very serious matter and is willing to give great weight to the allegations set forth in a Notice of Appeal. We also take into account the appellant’s efforts to appeal the matter *pro se* and without the assistance of legal counsel. But we caution that the appellate process should not be used for the mere purposes of delay, harassment or evasion of legal process at the trial court level.


Accordingly, we order the following:

1. The Respondent-Appellant Jesus William Gonzales must tender to the Clerk of the Court an amount of \$1,000. in cash or cashier’s check, as an appellate bond securing the sincerity of his appeal, such amount due on or before the close of business on March 5, 2001;

2. In the event the bond mentioned above at (1) is not submitted by the deadline given therein, this appeal shall be deemed abandoned, and the matter shall be remanded to the trial court for execution on the judgment entered by the Order of January 8, 2001;
3. If a bond is posted in accordance with (1) above by the deadline set therein, the Respondent-Appellant shall have until March 5, 2001, by the close of business, to submit to the Clerk of the Court an Amended Notice of Appeal setting forth with particularity the errors of fact or the mistakes in the conclusions of law made by the trial court in its order of January 8, 2001;
4. If the Respondent-Appellant fails to submit an Amended Notice of Appeal by the deadline specified in (3) above, this appeal shall be deemed abandoned, and the matter shall be remanded to the trial court for execution on the judgment entered by the Order of January 8, 2001;
5. In addition to the requirements set forth above, the Respondent-Appellant shall refrain from any and all contact¹ with those persons (and their families) who had filed any of the complaints used as a basis to initiate the Complaint for Forcible Detainer;
6. The stay of execution requested by the Respondent-Appellant is hereby granted, however such stay shall dissolve by the terms of this Order if:
 - (A) the Respondent-Appellant fails to pay the appellate bond cited above at (1);
 - (B) the Respondent-Appellant fails to submit an Amended Notice of Appeal as cited in (3) above;
7. If the Respondent-Appellant violates the requirements of (5) above, this Court shall consider whether to impose sanction upon him for contempt of this Order, or, whether a dismissal of this appeal may be appropriate.

IT IS SO ORDERED this 26th day of February, 2001.


 Richard A. Monette, Chief Justice


 Carolyn Abeja, Associate Justice

TELEPHONICALLY APPROVED


 Carey N. Vicenti, Associate Justice

¹ For the purposes of this Order “contact” shall include touching, the use of force, verbal communication in any form, gestures, or staring.

1 Jesus Gonzales
5202 W. Toroko Vampo
2 Tucson, AZ 85746

3 Pro Per

APPELLATE COURT
FILED ONE AND TIME
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CA-01-001
cmw

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5 IN THE APPELLATE COURT OF THE YAQUI NATION
6 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

7 GONZALES, JESUS,
8 Appellant,

9 Vs.

10 PASCUA YAQUI TRIBE DEPARTMENT
11 OF HOUSING,
12 Appellee

)
)
) Case No.: CA-01-NEW
)
) MOTION FOR IMMEDIATE STAY OF
) EXECUTION

13
14 Pursuant to section 1.21 of the Rules of Appellate
15 Procedure, Appellant requests that this Court give its order to
16 stay the trial Court's eviction order of January 8, 2001 pending
17 resolution of this case. This stay of execution will protect the
18 interests of the parties and the conditions for a just
19 resolution of the case since possession of the residence is at
20 issue. Appellant filed a notice of appeal on January 19, 2001.

21 RESPECTFULLY SUBMITTED this 22nd day of January 2001.

22
23 
24 Jesus Gonzales
Appellant

IN THE APPELLATE COURT OF THE YAQUI NATION

YACQUI TRIBAL COURT
FILED DATE AND TIME

Housing Department of the
PASCUA YAQUI TRIBE OF ARIZONA)
Appellant or Petitioner,)
Vs.)
GONZALES, JESUS WILLIAM)
Appellee or Respondent.)

01 JAN 22 AM 11:46

DOCKET NO. CV-01-026

CLERK gm

No. CV-01-026

NOTICE OF APPEAL

1. If the appeal is from the entire judgment:

"Notice is hereby given that the above named Jesus Gonzales RESPONDENT appeals to the Appellate Court of the Yaqui Nation from the judgment entered in this action by PASCUA YAQUI TRIBAL COURT on the 8th day of JANUARY 2001.
(Name of the court or agency)

2. If the appeal is from part of the judgment:

"Notice is hereby given that the above named Jesus Gonzales appeals to the Appellate Court of the Yaqui Nation from the following part of the judgment entered by the PASCUA YAQUI TRIBAL COURT on the 19th day of JANUARY, 2001.
(Name of the court or agency)

2001. (Specify the part of the judgment appealed from here.)

I Appeal the judgement dated January 8th 2001 entered by default. I was not properly notified I appeal the judgement to vacate the premises AND surrender the premises located at 5202 W. Toroko Vampo by January 22 2001 the court ruled I Jesus William Gonzales was duly notified I was not given a court date or notified

Jesus Gonzales
Name of the Attorney of Party taking appeal if not represented by Attorney

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IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

The Housing Department of the)
Pascua Yaqui Tribe of Arizona,)
A federally recognized Tribe.)
Plaintiff)
VS.)
Gonzales Jesus William)
Respondent)

NO. CV-01-026

ORDER

Hearing on the Forcible Detainer Complaint was held on this 8th day of January, 2001. Michael Breeze appeared in behalf of the Plaintiff; the Respondent failed to appear.

The Court finds that jurisdiction lies within this Court in that the Respondent is an enrolled member of the Pascua Yaqui Tribe and the home that is in dispute is within the exterior boundaries of the Pascua Yaqui Indian Reservation and the contract was entered into within the exterior boundaries of the Pascua Yaqui Indian Reservation; that the Respondent was duly served notice of today's hearing as the procedures for service required by the Law and Order Code were followed and that the Respondent submitted a request for continuance to allow him time to contact legal counsel; that the Court was going to address the request prior to the trial hearing and that the Respondent failed to check back with the Court in regards to his request; that the Plaintiff moves to proceed with the hearing as the Respondent has had contact with an attorney since this matter was initiated prior to the Court hearing; that the Court will proceed with the hearing as the Respondent has been afforded due process by the Housing department and by the Court and he has been kept informed of the proceedings since the initiation of this matter; that after hearing sworn testimony the Court finds that the Respondent did enter into a contract with the Pascua Yaqui Housing Department for the home located at 5202 West Toroko Vampo, that the Respondent and guests did breach the contract by engaging in activity that goes against Paragraph 8(1) as defined in paragraph 14.1(a,d) and 14.4 of the Low Rent Lease Agreement, that the Respondent is in breach of the contract as he has not maintained the home as the home is in disrepair and will need to be repaired by the Housing department; that efforts to resolve the issues were attempted by various Housing department staff to no avail including termination hearings, etc. and it appears to the Court that any further efforts to resolve these issues will be to no avail; that the Plaintiff moves for judgment by default and moves the Court to award judgment to the Plaintiff in the form of the Housing department taking possession of the home, restitution for damages and any and all repairs made to the home that go beyond normal wear and tear, reasonable attorney's fees and Court cost including all back payments owed by the tenant; that the Court will grant judgement by default and the Plaintiff will vacate the premises within two weeks.

IT IS ORDERED THAT judgment for the Plaintiff is entered by default as the Respondent failed to appear for the hearing after being duly notified and the Respondent shall

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vacate the premises and surrender the premises located at 5202 West Toroko Vampo on or by **January 22, 2001** and the Respondent shall be liable for any and all cost of the repairs for damages incurred by the Respondent that go beyond normal wear and tear, reasonable attorney's fees and Court cost, and back payments owed to the Pascua Yaqui Housing department.

SO ORDERED THIS 8th DAY OF January, 2001.

Cornelia S. G.
Judge, Pascua Yaqui Tribal Court

CC:
Date: 01-09-01
 Plaintiff/Petitioner Defendant/Respondent Other PYHA
SM
Clerk