

No. CA-02-001

Pascua Yaqui Court of Appeals

Frances Baltazar, Appellant/Respondent

v.

Dolores Lopez, Alma Lopez (Lespron), and
Daniel Lopez, Appellees/Petitioners

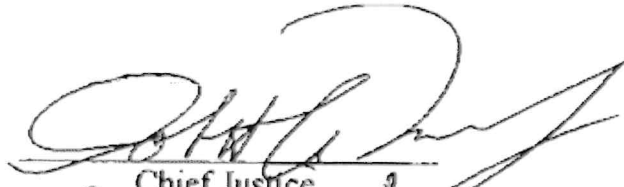
ORDER

Delores Lopez, Alma Lopez (Lespron), and Daniel Lopez, Pro se Petitioner, Tucson, Arizona
Amanda J. Sampson, Esq., Tucson, Arizona, for the Respondent

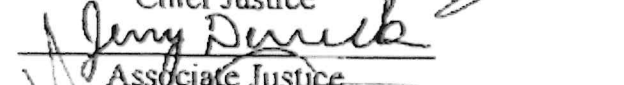
This Court reviewed the Pro se Petitioners' "Motion for Reconsideration" of its final decision in this case dated September 14, 2006 and finds no merit in the petition to grant the motion. The Petitioners' claim of ineffective assistance of counsel at the oral argument does not apply in a civil case; an ineffective assistance of counsel claim applies only in criminal cases. Moreover, the Petitioners chose their own lawyer so they cannot complain about counsel's performance after the case has been decided. Nonetheless, we find that John Crow, Petitioners' appellate counsel, provided quality services to the Petitioners at oral argument. The 2005 Land Code (Title 18) that Petitioners want this Court to use to rule in their favor does not apply to this case because the Land Code is not part of the trial court record and the trial court entered its decision several years before the tribal council adopted the Land Code. The Petitioners' claim that they should be awarded the land on which the house sits has no basis in law because the subject land is federal trust land; land held in trust by the federal government for the Pascua Yaqui Tribe.

Accordingly, the Petitioners' "Motion for Reconsideration" of this Court's final decision dated September 14, 2006 is denied.

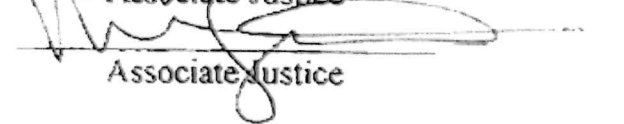
So ORDERED this 26th day of July, 2007.



Chief Justice



Associate Justice



Associate Justice

1 PASCUA YAQUI LEGAL SERVICES
Amanda J. Sampson
2 AZ Bar No. 022992
7454 S. Camino Rahum
3 Tucson, AZ 85757
(520) 879-5750 TEL
4 (520) 879-5752 FAX

CA-02-001
CLERK AC

5 *Attorneys for Appellant*

6
7 **IN THE PASCUA YAQUI COURT OF APPEALS**
8 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**
9

10 FRANCES BALTAZAR,) Case No.: No. CA-02-001
11)
Appellant,)
12 vs.) OPPOSITION TO MOTION FOR
RECONSIDERATION
13 DOLORES LOPEZ, ALMA LOPEZ)
14 (LESPRON), & DANIEL LOPEZ,)
15 Appellee)
16

17 Comes now Frances Baltazar, Appellant, by and through her counsel undersigned, and
18 respectfully opposes Appellee's MOTION FOR RECONSIDERATION for the following reasons:

- 19 1. **Appellee's cannot rely on the doctrine of "ineffective assistance of counsel" in a civil**
20 **matter.**
21 The concept of "ineffective assistance of counsel" applies only in criminal cases. If a claim
22 exists based upon counsel's performance, that matter would be between Appellee and her retained
23 counsel and does not constitute grounds for reconsideration. The acts and omissions of Appellee's
24 counsel, if any, do not form grounds for reconsideration of this Court's ruling. As this Court knows,
25 the Court has made an independent review of the record below and nothing beyond that record
could properly be argued to the Court. Therefore the specific complaints raised by Appellee do not

1 show poor performance by their attorney, but merely indicate of lack of understanding of the
2 appellate process. Appellees are unhappy with the decision rendered by this Court, and seek to
3 blame their attorney.

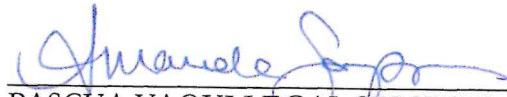
4 **2. The new Land Code does not apply to this case, and is not part of the record on**
5 **appeal.**

6 Appellees seem to argue that this Court should have based its decision on the 2005 Land Code
7 adopted by the Pascua Yaqui Tribe in reaching its Memorandum Decision in this case. The 2005
8 Land Code does not apply to this case nor should it control the decision by this Court because the
9 2006 Land Code: 1) was adopted in 2005 and the Tribal Court rendered its decision in 2001; 2) was
10 never a part of the record on appeal; 3) was not retroactive in application; and 4) even if it was
11 retroactive in application, the correct legal result would be identical.

12 **3. Appellee's request to remand this case for further proceedings in Tribal Court to**
13 **address the "assigned rights of possession to the land upon which the house sits" is**
14 **without merit and should be denied.**

15 Appellee attempts to needlessly prolong these proceedings by alleging that in spite of this
16 Court's ruling she retains the right to possession of the land upon which the house sits. There is no
17 legal basis to support this contention because the land lies within the external boundaries of the
18 Pascua Yaqui Reservation and is held as trust land by the federal government. The Pascua Yaqui
19 Tribe Land Department does maintain maps that accurately indicate which party has a legal right to
20 occupy each parcel of land. Whether or not the Land Department had a map that reflected an
21 assignment based upon an erroneous ruling of the Trial Court does not constitute a ground for this
22 court to reconsider its ruling. The interest in the house, which this Court granted to the Appellant, is
23 the only interest that can be conveyed.

24 Respectfully submitted for Appellant this 27th day of October, 2006.
25



PASCUA YAQUI LEGAL SERVICES

7454 S. Camino Rahum

Tucson, AZ 85757

(520) 879-5750 TEL

(520) 879-5752 FAX

Amanda J. Sampson

AZ Bar No. 022992

1
2
3
4
5
6 Original of the foregoing filed
and a copy mailed this

7 27th day of October,
2006 to:

8 Alma Lespron

9 7650 S. Camino Huivisim

Tucson, AZ 85757

10 John Crow, Esq.

11 Sun Station PO Box 42288

Tucson, Arizona 85733

12 By  _____
13
14
15
16
17
18
19
20
21
22
23
24
25

1 **PASCUA YAQUI NATION APPELLATE COURT**

RECEIVED
MAY 2 11 44 AM '06
DOCKET NO. CA-02-001
PJM

2
3
4 In the matter of: : Case # CA-02-001
5 Dolores Lopez, Daniel Lopez, Alma :
6 Lopez (Lespron), :
7 Appellees, :
8 and :
9 Frances Baltazar, :
10 Appellant :

MOTION FOR RECONSIDERATION

11
12 Dolores Lopez, Alma Lopez (Lespron), Daniel Lopez, Appellees pro se,
13 Tucson, Arizona
14
15 Amanda Sampson, Esq., Pascua Yaqui Legal Services, for the Appellant
16

17 **MOTION TO RECONSIDER OR MODIFY THE RULING**

18
19 1. The Pascua Yaqui Court of Appeals needs to vacate its order of
20 September 14, 2006 for the following reasons:
21

22
23 A. The appellees did not receive a fair appeal hearing on June
24 30, 2006. Appellees retained Counsel John Crow to
25 represent them before the Court of Appeals. Current Tribal
26 Court rules require that Attorneys practicing law before
27 the Pascua Yaqui Tribal Courts, including the Pascua Yaqui
28 Court of Appeals, must be certified to practice law by the
29 Pascua Yaqui Tribal Courts. The Pascua Yaqui Tribal Courts
30

1 provides a list of attorneys who are certified to practice
2 law within the Pascua Yaqui Indian Reservation. The list
3 included Mr. John Crow. When Appellees attempted to find
4 an attorney on the list for the Appellate hearing scheduled
5 for June 30, 2006 (the attorney they had previously used
6 was no longer certified to practice in the Pascua Yaqui
7 Tribal Courts), Mr. Crow was the only attorney of the six
8 that was available to represent the appellees. Mr. Crow
9 did not properly represent the appellees.
10

11
12 B. The Appellate Court failed to consider in its decision the
13 Powers of the Tribal Council Article VI Section 1 G, which
14 states, "To sell and convey, lease and grant interests in
15 tribal lands and property...". and Section 1 T "To enact
16 ordinances, subject to applicable federal law and this
17 constitution, regulating activities including but not
18 limited to, civil actions, crimes, law enforcement,
19 gambling and gaming, zoning, business, signs, land use,
20 environmental quality, housing development and improvement,
21 uniform building codes and enforcement,..." And Article VI
22 Section 2, "Those powers specifically set forth in Article
23 VI, Section 1 of this constitution are expressly and solely
24 entrusted to the tribal council and any action, sale,
25 lease, conveyance, enactment, acquisition contract
26 obligation, incorporation, purchase, removal of lawmaker,
27 appropriation or loan entered into on behalf of the Pascua
28
29
30

1 Yaqui Tribe by any other entity or individual shall be
2 considered void or voidable." The above mentioned Article
3 and Sections gives the Tribal Council jurisdiction to
4 resolve property disputes.
5

6
7 C. The Appellate Court did not consider the Land Code,
8 approved in 2005, which provides for transfer of interests.
9 The approval of the Policies and Procedures in June of 2005
10 consisted of the publishing of a map from May 16, 2005 to
11 November 16, 2005 recommending that interests in parcel
12 ownership be reviewed and the filing of a petition to Show
13 Cause be filed if a member believed that the information on
14 the map was incorrect. The publishing of the map showed
15 Dolores Lopez as rightful owner of interest in the land on
16 which the house in question sits. Ms. Baltazar did not
17 file a petition to show cause.
18
19

20
21 D. The constitutional provisions and the Land Code were not
22 presented to the Appellate Court by reason of ineffective
23 assistance of counsel of appellees.
24

25
26 E. Had the information provided in B) & C) been presented at
27 trial or to the Appellate Court, the Appellate Court would
28 have found for appellees or in the alternative remanded the
29 matter for a new trial or reconsideration taking into
30

1 account the provisions of the Pascua Yaqui Constitution and
2 the Land Code.

3
4 F. Should the Appellate Court deny the motion for
5 reconsideration, appellees ask the Court to clarify its
6 judgment by declaring that while appellant should be
7 awarded the house in question, the appellees are properly
8 and solely assigned rights of possession to the land upon
9 which the house sits.
10

11
12 G. Furthermore, the request to change the designation was
13 submitted by Ms. Baltazar, not Mr. or Mrs. Alvarez, even
14 though both were still alive. It was received by former
15 Tribal Attorney Violet Lui-Frank and taken to former Tribal
16 Secretary Alma Lespron. It was indeed acted upon and it was
17 Ms. Baltazar who failed to complete the Tribal Council
18 Agenda Procedure process by not selecting a date to be
19 heard by the Tribal Council. In addition, there are other
20 ways to approach the tribal council. Ms. Baltazar was aware
21 of this as she had previously approached the Tribal Council
22 on other issues. Finally, Lespron's term was over in June
23 of 2000, Mr. Alvarez was still alive.
24
25
26
27

28 In support of the request 1.A through G above, Appellees argue to the
29 court:
30

- 1 a) See the attached copy of the list of attorneys provided
2 by the Pascua Yaqui Tribal Courts.
- 3 b) See the attached copy of the Pascua Yaqui Constitution
4 which provides jurisdiction to the Pascua Yaqui Tribal
5 Council.
- 6 c) See the attached copy of the Land Code.
- 7 d) Mr. Crow did not argue the facts or the law.
- 8 e) Competent counsel would have resulted in a different
9 ruling.
- 10 f) The current land code assigns the property in which the
11 house sits to Dolores Lopez.
- 12 g) It was Ms. Baltazar that approached a Tribal Attorney,
13 not Mr. or Mrs. Alvarez. Ms. Baltazar did not approach
14 the Tribal Secretary, Chairman, or any Council member.
15 The Tribal Council can be and could have been approached
16 at any meeting as Ms. Baltazar had previously done
17 within Ms. Lespron's term. Furthermore, Lespron's term
18 was over in June 2006. Mr. Alvarez was still alive and
19 he could have made the request before Council at any
20 time before his death.

21

22 2. The scope of the appellate court was not consistent with standard
23 judicial practices. The Appellee's Counsel, John Crow, stated that it
24 was not necessary to request a continuance in order to better prepare
25 for the quickly arriving hearing because Appellate Courts would only
26 hear the case if there was something different that the appellant
27 introduced. He also stated that regular appellate court procedures
28 called for review of any incorrect decision that the trial court judge
29 would have made and only those points would be argued, nothing else.
30

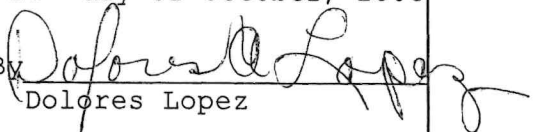
1 The Memorandum Decision dated September 14, 2006 does not indicate how
2 the judge erred in the original trial.

3 WHEREFORE, the interest of justice requires the court to reverse its
4 order or remand for new trial taking into consideration as evidence
5 the Pascua Yaqui Tribal Constitution and the Land Code or in the
6 alternative, declare appellees as proper and sole assigned possessors
7 of the land on which the house in question sits.
8

9 Furthermore, the appellees request an immediate injunction regarding
10 eviction and/or demands for vacating the property at 7650 S Camino
11 Huivisim until all legal remedies have been exhausted by both parties.
12
13

14 Respectfully submitted,
15
16
17

18 Dated this 16nd day of October, 2006

19 By 
20 Dolores Lopez
21
22
23
24
25
26
27
28
29
30

THE PASCUA YAQUI COURT OF APPEALS

FRANCES BALTAZAR,

Appellant

v.

DOLORES LOPEZ, ALMA
LESPRON & DANIEL LOPEZ,

Appellees

Case No.: CA-02-001

MEMORANDUM DECISION

Amanda Sampson, Esq., Pascua Yaqui Legal Services, for the Appellant.

John Crow, Esq., for the Appellees.

This Court reviewed the record and heard oral arguments and reverses the Tribal Court findings: About 1969, Gerardo and Gregoria Alvarez purchased a house (Alvarez house) that was built on land held by the Pascua Yaqui Association, an Arizona Corporation. The Pascua Yaqui Tribe was not a federally recognized tribe in 1969, so the tribe members were organized as the Association. See 78 Stat.1197.

On September 18, 1978, the Pascua Yaqui Tribe received federal recognition and the land held by the Association was placed into trust status for the Tribe. 25 U.S.C. § 1300f. There is no evidence in the record that the Tribe assumed ownership of the houses, including the Alvarez house, when the land was placed into trust status. In fact, the Tribe's housing officials were named originally as defendants in this action, but they were dismissed upon motion made by the Tribe's Attorney General's office. The trial court was told by the Attorney General that the "house which is the subject ... of the dispute here would not fall under the jurisdiction of the Tribe since it was a house that

was in the name of a tribal member.” Transcript at p. 2. The Tribe’s interest, by its own stated admission, is therefore only in the land itself, and not the Alvarez house. Accordingly, we hold at the outset that the Alvarez house is private property, and is governed by relevant tribal law respecting rules of descent and inheritance by testamentary disposition.

On June 21, 1973, Mr. and Mrs. Alvarez designated the Appellees to receive their house. On February 4, 1998, Mr. and Mrs. Alvarez signed a “Request to Change Designation of Preference” regarding the house before a notary public. The change of designation document has the property’s address (7650 South Camino Huivisim) and declares the owners’ intention to change their 1973 designation to the Appellant and others:

The undersigned parties [Mr. and Mrs. Alvarez] hereby remove Dolores Lopez, Daniel Lopez, and Alma Lopez as the designated persons for occupancy and substitute the following persons as the designated persons for preference in occupancy after expiration of the occupancy of the undersigned parties:

- 1) Frances Baltazar, daughter
- 2) Randolph Baltazar, grandson
- 3) Randolph Baltazar, great grandson
- 4) Desiree Baltazar, great granddaughter

The document has Mrs. Alvarez’s “X” mark (which was witnessed by Belinda Baltazar) and Mr. Alvarez’s signature. The document is notarized by Erin E. Rosovic, a Pima County Notary Public.

Although the Alvarez house is private property, is there a Pascua Yaqui Tribe law that requires the tribal council to approve its transfer to new owners, as the Appellees successfully argued to the trial court? The Appellees introduced into evidence at trial a 1998 memorandum by a tribal attorney that states that Mr. and Mrs. Alvarez were required to submit their request to change their designation by filing a written request to the Council. This, in fact, was done. A signed and notarized copy of the request was submitted to the Tribal Council Secretary, Alma Lespron, one of the named Appellees (i.e., Alma Lopez) in this case, whose official duties, as she admitted at trial, were to receive and distribute to the Tribal Council for approval just such documents. It also appears on the record that the Council had routinely approved such transfer requests of homes located on former Association land in the past. But, as Appellee Lespron admitted at trial under oath that while she in fact had received the statement from the tribal attorney, she failed to distribute or submit the Alvarez's request to the Council for approval. Mr. and Mrs. Alvarez did what they were told was required, and there was nothing more they could have done to affect the change. For whatever reasons, whether personal or professional, Appellee Lespron admitted she did not submit the request to the Council, and therefore failed in her duty and the Alvarez's request never reached formal Council action. No matter, for it appears to the Court that neither party has provided sufficient evidence that at the time of the Alvarez's 1998 request submission, there was any governing tribal law or code provision that required the tribal council to formally approve ownership changes of houses located on former Association land. Even the tribal attorney's memo stated that Council approval was "required to make this designation a matter of record." Trial Exhibit 1. Clearly, the record at trial proves here that Appellees

were on notice as to the designation request, and cannot claim the protection that tribal law might afford to those who justifiably might rely on matters of public record to protect their rights and interests in private property held on the reservation. Accordingly, under the circumstances of this case, Mr. and Mrs. Alvarez did not need the tribal council to approve their designation.

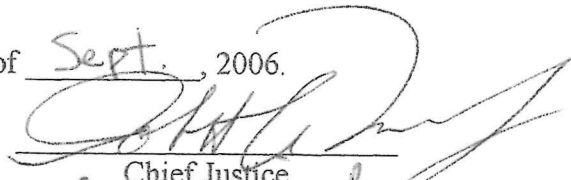
Is the change of designation document executed by Mr. and Mrs. Alvarez valid and enforceable? Pascua Yaqui Tribe members can designate who can get their property after their death by declaring their desires in writing. 1 PYTC § 14.15 (Wills). A writing that complies substantially with section 14.15 is valid, 1 PYTC § 14.17, and will revoke a prior designation, 1 PYTC § 14.18. In this case, the 1998 change of designation document declares the owners' intentions in writing and contains the signature of Mr. Alvarez and Mrs. Alvarez's "X" mark, which were witnessed by Belinda Baltazar and a notary public. The document is officially notarized by Erin Rosovic, a notary public.

No evidence was presented that Mr. and Mrs. Alvarez were not of sound mind when they executed the 1998 document. There is also no proof that fraud induced the making and finalization of the document. Therefore, we hold that the document entitled "Request to Change Designation of Preference," executed on February 4, 1998, is valid and enforceable.

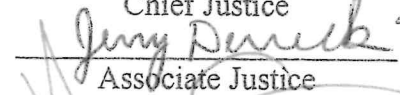
Accordingly, the judgment of the Pascua Yaqui Tribal Court is reversed. The Tribal Court shall enter an ORDER granting the house to the Appellant, Frances Baltazar, and those persons listed on the 1998 change of designation document.

Reversed and remanded.

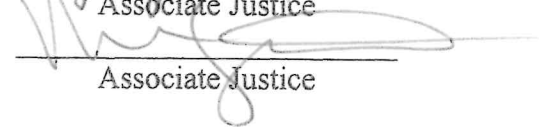
Filed this 14 day of Sept., 2006.



Chief Justice



Associate Justice



Associate Justice

1 In its September 27, 2001 Order, the Trial Court found that Appellant's deceased parents
2 executed a document transferring the designation of preference for their home at 7650 S.
3 Camino Huivisim from Appellees to Appellant, her son and grandchildren. The Trial Court
4 further found that the deceased parents submitted this document to Tribal Council, but no
5 action was taken by the Tribal Council. The Trial Court therefore held that the executed
6 Designation of Preference was without effect. This finding was clear error of law on the part of
7 the Trial Court. The Trial Court held, in essence, that the "Request to Change Designation of
8 Preference" executed 02/04/1998 had to be approved by the Tribal Council. There is no
9 statutory authority in Yaqui law for this proposition cited either by the Court or by the
10 Appellees. Further, the Court did not cite tradition or custom for legal authority. In short, there
11 was no legal authority to support the Trial Court's holding.

12 The Pascua Yaqui Tribal Code contains no requirement that the Tribal Council must
13 approve designations of preference for succession in interest in homes on the reservation. Since
14 the code does not contain such a provision, it does not follow that the document submitted into
15 evidence was invalid for the reason that the Tribal Council did not take any action on the matter.

16 Even if the practice at the time was to submit such documents to Council for recording
17 purposes, it still does not follow that the failure of Tribal Council to act in this matter was
18 sufficient to make this transfer invalid. Appellee Lespron testified during the trial that since she
19 was working at Tribal Council from 1996 to 2000, she had seen the document transferring
20 interest in the property from Appellees to Appellant submitted to Tribal Council, but that the
21 matter was never put on the agenda. Appellee Lespron testified that the request was "left there
22 on hold" (Trial Transcript, p. 10). Failure of the Tribal Council to even hear or consider the
23 matter does not mean that the transfer of property rights was invalid, and the Trial Court erred
24 in so finding.

1 The Trial Court gives no explanation for their finding as to the document's invalidity,
2 however, if they rely upon the opinion offered in the memorandum written by Deputy Tribal
3 Attorney Po Lui-Frank, this is additional error. Ms. Po Lui-Frank states in her memo, "Other
4 Tribal members have filed written requests to convey their homes to certain relatives by filing
5 written requests to Council, and the Council took action on their request. It follows that Council
6 action is required to make this designation a matter of record." (Memorandum dated 01/22/98,
7 Plaintiff's Exhibit 1) It does not follow that Council action is required simply because other
8 tribal members had sought it. Former Tribal Attorney Po Lui-Frank cites no legal authority to
9 say that such action is required. Because the Pascua Yaqui Tribal Code does not require an act of
10 Tribal Council to approve a change in designation of interest in property it is not required simply
11 because others have submitted similar requests. If the Trial Court relied on this faulty reasoning
12 in the Deputy Attorney's memorandum in making its ruling then it committed error.

13 Appellees make several arguments alluding to the "requirement" of Tribal Council approval.
14 Appellees argue that because the deceased parents were aware of the "required" procedure for
15 changing a designation of preference, the fact that the Tribal Council took no action is
16 determinative in making their change in designation of preference invalid. Appellees refer to the
17 "policy of the Nation." (see Appellee's Brief 06/21/06, p. 3). In fact there was no such policy.
18 The memorandum opinion of Ms. Po Lui-Frank does not state that Tribal Council "approval" is
19 necessary, but rather suggests that Council Action makes the designation "a matter of record".
20 (Memorandum dated 01/22/98, Plaintiff's Exhibit 1) In the case at hand, the deceased parents
21 submitted the request to change designation of preference to the Tribal Council before their
22 death. Based on the testimony of parties on both sides of this case, the deceased parents wished
23 to change designation of preference to Appellant. Appellee Lespron testified that she knew the
24 request had been submitted to Tribal Council, but for some reason the matter was never set on
25 the agenda. This failure to act, when action is not even required by Pascua Yaqui law does not

1 invalidate the document which removes Appellees as designees and replaces them with
2 Appellant, her son and his children.

3 The Trial Court erred in finding the change in preference invalid. The change in preference
4 was valid, and was the intent and wish of Appellant's deceased parents. The decision of the Trial
5 Court dated September 27, 2001 should be reversed, and the change in preference given full
6 effect.

7
8 II. THE TRIAL COURT'S FAILURE TO MAKE SUFFICIENT FINDINGS OF FACT
9 AND CONCLUSIONS OF LAW IS REVERSIBLE ERROR.

10 The Trial Court's Order of September 27, 2001 makes insufficiently detailed findings of fact
11 and conclusions of law. Because of the lack of findings of fact and conclusions of law in the
12 Order, it is not possible for this Court to make a determination of whether the Trial Court
13 committed error in its decision, and such insufficiency of findings is itself reversible error.

14 When there is no Pascua Yaqui law on point, it is within the discretion of the Court to apply
15 the applicable laws and regulations of Arizona so long as they do not conflict with the laws or
16 policies of the Tribe (Pascua Yaqui Code Title 20, Chapter One, Section 102). Additionally, Rule
17 121 of the Pascua Yaqui Rules of Court states that the Tribal Court, in its discretion may apply
18 interpretation of like provisions in the Arizona Rules of Civil Procedure in construing the Pascua
19 Yaqui Rules of Civil Procedure (Pascua Yaqui Code, Title 9, Chapter One- Rules of Civil
20 Procedure, Rule 121). Appellant cites Arizona law here for the Court's discretionary review.

21 Appellant is appealing the Order of September 27, 2001, which is the Order that the Trial
22 Court issued on Appellee/Plaintiff's Request for Declaratory Relief and for Permanent
23 Injunction. Rule 52(a) of the Arizona Rules of Civil Procedure, "Findings by the Court;
24 Judgment on Partial Findings" expressly requires that "[i]n all actions tried upon the facts
25 without a jury..., the court, if requested before trial, shall find the facts specially and state

1 separately its conclusions of law thereon and direct the entry of the appropriate judgment. In
2 granting or refusing preliminary injunctions the court shall similarly set forth the findings of fact
3 and conclusions of law which constitute the grounds of its action." The rule states that requests
4 for findings of fact are not necessary for purposes of review (A.R.C.P. 52(a), attached and
5 incorporated by reference herein). Rule 65(h) of the Arizona Rules of Civil Procedure
6 "Injunctions, Form and Scope of Injunction or Restraining Order" states that every order
7 granting an injunction shall set forth the reasons for its issuance and shall be specific in terms. It
8 shall also describe in reasonable detail the acts restrained (A.R.C.P. 65(h), attached and
9 incorporated by reference herein).

10 The September 27, 2001 order of the Trial Court does not make sufficiently specific findings
11 of fact and makes no conclusions of law. The Arizona Supreme Court in Miller v. Board of
12 Supervisors of Pinal County, 175 Ariz. 296 (1993) found that requiring a trial court to state
13 separately findings of fact and conclusions of law accomplishes multiple goals. First, it helps the
14 defeated party determine whether the case presents appealable issues. Second, it clarifies what
15 has been decided, and third, it helps judges to consider issues more carefully, including how they
16 came to their conclusions. In Miller the Supreme Court found that the Trial Court's findings
17 were insufficient to allow the reviewing court to determine whether the Trial Court's legal
18 conclusions were sound. (Miller, 175 Ariz. 296 at 300). "The Trial Court effectively made no
19 findings of fact at all, it simply reached and articulated the ultimate legal conclusion..." (Miller,
20 175 Ariz. 296 at 300). The Court concluded that the findings failed to comply with Rule 52(a) of
21 A.R.C.P.

22 As in Miller, the Trial Court in this case fails to articulate sufficient findings, simply coming
23 to the ultimate conclusion that the change in designation of preference is invalid. This Court
24 cannot glean the Trial Court's reasoning from the Order, and therefore cannot determine
25

1 whether the legal conclusion is correct. This is error that can support this Court's reversal, or at
2 minimum should support the remand of this case to the Trial Court for further fact finding.
3

4 III. THE TRIAL COURT ERRED IN ENTERING JUDGMENT IN FAVOR OF
5 APPELLEES BECAUSE APPELLEES PRESENTED INSUFFICIENT EVIDENCE
6 AT TRIAL TO SHOW THAT THEY WERE RIGHTFUL HOLDERS OF ANY
7 INTEREST IN THE PROPERTY AT 7650 S. CAMINO HUIVISIM.

8 There was insufficient evidence presented at trial that there was an initial designation of
9 preference made by the Appellant's deceased parents to the Appellees, or that it was submitted
10 to Tribal Council, or that the Appellees have any property right whatsoever in the residence at
11 7650 S. Camino Huivisim. No document was ever introduced as direct evidence of the status of
12 the property except the transfer of designation of preference to Appellant. There was hearsay
13 evidence in the form of the memorandum written by Ms. Po Lui-Frank to an original
14 designation of preference that listed Appellees; however Appellees did not present an original or
15 a copy of the document as evidence, nor did they testify to personal knowledge of any specifics
16 about such a document.


17 Without evidence of how the property was held by Appellant's deceased parents in the first
18 place, the Court cannot determine the type of action required (if any) in order to effectuate a
19 transfer. The current Pascua Yaqui Land Code (Pascua Yaqui Code, Title 18- Land) makes no
20 requirement of Tribal Council approval for the designation of preference. Additionally, if the
21 house was privately held and paid for by the deceased outside of any tribal authority before the
22 formation of the reservation, is any action by the tribe necessary for transfer? These questions
23 cannot be answered because of the lack of evidence in the record.

24 There is no factual basis for the Order of September 27, 2001 because there were no
25 findings that Appellees have an interest in the property in the first instance. There were no

1 findings as to how the Appellant's deceased parents held the house at 7650 S. Camino Huivisim.
2 Without such findings, the Trial Court erred in issuing judgment in favor of Appellees.
3

4 In conclusion, Appellant asks that this Court reverse the decision of the Trial Court and give
5 effect to the change in designation of preference. It is uncontroverted by either side that Appellant's
6 parents submitted the signed and notarized document to Tribal Council. The fact that Tribal
7 Council took no action does not invalidate the document, and should not defeat the purpose of the
8 Appellant's deceased parents, which was to transfer interest in the property to Appellant. Appellant
9 requests that this Court reverse or in the alternative remand the case for further fact finding by the
10 Trial Court.
11

12 Respectfully submitted for Appellant this 27th day of June, 2006.

13
14 
15 PASCUA YAQUI LEGAL SERVICES
16 7454 S. Camino Rahum
17 Tucson, AZ 85757
18 (520) 879-5750 TEL
19 (520) 879-5752 FAX
20 Amanda J. Sampson
21 AZ Bar No. 022992

18 Original of the foregoing filed
19 and a copy faxed & mailed this
20 27 day of June,
2006 to:

21 John Crow, Esq.
22 Sun Station PO Box 42288
23 Tucson, Arizona 85733
24 *Attorney for Appellees*

25 By 

Rule 65(f)
Deleted

security; see the cases collected in the dissenting opinion in *Bayham v. Funk*, supra.

This Committee believes that there should be security in the case of every injunction, but further believes that if in some instance security is omitted, the proper remedy is either a motion for security or an appeal, but not disobedience of the order. The Committee has not recommended any alteration in the language of Rule 65 to deal expressly with this point because it believes that greater value lies in keeping the rules uniform, but it does believe that, since the court in *Bayham v. Funk* relied to some extent in reaching a result different from the Federal interpretation on Rule 65(f), the repeal of the special Arizona provision may result in a different result in the *Bayham v. Funk* situation.

Rule 65(g). Security on injunction restraining collection of money; injunction made permanent

1. Upon dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court shall require the defendant to give security to be approved by the court, and payable to the plaintiff in the amount previously enjoined and such additional amount as the court requires, and conditioned upon refunding to the plaintiff the amount of money, interest and costs which may be collected by the plaintiff in the action in the event a permanent injunction is ordered on final hearing.

2. If a permanent injunction is ordered on final hearing, the court shall, on motion of the plaintiff, enter judgment against the principal and surety giving the security for the amount shown to have been collected and to which the plaintiff appears entitled.

Amended Sept. 15, 1987, effective Nov. 15, 1987.

Rule 65(h). Form and scope of injunction or restraining order

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance and shall be specific in terms. It shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained, and it is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

RULES OF CIVIL PROCEDURE

Rule 65(i). Writs of injunction; where returnable; several parties

Writs of injunction granted to stay proceedings in an action, or to stay execution of a judgment, shall be returnable to and tried in the court where the action is pending or the judgment was rendered.

Rule 65(j). Disobedience of injunction as contempt; order to show cause; warrant; attachment; punishment

1. Disobedience of an injunction may be punished by the court as a contempt.

2. When a party in whose favor an injunction has been issued files an affidavit that the party against whom the injunction was issued is guilty of disobeying the injunction and describes the acts constituting such disobedience, the court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of the court which issued the injunction.

3. The order, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable that person to prepare and make return to the order.

4. If such person fails or refuses to make return to the order to show cause a warrant of arrest may issue directing the sheriff or any constable of the county where the alleged contemnor resides or may be found, to arrest and bring the alleged contemnor before the court at a time and place directed by the court, and such person may be required to give bail for attendance at the trial and submission to the final judgment of the court.

5. If the alleged contemnor is a corporation, an attachment for sequestration of the property of the corporation may be issued upon refusal or failure to appear.

6. Upon the appearance of the alleged contemnor, or at the trial of the issue, the court shall hear the evidence, and if the person enjoined has disobeyed the injunction that person may be committed to jail until that person is purged of the contempt as may be directed by the court or until that person is discharged by law.

Amended Sept. 15, 1987, effective Nov. 15, 1987.

Rule 65.1. Security; proceedings against sureties

Whenever these rules, including the Injunction Rule and any other relating to security, require or

FINDINGS BY COURT

Rule 52(a)

same rule and practice has been adopted in Arizona in *Zugsmith v. Mullins*, 81 Ariz. 185, 188-189, 303 P.2d 261 (1956), which expressly adopts the Montgomery Ward rule.

By this rule change we put into the rule what was required in the Montgomery Ward case, *supra*, and in our own *Zugsmith* decision.

An extensive note illuminating the rule is attached to the Federal rule, and we incorporate it as our own.

Original Rule 50(c) added July 14, effective Oct. 13, 1961 was renumbered as 50(e) on March 26, 1963 effective June 1, 1963.

Rule 51. Instructions to jury; objections; arguments

Rule 51(a). Instructions to Jury; Objection

Immediately after the jury is sworn, the court shall instruct the jury concerning its duties, its conduct, the order of proceedings, the procedure for submitting written questions of witnesses or of the court as set forth in Rule 39(b)(10), and the elementary legal principles that will govern the proceeding. Prior to the commencement of a jury trial or at such other time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. Counsel shall be deemed to have waived request for other instructions except those which could not reasonably have been anticipated prior to trial. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court, at its election, may instruct the jury before or after argument, or both. No party may assign as error the giving or the failure to give an instruction unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of hearing of the jury.

Amended Sept. 15, 1987, effective Nov. 15, 1987; Oct. 24, 1995, effective Dec. 1, 1995.

Rule 51(b). Instructions to jury; notations; filing transcript

1. The court shall either give or refuse the instruction as requested, or shall modify the instruction, indicating on the record the modifications made and give it as modified. The court's instructions may be used by the parties in the argument to the jury.

2. The written instructions shall be filed among the papers in the action and constitute a part of the record. At the request and cost of either party, the

entire instructions given by the court shall be transcribed by the reporter and filed with the clerk.

3. The court's preliminary and final instructions on the law shall be in written form and a copy of the instructions shall be furnished to each juror before being read by the court. Upon retiring for deliberations the jurors shall take with them all jurors' copies of final written instructions given by the court. In limited jurisdiction courts, the court may record jury instructions on audiotape and provide these audio instructions to the jury for their use during deliberations.

Amended Sept. 15, 1987, effective Nov. 15, 1987; Oct. 24, 1995, effective Dec. 1, 1995.

Rule 51(c). Renumbered as Rule 39(n)

Rule 51(d). Deleted, May 1, 1989, effective July 1, 1989

Rule 52. Findings by the Court; Judgment on Partial Findings

Rule 52(a). Effect

In all actions tried upon the facts without a jury or with an advisory jury, the court, if requested before trial, shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or minute entry or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

Amended Aug. 7, 1984, effective Nov. 1, 1984; July 2, 1985, effective Oct. 1, 1985; Oct. 9, 1996, effective Dec. 1, 1996.

1 **JOHN CROW**
2 ATTORNEY AT LAW
3 Sun Station PO Box 42288
4 Tucson, Arizona 85733
5 (520) 465 4740
6 (520) 323-2649 FAX
7 Arizona State Bar No: 017981

CLAY YAGUI TRIBAL COURT
FILED DATE
06 JUN 23 AM 9:13
DOCKET NO. CA-02-001
FILED BY *(signature)*

5 **Attorney for Respondent**

7 **IN THE APPELLATE COURT OF THE YAQUI NATION**
8 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

11 **Frances A . Baltazar**
12 **Appellant**
13 **v.**
14 **Dolores Lopez, Alma Lespron and Daniel**
15 **Lopez**
16 **Appellees**

File No. CA – 02-001

Notice of Entry of Counsel

17 COMES NOW Dolores Lopez, et. al. (“Appellees”) , to give notice the undersigned at-
18 torney, admitted to practice in the Courts of the Pascua Yaqui Nation, is appointed to serve as
19 Counsel to the appellees in the above captioned matter to be heard by the Appellate Court of
20 the Yaqui Nation at 1:30 PM June 30, 2006.

21 Respectfully submitted this 22nd day of June 2006.

(Signature)

23 _____
24 John Crow
25 Attorney for Appellee

JOHN CROW
SUN STATION PO BOX 42288
TUCSON, AZ 85733
(520) 465 4740

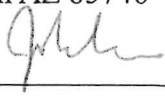
CERTIFICATE OF SERVICE

I, John Crow, hereby certify that a copy of the foregoing document was

[] Mailed, using first class U.S. Postal service

on this 22nd day of June 2006 to:

Appellant Frances Baltazar
7760 S. Camino Cocoi
Tucson AZ 85746



John Crow

JOHN CROW
SUN STATION PO BOX 42288
TUCSON, AZ 85733
(520) 465 4740

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **JOHN CROW**
2 ATTORNEY AT LAW
3 Sun Station PO Box 42288
4 Tucson, Arizona 85733
5 (520) 465 4740
6 (520) 323-2649 FAX
7 Arizona State Bar No: 017981

06 JUN 23 AM 9:14

SECRET NO. CV-02-001
FILED

8 **Attorney for Respondent**

9
10
11 **IN THE APPELLATE COURT OF THE YAQUI NATION**
12 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**

13 **BALTAZAR, FRANCES A.**
14 **Plaintiff**
15 v.
16 **LOPEZ, DOLORES, et. al.,**
17 **Appellees**

File No. CV 02-001

Appellee's Brief

18 COMES NOW Dolores Lopez ("Appellee"), by and through her undersigned counsel,
19 who hereby submits argument that the judgment of the Court, entered by Order, 27 September
20 2001 be confirmed and upheld, and the Appellant's pleading be dismissed with prejudice.

21 **I. JURISDICTION**

22 The Court of Appeals has jurisdiction to hear all appeals from an Order of the Trial
23 Judge, Sect I.12(A). Appellant-Petitioner timely filed Notice of Appeal pursuant to Sect
24 I.14 on 1 October 2001 and appealed the entire judgment. No preference for either a three
25 Justice or one-Justice proceeding was expressed.

26 **II. FACTS OF THE CASE**

27 Parents of Appellant and Appellee owned a house at 7650 S. Camino Huivism, Tucson
28 Arizona. Both parents passed away by September 2001. Appellee at that point had lived
with the parents for two years, caring and nurturing them until they passed. Her

JOHN CROW
SUN STATION PO BOX 42288
TUCSON, AZ 85733
(520) 465 4740

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

testimony was that she was told by her mother that upon her passing, the home would be hers and her children. The father may have been pressed to designate the Appellate at the same time he was cared for by the Appellee. It may be presumed that the father and the mother assumed the Yaqui tradition of care and comfort by the oldest female of the next generation and Appellee performed that duty.

The Appellant placed into evidence a memo on methods for changing the designation of preference for families, prepared by Deputy Tribal Attorney V. Po Lui-Frank, and dated January 22 1998. It appears to have been prepared at the request of the parents of Appellant and Appellee, Mr. and Mrs. Alvarez. Attorney Lui-Frank affirmed it is the policy of the Nation to allow individual members to designate intended heirs and as they desired, to change heirs that had previously been designated. The method was outlined for Mr. and Mrs. Alvarez and required filing by them a written request to the Council. The policy required that Council action be sought and Counsel affirmation of a change of designation.

III ARGUMENT

Thus Attorney Lui-Frank set forth the steps required and did so January 22, 1998. These elements were then known to the parents. An appropriate document was prepared, presumably by Lawyer Lui-Frank. No indication is in the record as to the date when Appellant's presented their request for a change in designation of the heirs to the Court Clerk The deceased parents had been advised of the required procedure on or after January 22 1998. The surviving parent died in September 2001. There is no indication that the Appellants, in that long period, took any action or made any further effort to finalize their plea for a change in designations in accord with the procedures authorized by the Tribal Council and known to them following their interview with the Deputy Tribal Attorney.

The parents had been fully informed by Attorney Lui-Frank and presumably understood that if the Tribal Council gave no approval, any change in designation they

JOHN CROW
SUN STATION PO BOX 42288
TUCSON, AZ 85733
(520) 465 4740

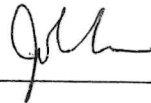
1 might have had in mind would not survive and would have no validity. Appellant urges
2 on page 2, line 11 of her Appellant's brief that "[a]t the hearing, Appellees did not pre-
3 sent any evidence to contradict the intent of the now deceased parents/designators to
4 give the resident to Appellant." But even if true, this does not suffice to state the policy
5 of the Nation or implement that policy, to wit, that the Tribal Council must have the op-
6 portunity to consider and recognize a designation and no such consideration ever oc-
7 curred.

8 **IV CONCLUSION**

9 Thus the Trial Judge acted in accord with Tribal Policy that absent Tribal Coun-
10 cil recognition; a designator's memorialized designation was invalid. It was beyond the
11 scope of the powers of the trial judge to affirm, authorize or find a designation existed
12 and should be given effect – that was and remains a responsibility of the Tribal Council.

13 The appeal of the Plaintiff should be denied.

14 **RESPECTFULLY SUBMITTED for Appellee this 21st day of June 2006.**

15
16 

17 _____
18 John Crow
19 Attorney for Appellee

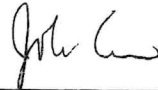
20 **CERTIFICATE OF SERVICE**

21 I, John Crow, hereby certify that a copy of the foregoing document was

22
23 Mailed, using first class U.S. Postal Service

24 on this 21st day of June 2006 to:

25 Frances Baltazar, Appellant
26 7760 S. Camino Cocoim
27 Tucson AZ 85746

28 

06 JUN 16 AM 8:25
DOCKET NO CV-01-144
PRK *AL*

1 LAW OFFICE OF
2 TRINI ARMENTA
3 422 East Ninth Street
4 Tucson, Arizona 85705
5 (520) 622-6264
6 PCC #64745

7 Attorney for Petitioner

8 IN THE PASCUA YAQUI TRIBAL COURT
9 PASCUA YAQUI INDIAN RESERVATION

10 In The Matter of:

11 DOLORES LOPEZ
12 Petitioner

13 vs.

14 FRANCES BALTAZAR,
15 Respondent.

NO. CV-01-144

MOTION AND ORDER TO WITHDRAW

16 Comes now, undersigned counsel for, , and hereby requests this Court to allow him to
17 withdraw from this case for the following reasons:

18 1. Counsel has not had contact with client since 2001. Additionally, counsel is not
19 authorized to practice in the Pascua Yaqui Tribal Court.

20 For the reasons stated above, counsel respectfully requests this Court to enter an order
21 withdrawing counsel from this case.

22 DATED this 13th day of June 2006.

LAW OFFICE OF
TRINI ARMENTA

By 

TRINI ARMENTA
Attorney for Petitioner

1 LAW OFFICE OF
 2 TRINI ARMENTA
 3 422 East Ninth Street
 4 Tucson, Arizona 85705
 5 (520) 622-6264
 6 PCC #64745

Attorney for Petitioner

7 IN THE PASCUA YAQUI TRIBAL COURT
 8 PASCUA YAQUI INDIAN RESERVATION

9	In The Matter of:)	
10	DOLORES LOPEZ.)	NO. CV-01-144
11	Petitioner)	
12	vs.)	ORDER
13	FRANCES BALTAZAR,)	
14	Respondent.)	

15 PURSUANT to the foregoing Motion Allowing Counsel to Withdraw;
 16 IT IS HEREBY ORDERED that TRINI ARMENTA, ESQ. be withdrawn from
 17 this case.

18 DATED this _____ day of June 2006.

19
 20
 21 HONORABLE/JUDGE PASCUA TRIBAL COURT

22 Copy of the foregoing mailed/
 23 delivered to:

24 Dolores Lopez
 25 7650 S. Camino Huiuisim
 26 Tucson, Arizona 85757
 27
 28

To: Tribal Courts
From: Frances Baltazar
Date: 6/13/06

06 JUN 13 PM 3:41

I hereby authorize Amanda Sampson of Pascua Yaqui Legal Services to have access to the entire file of the record below in case number CV-01-144, include any audio tape that may be available. Amanda Sampson will be representing me in the appeal (CA-02-001) and she will need to read and review the record below. *RL*

Sincerely,

Frances A. Baltazar

Frances Baltazar

Frances Baltazar, Appellant
7760 S. Camino Cocoim
Tucson, AZ 85746
(520) 908-1292

APPELLATE COURT
OF THE YAQUI NATION
02 MAR 21 AM 10:00

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

Frances Baltazar,
Appellant,
vs.
Dolores Lopez, Alma Lespron, and Daniel Lopez,
Appellees.

*Baltazar, Dolores Lopez,
+ Ernest Alvarez
all siblings*

Case No.:
(Re: CV-01-144)

SUPPLEMENTAL ATTACHMENT TO
APPELLANT'S BRIEF

CA-02.001

RY

Appellant hereby submits a supplemental attachment to her Brief, which she filed on October 30, 2001. The attached document is a letter from the Pascua Yaqui Tribal Chairman, Robert Valencia received by Appellant on this date. The letter indicates that the house, herein at issue was not a tribally funded home. Rather, the house was built by the decedent designators from their own funds. Tribal funds were not used to build the home. It follows, therefore, that Tribal Council action was not required to approve a transfer of the Designation of Preference. This is further reason for this Court to overrule the trial court's order and grant Appellant's requested relief.

RESPECTFULLY SUBMITTED this 21st day of March 2002.

Frances Baltazar
Frances Baltazar, Appellant

*No copy of Trial Ct's
Final Decision
was ever signed after
hearing on Sept 27, 2001?*



PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN

March 19, 2002

To Whom It May Concern:

A dispute exists over a house built by Gerardo and Geogoria Alvarez. Although there are no written documents, by talking to elders and people who have lived here on the reservation, it has been determined that the house that belonged to Frances Baltazar's parents was not considered a tribally funded home.

The parents constructed this home with their own money. No money from the tribe was used to build the home. The tribe is not part of the lawsuit and the tribal court dismissed the tribe from the lawsuit. Therefore, the tribe is not involved in the dispute over the privately owned home.

If you need any more information, please feel free to call me at 883-5006.

Respectfully Submitted,

*Robert Valencia, Chairman
PASCUA YAQUI TRIBE*

RV:vs

CC: Frances Baltazar

Frances Baltazar, Appellant
7760 S. Camino Cocoim
Tucson, AZ 85746
(520) 908-1292

02/13/13 11:10:23
CA-02-009
DL

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

Frances Baltazar,)
Appellant,)
vs.) Case No.:
(Re: CV-01-144)
Dolores Lopez, Alma Lespron, and Daniel Lopez,)
Appellees.) REQUEST FOR ORAL ARGUMENT
)
)
)
)
_____)

Appellant hereby requests this Court to set this matter for Oral Argument. Appellant filed her Notice of Appeal on October 9, 2001 and her Brief on October 30, 2001. Appellees did not submit their Brief until December 13, 2001, approximately one month after the required time. To date, Appellant has not received any further information on the status of this Appeal.

Time is of the essence in this matter for the following reasons. Appellant's brother, Ernesto Alvarez had been residing in the residence herein at issue for the past two years. In the beginning of March 2002 Appellee Dolores Lopez forced Appellant's brother to leave the residence without notice. His belongings were merely packed up and put outside. All of the Appellees currently have houses. Appellant is currently in a rental after a fire destroyed her residence. This was the main reason for the designators to change their designation of preference.

WHEREFORE, Appellant prays that this Court set a date for Oral Argument, or in the alternative, provide Appellant with information on the status of this Appeal.

RESPECTFULLY SUBMITTED this 13th day of March 2002.

Frances A. Baltazar
Frances Baltazar, Appellant

Law Office of
Trini Armenta
422 E. 9th Street
Tucson, Arizona 85705
(520) 622-6264
Attorney for Appellees

01 07 13 11:03
CV-02-001
Rej

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

Frances Baltazar,)	
)	Case NO. CV-02-001
Appellant,)	(RE: CV-01-144)
)	
vs.)	APPELLEES' BRIEF
)	
Dolores Lopez, Alma Lespron, and)	
Daniel Lopez)	
Appellees)	
_____)	

COMES NOW TRINI ARMENTA, attorney at law, and hereby submits Appellees Brief to the Court of Appeals, as required in the Pascua Yaqui Rules of Appellate Procedure.

A. JURISDICTION

Appellees join in the jurisdictional statement of the Appellant's Brief.

B. FACTS OF THE CASE

This case involves a dispute with a home within the Pascua Yaqui tribal reservation. The court found that the owners, Gerardo and Gregoria Alvarez designated the Appellees as a having a preference to occupy the residence. The court found that this designation of preference was properly done and legally binding. The Appellant made claim that a subsequent designation made her the preferred occupant. The court found that the Appellant's preference had not been legally executed according to tribal law and tribal procedures. *

C. THE TRIBAL COURT DID NOT ERR IN RULING THAT THE DESIGNATORS MEMORIALIZED DESIGNATION OF PREFERENCE TO APPELLANT WAS INVALID

The Appellant never asserted the argument in the lower as to the document being a will. At the time of trial, the Appellant presented a signed statement and asserted that it was a designation of preference in favor of the Appellant. The only question presented to the court was whether this document was a valid designation of

3

3

What rules is she relying on?

preference and whether or not it superseded the previous designation to Appellees. The court had ample evidence to determine that Appellees' designation was valid and that Appellant's designation was invalid as it did not conform to the tribal rules regarding perfection of the designation as to all parties.

The transcript of the proceedings is attached to Appellant's brief and the Court can determine for itself the actual testimony of all parties involved contrary to the Appellant's description of said evidence, particularly the testimony of Ms. Alma Lespron.

D. THE PASCUA YAQUI TRIBAL CODE MAY BE SILENT IN REGARDS TO THE NEED FOR THE TRIBAL COUNCIL TO APPROVE DESIGNATIONS OF PREFERENCE HOWEVER AS MATTER OF COURSE IT HAS BEEN DETERMINED THAT COUNCIL ACTION IS REQUIRED TO MAKE A DESIGNATION — why? Due process?

Evidence was presented at trial which clearly established that the Council's action was required in order to make a designation a matter of record. There was no controverting evidence presented by the Appellant. Attached is a legal memorandum stating the required procedure by the Council which was introduced and admitted into evidence at trial.

E. CONCLUSION

The Tribal Court did not err in the order issued in this case that established the Appellees as the rightful designator of the subject residence. The Tribal Court has ample evidence and testimony to sustain its' ruling. The Tribal Court had the benefit of viewing the demeanor and credibility of the witnesses as they testified and the Court of Appeals should not overturn the lower court's ruling unless there is a clear error in its' holding. The Appellant's appeal should be denied and the Tribal Court's ruling should be upheld.

RESPECTFULLY SUBMITTED this December 13, 2001.


TRINI ARMENTA
Attorney for Appellees

COPY to:
Frances Baltazar
7760 S. Camino Cocom
Tucson, Arizona 85746
Appellant

Frances Baltazar, Appellant
7760 S. Camino Cocomim
Tucson, AZ 85746
(520) 908-1292

01 OCT 30 PM 3:08

CA-02-001
[Signature]

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

Frances Baltazar,
Appellant,
vs.

Dolores Lopez, Alma Lespron, and Daniel
Lopez,
Appellees.

Case No. *CV-02-001*
(Re: CV-01-144)

APPELLANT'S BRIEF



Appellant hereby submits her Brief to the Court of Appeals, as required in Section 1.22 of the Pascua Yaqui Rules of Appellate Procedure.

A. JURISDICTION

Pursuant to Section 1.12 of the Pascua Yaqui Rules of Appellate Procedure this Court has jurisdiction over this matter. The Section states that "The Court of Appeals shall have jurisdiction to hear all appeals from any Order of the Trial Court." This is an appeal of an Order of the Trial Court dated September 27, 2001, attached and incorporated herein.

B. FACTS OF THE CASE

Appellant's parents owned a house located at 7650 S. Camino Huivism, Tucson, AZ 85746. The house is located within the exterior boundaries of the Pascua Yaqui Indian Reservation. The house is a homeowner home, paid in full, with no affiliation to the Pascua Yaqui Housing Authority. The designators had the right to occupy the house as a private dwelling, which expired on their death. However, prior to their death, they had the right to designate the person(s) they preferred to occupy the house after their death.

On February 4, 1998 Appellant's parents and the designators, Gerardo and Gregoria Alvarez, signed a notarized statement indicating their desire to give preference to occupy the residence to Appellant, Appellant's son, Randolph Baltazar, and Appellant's grandchildren, Desiree Baltazar and Randolph Baltazar, Jr. A copy of this request is attached and incorporated by reference as an exhibit. This designation of preference was to occur upon the death of the designators, or by their inability to live in the home. Gregoria Alvarez signed the statement with an "X" with her granddaughter, Belinda Baltazar (not an interested party) and Erin Rosovich witnessing the signature.

Gregoria Alvarez passed away in May 1999. Gerardo Alvarez passed away on September 2001. Soon after Gerardo's death, Appellees filed a Petition for Injunction.

On September 27, 2001 the Tribal Court held a hearing. At the hearing, Appellees did not present any evidence to contradict the intent of the now deceased parents/designators to give the residence to Appellant. Appellee Alma Lespron was Pascua Yaqui Tribal Council Secretary during the period in which the parents/designators signed, notarized and presented the statement to Council. It was her duty as Council Secretary to receive and distribute to the Tribal Council for approval, such documents. She admitted at the September 27th hearing that, in fact, she had received the statement, however, she had not distributed nor submitted the designation of preference statement for Council approval. She indicated on the record that she had not done so because she was too busy during her term in office. As a potential recipient of the property, Ms. Lespron had a direct interest and was biased in her decision not to distribute or submit the statement for Council approval. The Council's failure to take action on the designators' request to change

designation of preference is due to Ms. Lespron's dereliction of her official duty and bad faith because of her direct interest in the house.

Appellees did not submit any documentation that the residence was to be given to them at the parents' deaths. Appellant provided proof of the parents' designation of ownership of the residence – the signed and notarized statement herein attached and incorporated by reference as an exhibit.

C. ISSUES PRESENTED

The Tribal Court erred in ruling in favor of the Appellees. The Tribal Court also erred in ruling that the document signed and notarized by designators is “invalid and the home shall remain with the Plaintiffs.” (See Court's September 27, 2001 order)

D. ARGUMENTS

- 1. The Tribal Court erred in ruling that the residence should be given to Appellee in direct contradiction to designators' memorialized intent. The designation of preference serves as the designators' will in regards to the property.**

The Pascua Yaqui Tribal Code, 1 PYTC 14.15 allows that “Any person who is of sound mind may make a will. Every will shall be in writing, signed by the testator *or by some other person in the testator's presence and by their direction*. The will shall be signed by two persons witnessing the signing of the will. Said witnesses shall not have an interest in the estate.” The designators' signed, witnessed, and notarized change of designation of preference conforms to the requirements of this section in the Tribal Code. Their intent or *will* is in writing. The document is signed by both of them, and in Gregoria Alvarez's case, is signed by her mark, an “X”, and witnessed by Belinda Baltazar in Gregoria's presence and at Gregoria's direction. The document is witnessed

by both Belinda Baltazar and Erin Rosovich, a notary public. Neither have an interest in the property.

2. The Tribal Court erred in ruling that designators' memorialized designation of preference to Appellant was invalid.

As stated in Argument 1 above, the document conforms to all requirements in the Tribal Code regarding wills. The document is valid. Further, Appellees presented no evidence to the Tribal Court that the designators were incompetent to designate preference for their residence to Appellant. Appellees further did not present any evidence that the statement signed and notarized by parents/designators was coerced or made under duress. Appellant presented a witness, Erin Rosovich, who testified that the designators were of sound mind at the time of the change of designation of preference. She testified that the designators understood that they were changing designation of preference and giving preference to Appellants. She testified that the designators intended the change of preference because the Appellees already had homes.

Appellee, Alma Lespron, testified that the designators had informed her that they intended to change designation of preference for the home to Appellant, her son, and his children. This testimony is clear evidence that Appellees were not only aware of the designators' intent, but that they failed to investigate the designators' state of mind regarding their intent.

3. The Pascua Yaqui Tribal Code is silent in regards to the need for the Tribal Council to approve designations of preference.

Nothing in the Tribal Code dictates that the Tribal Council must approve designators' selection for preference in succession of occupancy. Therefore, even if the prior

Council's Secretary, Appellee Alma Lespron failed to perform her duties by not submitting the document for Council approval, such approval is irrelevant.

CONCLUSION

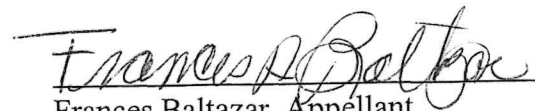
The Tribal Court erred in ruling that the residence should be given to Appellee in direct contradiction to designators' memorialized intent. The designation of preference serves as the designators' will in regards to the property herein at stake. Their intent was in writing, signed, and witnessed. Appellees did not present any contrary evidence.

The Tribal Court further erred in ruling that designators' memorialized designation of preference to Appellant was invalid. Appellant's witnesses and Appellee Alma Lespron provided only information that would support Appellant's case. Ms. Rosovich testified that the designators' were of sound mind when they signed the document designating preference of occupancy to Appellants.

Finally, the Tribal Code is silent in regards to the need for the Tribal Council to approve designations of preference. Absent a requirement specifically aimed at obtaining Tribal Council approval, the designators' memorialized will should stand as clear evidence of their intent.

WHEREFORE, Appellant prays that this Court overrule the trial court's order and grant Appellant's requested relief.

RESPECTFULLY SUBMITTED this 30th day of October 2001.


Frances Baltazar, Appellant

10-23-01

I would like more time for the
Counts transcript due to the loss of keys
~~to~~ to the safe. I would appreciate it.

ms. Ballage

CA-09-001

2001 OCT 23 PM 1:35

10/23/01

IN THE APPELLATE COURT OF THE YAQUI NATION

APPELLATE COURT
P. 10/11/01
OCT-9 PM 1:41

Frances A. Baltazar)
Appellant or Petitioner)
vs Lopez Dolores)
Lespron, Alma Lopez)
Lopez, Daniel)
Appellee or Respondent)

CA-02-001
No. 600114

NOTICE OF APPEAL

1. If the appeal is from the entire judgment.

"Notice is hereby given that the above named Frances A. Baltazar appeals to the Appellate Court of the Yaqui Nation from the judgment entered in this action by Pascua Yaqui Trib. Court on the 27 day of September 2001.
(Name of Court)

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

"Notice is hereby given that the above named _____ appeals to the Appellate Court of the Yaqui Nation from the following part of the judgment entered by the _____ on the _____ day of _____ 200____.
(Name of Court)

20__ (Specify the part of the judgment appealed from here.)

Frances A. Baltazar
Name of the Attorney or Party taking appeal
If not represented by Attorney