

No. CA-03-005  
Pascua Yaqui Tribe Court of Appeals

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Eddie Soto, Appellant,

v.

Linda Salomon, Appellee.

ORDER

Michelle E. Ereaux, Esq., Tucson, Arizona, for the Appellant.  
Lourdes S. Lopez, Esq., Gonzalez Law Firm, Tucson, Arizona, for the Appellee.

After reviewing the record and hearing this case on June 30, 2006, this Court finds that the Tribal Court misinterpreted item # 8 of our Final Order dated November 5, 2002. This part of our order states as follows:

Matters of equitable relief sought by the parties in the context of these matters, such as restraining orders and garnishments, must be filed or re-filed, if continued necessity dictates, to the trial level courts of this jurisdiction.

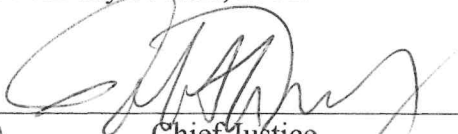
*Soto v. Salomon*, No. CA-01-005, Final Order (PYT Ct. App., Nov. 5, 2002). The Tribal Court used the language in our Order to dismiss a different case between these same parties which dealt with the granting of a permanent injunction and a complaint alleging violations of that injunction. *Soto v. Salomon*, No. CV-01-119, Final Order (PYT Tribal Ct., Nov. 26, 2002), and Order [Denying Reconsideration] (PYT Tribal Ct., Jan. 3, 2003). This Court does not have jurisdiction to enter an order concerning a case that has not been properly brought before it. PYT Constitution, Art. VIII, Sec. 5; see also 11 PYTC § 1.32. Therefore, the Tribal Court misinterpreted item #8 in our November 5, 2002 Order and wrongly dismissed Case No. CV-01-119. We reverse the Tribal Court on this issue.

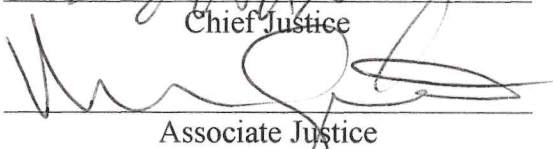
The other issue concerns the Appellant's request that the Appellee pay his attorney's fees in the amount of \$4,200. We neglected to consider this issue in Case No.

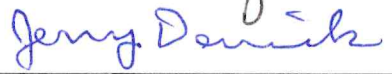
CA-01-005 so the Appellant has raised it again in this appeal. The attorney requesting attorney's fees did not appear for oral argument, so we will deny the request for attorney's fees.

Accordingly, we reverse the Tribal Court's Order that dismissed Case No. CV-01-119. We further deny the request for attorney's fees.

So ORDERED this 30th day of June, 2006.

  
\_\_\_\_\_  
Chief Justice

  
\_\_\_\_\_  
Associate Justice

  
\_\_\_\_\_  
Associate Justice

IN THE PASCUA YAQUI COURT OF APPEALS

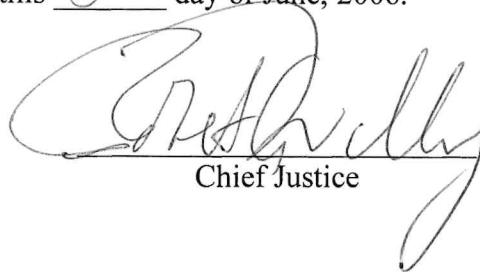
-----	)	Case No.: No. CA-03-005
EDDIE SOTO,	)	
Appellant	)	
v.	)	ORDER
LINDA SALOMON,	)	
Appellee	)	
-----	)	

Michelle E. Ereaux, Esq., Tucson, Arizona, for the Appellant.

Lourdes S. Lopez, Esq., Gonzalez Law Firm, Tucson, Arizona, for the Appellee.

Upon review of the record, this Court requests an appellate hearing be held in this case. Oral arguments have been scheduled for June 30<sup>th</sup>, 2006 at 11:30 AM. Arguments will be held in the courtroom at the Pascua Yaqui Tribal Court. Appellant and appellee will each have 15 minutes to present.

So ORDERED this 8<sup>th</sup> day of June, 2006.

  
Chief Justice

1 MICHELLE E. EREAUX  
2 4700 N. KOLB RD., APT. 6105  
3 TUCSON, ARIZONA 85750  
4 TEL.: 520-312-5378

5  
6 ADVOCATE FOR PETITIONER

APPROPRIATE COURT  
FILED  
APR 10 PM 4:44  
CASE NO. CA-03-005  
OK *[Signature]*

7  
8  
9 **IN THE PASCUA YAQUI TRIBAL COURT OF APPEALS**  
10  
11 **IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION**  
12  
13 **TUCSON, ARIZONA**

14  
15  
16 EDDIE SOTO, ) No. CA-01-005  
17 Petitioner, )  
18 vs. ) **REQUEST FOR**  
19 ) **STATUS CONFERENCE**  
20 )  
21 LINDA SALOMÓN )  
22 Respondent. )  
23

24  
25 COMES NOW, Petitioner Eddie Soto, by and through his lay advocate, Michelle Ereaux,  
26  
27 and respectfully asks that this Court hold a status conference with the parties to review  
28  
29 the pending claim for advocate's fees and the appeal filed by Mr. Soto on April 10, 2003.

30  
31  
32 Because Ms. Ereaux will be going to Fort Belknap, Montana prior to May 5, 2003, to  
33  
34 participate in ceremonies, it would be preferable to schedule the conference during the  
35  
36 latter part of April if possible.

37  
38 Respectfully submitted this 10<sup>th</sup> day of April, 2003.

39  
40  
41 By, *Michelle Ereaux*  
42 Michelle E. Ereaux  
43 Advocate for Appellant, Eddie Soto

44 Copy of the foregoing served  
45 April 9, 2003  
46 Lourdes S. Lopez  
47 3414 W. Avenida Del Pueblo  
48 Tucson, Arizona 85746

PASCUA YAQUI TRIBAL COURT  
CLERK AND DEPUTY CLERK  
APR 10 PM 4:44  
CASE NO. CA-03095  
CLERK \_\_\_\_\_

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

---

**EDDIE SOTO,  
Appellant,**

vs.

**LINDA SALOMÓN,  
Appellee.**


---

**ON APPEAL FROM THE  
PASCUA YAQUI TRIBAL COURT  
IN AND FOR  
THE PASUA YAQUI INDIAN RESERVATION**

---

**BRIEF FOR APPELLANT**

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ISI   
**Michelle E. Ereaux, J.D.**  
**Advocate for the Appellant**  
**4700 N. Kolb Road, Apt. #6105**  
**Tucson, Arizona 85750**

**Dated: April 10, 2003**

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- II. THE TRIAL COURT ERRED IN DISMISSING SUA SPONTE THE APPELLANT’S COMPLAINT OF CONTEMPT OF THE PERMANENT INJUNCTION FILED ON OR ABOUT NOVEMBER 18, 2001.
  - A. The Trial Court erred in not specifying the complaint of contempt of November, 2001, as the pending judicial matter.
  - B. The Trial Court erred in defining the Appellant’s complaint of contempt as an equitable remedy.
  - C. The Trial Court erred in closing the complaint of contempt where the parties Stipulated to a continuance and the terms of the stipulation were explicit.
  
- III. THE TRIAL COURT ERRED IN DISMISSING SUA SPONTE THE PERMANENT

INJUNCTION ISSUED ON BEHALF OF MR. SOTO AND FINALIZED ON OR ABOUT  
AUGUST 23, 2001.

- A. The Trial Court erred in defining the permanent injunction issued and docketed under a final order on or about August 23, 2001, as a pending judicial matter.
- B. The Trial Court erred in closing the permanent injunction issued and docketed under a final order where none of the conditions for closure of the case by a trial court was present.
- C. The Trial Court erred in closing the permanent injunction where the final order awarding the injunction was not under appeal.

IV IN DISMISSING SUA SPONTE, APPELLANT'S COMPLAINT OF CONTEMPT OF THE  
PERMANENT INJUNCTION THE TRIAL COURT VIOLATED MR. SOTO'S DUE PROCESS  
RIGHTS.

- A. The Trial Court's closure of the complaint of contempt and of the permanent injunction constitutes a dismissal without prejudice.
- B. The Trial Court's closure of the complaint of contempt failed to comply with the due process minimal requirements of notice and opportunity to be heard in opposition.

V. THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS IN DISMISSING  
SUA SPONTE THE PERMANENT INJUNCTION.

- A. The Trial Court's closure of the permanent injunction issued under a final order and docketed by the Trial Court on August 23, 2001, violated Mr. Soto's due process rights.

VI. THE TRIAL COURT VIOLATED APPELLANT'S EQUAL PROTECTION RIGHTS IN  
DISMISSING SUA SPONTE THE COMPLAINT AND IN DISMISSING THE PERMANENT  
INJUNCTION.

- A. The Trial Court erred in not closing the garnishment action addressed within the joint stipulation of the parties.
- B. The Trial Court treated these two claims differently without legal basis and thereby denied Mr. Soto equal protection of the law.

VII. CONCLUSION

## **PREFATORY REMARKS**

Appellant is unaware of any Pascua Yaqui Court of Appeals decision(s) that address and decide the issues presented in this Appeal. Where appropriate, Appellant cites Pascua Yaqui Tribal law. Where the law is not specified, pursuant to Section 9.2 and Title 9, Rule 22, of the Pascua Yaqui Tribal Code, Appellant cites authority from the law of the United States and the state of Arizona. Appellant makes no recommendation that this Court should adopt either law as precedent for the Pascua Yaqui nation.

## PRELIMINARY STATEMENT

On August 23, 2001, at the request of Mr. Soto, the Pascua Yaqui Tribal Court ordered the imposition of a permanent injunction against Ms. Linda Salomón. (CV-01-119). On or about November 16, 2001, Mr. Soto filed a complaint alleging Ms. Salomón violated the permanent injunction. On or about January 18, 2002, the parties stipulated to a continuance of the show cause hearing for contempt of the permanent injunction to provide an opportunity for the parties to settle this conflict as well as other matters, (CV-01-047/CA-01-005) under review by the Court of Appeals

The final order of the Court of Appeals was returned on November 5, 2002. On remand, on November 26, 2002, the trial Court issued an order, “closing the restraining order matter of CV-01-119.” On January 6, 2003, the trial court denied Mr. Soto’s petition for reconsideration of the trial court’s *sua sponte* dismissal of CV-01-119, stating,

The Court finds that the decision of the Pascua Yaqui Court of Appeals is clear to this Court that the restraining order must be re-filed.”

This appeal followed.

Petitioner requested, but has not received, a certification of the trial court’s record of the closing of the restraining order, the closing of the permanent injunction and of the denial of the petition for reconsideration.

### **QUESTIONS PRESENTED**

1. Did the Trial Court err in dismissing sua sponte the permanent injunction issued on behalf of Mr. Soto on or about August 23, 2001?
2. Did the Trial Court err in dismissing sua sponte Appellant's complaint of contempt of the permanent injunction filed on or about November 18, 2001?
3. Did the Trial Court violate Mr. Soto's due process rights by dismissing sua sponte his complaint of violations of the permanent injunction and the injunction referenced above?

### STATEMENT OF FACTS

On August 23, 2001, the Pascua Yacqui Tribal Court issued a Permanent Injunction and Temporary Restraining Order. The permanent injunction directed Respondent, Linda Salomón, not to interfere with Eddie Soto by direct or indirect means. At the same hearing, Ms. Salomón made a counter request for and was granted a restraining order against Mr. Soto. On August 24<sup>th</sup>, 2001, the final order issued in CV-01-119, entitled, “A Permanent Injunction Order and Counter Restraining Order,” at § 4, line 25, mandated, “Respondent, Linda Salomón, is permanently restrained from interfering with the physical well-being of Eddie Soto . . .” The Order was docketed by the clerk of the Court. No subsequent appeal, nor request for a new trial questioning the injunction was filed.

Notwithstanding the trial court’s order, Ms. Salomón repeatedly attempted contact with Mr. Soto, both directly and indirectly, during the months of September, October, and November of 2001. Consequently, on or about November 16, 2001, Mr. Soto sought relief from the trial court through a motion for a show cause hearing alleging some of Ms. Salomón’s numerous attempted contacts as contempt of the permanent injunction. Mr. Soto further alleged that in the absence of compelling Ms. Salomón to adhere to the permanent injunction, he would have no opportunity for uninterrupted visits with his children, that his relationship with his children would be seriously impaired, and that Ms. Salomón would continue to humiliate and dishonor him at work and within the community.

The Pascua Yaqui trial court scheduled a show cause hearing to review Mr. Soto's complaint. However, because the parties were engaged concurrently in the appeal, (CA 01-005), of the Pascua Yaqui trial court's judgment regarding child custody, child support and visitation, (CV-01-047), and were engaged in negotiations to obtain a settlement of those matters, Mr. Soto and Ms. Salomón stipulated to a continuance of Mr. Soto's complaint to allow for negotiation of a settlement of this dispute as well.

During the course of the negotiations, Ms. Salomón categorically rejected Mr. Soto's offers for settlement of the complaint. Further, Ms. Salomón made no counteroffer. Therefore, the complaint remained unresolved when the Court of Appeals issued its final order on November 5, 2002.

ARGUMENT

I. THE TRIAL COURT ERRED IN INTERPRETING THE EIGHTH ITEM  
PARAGRAPH OF THE COURT OF APPEALS FINAL ORDER OF NOVEMBER 5,  
2002, AS AUTHORIZING THE TRIAL COURT'S CLOSING OF CV-01-119.

The Trial Court found its authority to close CV-01-119 in the eighth item of the Court of Appeals' Final Order of November 5, 2002. In its order of November 26, 2002, the Trial Court explained,

The Court finds that in item #8 of the Final Order the Pascua Yaqui Court of Appeals essentially dismissed the restraining order matter of CV-01-119. . . . The Court will therefore order that CV-01-119 be closed.

In its order of January 3, 2003, the Trial Court again relied on the eighth item of the Court of Appeals Final Order of November 5, 2002, in determining,

The Court finds that the decision of the Pascua Yaqui Court of Appeals is clear to this Court that the restraining order must be re-filed. . . .IT IS ORDERED THAT the Petition for Reconsideration of Closing of Permanent Injunction is denied.

Contrary to the trial court's assertions, the paragraph cited of the Court of Appeals' Final Order does not refer to the initiation of actions by the trial court. The paragraph in the Court of Appeals' Final Order at issue states,

Matters of equitable relief sought by the parties in the context of these matters, such as restraining orders and garnishments, must be filed or re-filed, if continued necessity dictates, to the trial level courts of this jurisdiction.

The essence of this statement is, matters must be filed or re-filed to the trial level courts.

The distinguishing reference is to "relief sought by the parties." The filing or re-filing of

matters is the prerogative of the parties. Pascua Yaqui Tribal Code, Title 9, Rule 6. A.

The Court of Appeals is aware that the parties stipulated to a continuance. Therefore, the Court would logically anticipate that the parties would file motions to renew, i.e., re-file, the existing actions or file new actions if the circumstances warranted.

Contrasting this paragraph with the subsequent paragraph,

“Consequently this case is remanded . . .so that the trial court . . . enter a final decree on custody, visitation, and child support.”

further clarifies the Court of Appeals’ intent. The Court of Appeals specified the role of the trial court here as it specified the role of the parties in its previous paragraph.

The standard for interpretation of legal documents is generally one of reasonableness without convolution of the meaning of the language used. Had the Court of Appeals decided that the trial court was required to close the “restraining order matter”, the paragraph would have so stated. There is no expressed conveyance of authority from the Court of Appeals to the trial court to close pending judicial matters.

The Trial Court made an assumption that closure of a pending matter is a prerequisite to the filing or re-filing of the matters referred to by the Court of Appeals. It is not.

Following a continuance a party may use various motions to renew a pending action.

Therefore, the Trial Court erred in interpreting and using as its authority the Final Order of the Court of Appeals as the basis for closure of Mr. Soto’s petition under CV-01-119.

**II. THE TRIAL COURT ERRED IN DISMISSING SUA SPONTE APPELLANT'S  
COMPLAINT OF CONTEMPT OF THE PERMANENT INJUNCTION FILED ON  
OR ABOUT NOVEMBER 18, 2001.**

In its Order of November 26, 2002, the Trial Court first stated,

The Court finds that on January 18, 2002, the parties filed a Stipulation For Postponement of Hearing Dates for the matters CV-01-047 and CV-01-119. In the Stipulation the parties agreed to postpone the two matters for a period of 90 days upon completion of a *Settlement Agreement* ordered by the Appellate Court.

**A. The Trial Court erred in not specifying the complaint of contempt of November, 2001, as the pending judicial matter.**

Mr. Soto asserts that the complaint of contempt of the permanent injunction, not the injunction itself, was the matter “pending” before the trial court when the Appellate Court issued its Final Order in CA-01-005. In the stipulation noted above, the parties agreed to continue the show cause hearing to review Ms. Salomón’s alleged contempt of the permanent injunction. They did not stipulate to any new adjudication or settlement of the permanent injunction itself.

A continuance is, “the adjournment or postponement of a session, hearing, trial or other proceeding to a subsequent day or time.” Black’s Law Dictionary Because the complaint of contempt was continued, it is, by definition, “pending.” Therefore, as a matter under continuance, the complaint of contempt should have been construed by the Trial Court as contained in the paragraph titled, “Pending Judicial Matters.”

**B. The Trial Court erred in defining Appellant's complaint of contempt as an equitable remedy.**

Black's Law Dictionary, 7<sup>th</sup> Edition, (1999), under "equitable" cites to the definition of "equitable remedy" under "remedy" as: "a non-monetary remedy, such as an injunction or specific performance when monetary damages cannot adequately redress the injury.

The subject matter of the stipulation categorized by the Court as CV-01-119 is a complaint for contempt of a permanent injunction. In support of subject matter jurisdiction for his complaint for contempt, Mr. Soto cited Section 2.14 §d. and Section 2.16 of the Pascua Yaqui Tribal Code. This is the "Sentences" chapter of the Pascua Yaqui Code. The sections cited refer to acts of contempt committed not in the presence of the judge. Mr. Soto found no direct reference in the Pascua Yaqui Tribal Code for instances of civil contempt.

Remedies for contempt cross between civil contempt where fines are remedial and compensatory and criminal where the remedy can include both fines and incarceration. Mindful of the jurisdictional questions where non-Indians are subject to Tribal laws, Mr. Soto is attempting to fashion the civil remedy for contempt as monetary damages to the Court equal to the amount of the fines designated in the sections cited above in order to compel Ms. Salomón to respect an order of the Pascua Yaqui Tribal Court and to deter her from continuing to disrespect the orders of the Court. As permitted by Section 9.24 of the Pascua Yaqui Tribal Code, Mr. Soto also asked for compensation for the expenses he incurred as a result of Ms. Salomón's violations and for those he incurred in bringing

the action.

**C. The Trial Court erred in closing the complaint of contempt where the parties stipulated to a continuance and the terms of the stipulation were explicit.**

The stipulation for continuance of the show cause hearing was filed to and confirmed by the trial court and the Court of Appeals.

A stipulation is,

a voluntary agreement between opposing counsel concerning the disposition of some relevant point so as to obviate the need for proof or narrow the range of litigatable issues. *Arlington v. State*, Fla. 233 So. 634,636.

The final paragraph of the stipulation states,

If the parties are unable to resolve these problems in the course of the negotiations then each party will seek a rescheduling of a hearing for his or her complaint as appropriate at the completion of the negotiation period.

On its face, this clause makes clear that the parties are responsible for the initiation of future actions. While the words differ, the intent of this paragraph is synonymous with the intent of paragraph eight of the Final Order. That is, it allows the parties to file to the trial court whatever pleadings are necessary to activate a dormant, continued, controversy.

For the trial court to sua sponte close this complaint creates the anomaly of a legal order in support of an illegal action. Specifically, the stipulation created a contract between the parties which the court then verified. The terms of the contract regarding the stipulation's purpose, the period of its existence, and the remedy if negotiations failed are clear. The court's summary closure of the complaint of contempt

breaches the contract established by stipulation. A material breach of a contract entitles Mr. Soto to seek relief, including damages, through the courts.

**III. THE TRIAL COURT ERRED IN DISMISSING SUA SPONTE THE PERMANENT  
INJUNCTION ISSUED ON BEHALF OF MR. SOTO AND FINALIZED ON OR ABOUT  
AUGUST 23, 2001.**

In its order of November 26, 2002, the Trial Court wrote,

IT IS ORDERED THAT the matter of the restraining order in CV-01-119 is hereby closed.

Similarly, in its order of January 3, 2003, the Trial Court directed,

The Court finds that the decision of the Pascua Yaqui Court of Appeals is clear to this Court that the restraining order must be re-filed.

Since the Trial Court has used the terms permanent restraining order and permanent injunction interchangeably elsewhere, Mr. Soto submits the following arguments in support of the proposition that the trial court erred in sua sponte dismissal of the permanent injunction awarded and established through a final order on or about August 23, 2001.

**A. The Trial Court erred in defining the permanent injunction issued and docketed under a final order on or about August 23, 2001, as a pending judicial matter.**

The eighth item paragraph, titled, “**Pending Judicial Matters,**”<sup>1</sup> of the Final Order of the Pascua Yaqui Court of Appeals begins with,

Matters of equitable relief sought by the parties in the context of these matters, such as restraining orders and garnishments . . .

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<sup>1</sup> Emphasis added.

Black's Law Dictionary, 7<sup>th</sup> Edition, 1999, defines "pending matters" as those matters that are "undecided; awaiting decision." American Jurisprudence, § 74, Pendency of Action, definitions:

A suit is deemed to be pending from the time it is commenced until its final determination, or until the entry of final judgment. Moreover, notwithstanding the entry of a final judgment or order, a case will be deemed pending during the time allowed for filing a motion for new trial. While according to some authorities a case is deemed pending until its final determination on appeal or the time for taking of an appeal has passed, other authority holds that a case in which a final judgment has been rendered is not pending while awaiting review. Where a decision of a state supreme court has been certified to the court below for entry of a judgment in accordance with the opinion, the case is not final until such judgment has been enforced.

Following a determination of the facts by the trial court, the permanent injunction was issued on behalf of Mr. Soto. Rule 19, A., of the Rules of Civil Procedure of the Pascua Yaqui Code states that, "a judgment is a final order of the Court which disposes of a claim in whole or in part. . ." Rule 19, B., adds, "Finality. A judgment becomes final when it has been recorded in the Docket Book by the Court Clerk. . ." The final order issuing the permanent injunction was docketed on August 24, 2001, fifteen (15) months prior to this dismissal. Therefore, by definition, the permanent injunction awarded for Mr. Soto was not a pending judicial matter.

**B. The Trial Court erred in closing the permanent injunction issued and docketed under a final order where none of the conditions for closure of the case by a trial court was present.**

The Pascua Yaqui Tribal Code only expressly provides authority for a bench dismissal of a case in the pretrial stage of litigation when the plaintiff withdraws the complaint prior to reply by a respondent or when a respondent does not counterclaim. Pascua Yaqui

Tribal Code, Title 9, Rule 7 A. & B. Involuntary dismissal of a complaint by a judge is also possible under other limited circumstances, e.g., failure to prosecute, or a showing of frivolousness. Pascua Yaqui Tribal Code, Rule 22, Applying U.S. Federal Rules of Civil Procedure. or Arizona Rules of Civil Procedure.

Moreover, Rule 20 of the Pascua Yaqui Rules of Civil Procedure provides,

- A. No later than ten days after judgment is final, a party may ask the judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment.
- B. The judge may grant a new hearing or reconsider any change in the judgment if he or she finds at least one of the following to be true:
  - (1) The original judgment was based on or reached as a result of fraud or mistake of law;
  - (2) There is newly discovered evidence . . .
  - (3) The court did not have jurisdiction over a party or over the subject matter.
- C. No later than thirty (30) days after judgment is final or after a motion made pursuant to Section A of this Rule is denied, a party may appeal . . .

None of the conditions described herein apply to this situation and none of the potential defenses under these rules were raised during the court's original adjudication of the injunction. Therefore, the Trial Court lacked jurisdiction to close the permanent injunction.

**C. The Trial Court erred in closing the permanent injunction where the final order awarding the injunction was not under appeal.**

Chapter 1 of the Pascua Yacqui Code allocates the responsibility for review of final orders to the appellate court at Sections 1.6 – 1.13. Section 1.13 of Chapter 1, directs that notice of appeal is to be filed within thirty (30) days after judgment. The permanent injunction was not appealed and, therefore, could not be construed as included

within paragraph eight or any part of the Court of Appeals Final Order.

**IV. IN DISMISSING SUA SPONTE APPELLANT'S COMPLAINT OF CONTEMPT OF  
THE PERMANENT INJUNCTION THE TRIAL COURT VIOLATED APPELLANT'S  
DUE PROCESS RIGHTS.**

**A. The Trial Court's closure of the complaint of contempt constitutes a  
dismissal without prejudice.**

In its Order of November, 26, 2002, the trial court stated, "The Court finds that in item #8 of the Final Order the Pascua Yaqui Court of Appeals essentially dismissed . . ." and thereby concluded, "This Court will therefore order that CV-01-119 be closed. IT IS ORDERED THAT the matter of the restraining order in CV-01-119 is hereby closed."

Inasmuch as the Trial Court used the terms, "essentially dismissed" and "closed." interchangeably, Mr. Soto contends that the closure with an option to file or re-file constitutes a dismissal without prejudice.

**B. The Trial Court's closure of the complaint of contempt failed to comply  
with the due process minimal requirements of notice and opportunity to  
be heard in opposition.**

Due process in the adjudication of a civil complaint is detailed in Title 9, Rules of Civil Procedure, of the Pascua Yaqui Tribal Code. Rule 22 of that Code also makes applicable like provisions of the Federal Rules and Arizona rules of procedure. Incorporating all the available sources here, determines that due process requires that a party be notified in advance of the Court's intent to dismiss the complaint, provide an opportunity for the plaintiff to amend his complaint or respond to the reasons for the dismissal, and, if the

claim is dismissed, the Court is obligated to state the reasons for the dismissal. [U.S.] Federal Rules of Civil Procedure, (F.R.C.P.), Rule 41 b. 1, *Catz v. Chalker*, 41 Fed Rules Serv. 3d 58, 142 F3d 279 (CA6 1986); *Tingler v. Marshall* 37 Fed Rules Serv 2d 934, 716 F2d 1109 (CA6 1983)

Further, in a case where negotiations failed to achievement settlement of a complaint of contempt, the United States Seventh Circuit Court of Appeals ruled,

While it is proper for a court to encourage settlement negotiations in a civil contempt proceeding, and to postpone judicial action until the settlement negotiations have a chance to bear fruit, it is not proper to decline to examine the merits of the issues left unresolved by the negotiations . . . *Thompson v. Cleland* (1986, CA7 ILL) 782 F2d 719

The Trial Court's closure of Mr. Soto's complaint of contempt denies him the opportunity for an examination of the merits of his complaint. This is particularly harmful.

. . . Dismissal of a party's action is a drastic punishment which should not be invoked except where the actions of the party show deliberate and contumacious disregard of the court's authority . . ." § 55, A., *American Jurisprudence*

There is no evidence before the Trial Court that Mr. Soto has ever disregarded the authority of the Court. To the contrary, it is the authority of the Court and its lawful order that Mr. Soto sustained and sought through his complaint.

**V. THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS**  
**IN DISMISSING SUA SPONTE THE PERMANENT INJUNCTION**

**A The Trial Court's closure of the permanent injunction issued under a Final order and docketed by the Trial Court on August 23, 2001 violated Mr. Soto's due process rights**

This argument incorporates and references the arguments made in Section IV. above.

As to this claim specifically, Mr. Soto adds the following.

There was no motion to vacate, set aside or to in any manner effect a change in the existence of the permanent injunction awarded on behalf of Mr. Soto before the trial court. In addition, as argued previously above, there was no authority specified under the Pascua Yaqui Tribal Code for the trial court to remove a permanent injunction. For the trial court to vacate its own final order, a permanent injunction, without notice and opportunity to be heard in opposition constitutes a particularly grave violation of Mr. Soto's due process rights. Mr. Soto argues further that this violation of his rights also constitutes ultra vires action by the court sufficient to require an award of punitive damages against the Honorable Judge Flores, as an agent of the Pascua Yaqui Tribal Court.

**VI. THE TRIAL COURT VIOLATED APPELLANT'S EQUAL PROTECTION RIGHTS IN DISMISSING SUA SPONTE THE COMPLAINT OF CONTEMPT AND IN DISMISSING THE PERMANENT INJUNCTION**

**A. The Trial Court erred in not closing the garnishment action addressed within the stipulation of the parties.**

The stipulation for continuance to permit negotiations filed by counsel for the parties included both the complaint for contempt and a complaint for garnishment of Mr. Soto's wages.

In a subsequent stipulation filed on April 17, 2002, Ms. Salomón's counsel of record, Ms. Lopez withdrew the complaint seeking the garnishment.

Appellee [Ms. Salomón] contends that to date, Appellant [Mr. Soto] is current with his child support payments. As such and as a showing of good faith, Appellee will not be seeking a garnishment of Appellant's wages."

Ms. Lopez signed this document. Pursuant to Rule 4 of the Pascua Yacqui Tribal Code and Rule 11 of the Federal Rules of Civil Procedure made applicable to this Court by Rule 22 of the Pascua Yacqui Code, by signing the paper, Ms. Lopez certified that the stipulation was,

- (1) not being presented for any improper purpose;
- (2) legal contentions therein are warranted by existing law, . . .and,
- (3) the allegations and other factual contentions have evidentiary support,

Notwithstanding the stipulation to end the garnishment proceeding, the Trial Court notably omitted any reference to it, even where the Final Order of the Court of Appeals specifically named it. Inasmuch as this is true, Mr. Soto alleges that the Court's Order of November 26<sup>th</sup>, 2002, omitting any reference to the closing of the garnishment, CV-01-047, is error.

**B. The Trial Court treated these two claims differently without legal basis and thereby denied Mr. Soto equal protection of the law.**

Both the complaint for contempt of the permanent injunction and the garnishment were continued by stipulation. This put the claims in a sense on equal footing as to their status before the Court. That status changed when the stipulation was filed by Ms. Lopez. In its order[s], the Trial Court made no effort to clarify the Court of Appeals' reference to

the garnishment in the item eight paragraph nor to indicate that the matter was withdrawn. In this situation, the Court could have again confirmed the withdrawal and made clear that the party could file a new action if necessary. In its order on remand, it would be logical for the Trial Court to explicate and confirm the status of all the issues that were within the purview of the previous years dealing. It is the omission of any reference to the garnishment that speaks starkly.

Mr. Soto alleges that this omission of any reference by the Trial Court to closing of the garnishment is, on its face, unequal treatment by the trial court. Where two claims stood similarly situated before this Court and were required to be addressed simultaneously by the trial court, the juxtapositioning of taking positive action to close one matter without basis in law to the disadvantage of one party while leaving open the second matter without basis in law to the advantage of the adverse party is deeply problematic. This is disparate treatment and Mr. Soto asserts that it is on its face the denial of his right to equal protection of the laws. Indian Civil Rights Act of 1968, 25 U.S.C.A., § 1302, (8).

## **VI. CONCLUSION**

The trial court erred in its interpretation of the eighth item paragraph of the Court of Appeals Final Order of November 5, 2002, as requiring closure of the pending matter before it. The trial court erred in sua sponte dismissing Mr. Soto's complaint for contempt. The trial court erred in sua sponte dismissing the permanent injunction previously awarded to Mr. Soto and thereafter established by final order. In addition, the

Trial Court violated Mr. Soto's due process rights in failing to provide notice and opportunity to be heard prior to dismissal of his pending complaint for contempt of a lawful court order. The Trial Court further, and with particular egregiousness, violated Mr. Soto's due process rights of notice and opportunity in closing a permanent injunction issued under a final order and docketed fifteen months prior to this trial court recent order. Finally, the too obvious omission of any reference to closure of the garnishment action which had, in fact, been closed by stipulation of the party, evidences the trial court's disparate treatment of the parties and the denial of equal protection of the law to Mr. Soto.

Therefore, the decision of the Trial Court closing Mr. Soto's complaint for contempt of a permanent injunction should be reversed and the decision of the trial court closing the permanent injunction should be reversed.

Furthermore, in light of the seriousness of the violations of Mr. Soto's rights protected by the Indian Civil Rights Act and the Pascua Yaqui Constitution, this Court should grant relief, not limited to but including the damages mentioned above. In addition, because it is unfair and unjust that he should have to bear the repeated burden of rectifying the Trial Court's errors and violations of his rights, Mr. Soto asks for an award of advocate's fees pursuant to Rule 18, ( c ) 1. These fees should be paid by the Pascua Yaqui Trial Court, as an agent of the Pascua Yaqui Nation.

Finally, Mr. Soto respectfully asks that this court award additional relief as it deems just and proper.

PASCUA YAQUI TRIBAL COURT  
FILED DATE AND TIME  
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Michelle E. Ereaux, J.D.  
c/o 4700 N. Kolb Road  
The Arboretum, Apt. #6105  
Tucson, Arizona 85750  
Tel. 520-312-5378  
Lay Advocate for Appellant, Eddie Soto


IN THE PASCUA YAQUI TRIBAL COURT OF APPEALS  
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION  
TUCSON, ARIZONA

EDDIE SOTO, )  
                  ) APPELLANT )  
                  ) )  
                  ) VS )  
                  ) ) MOTION FOR )  
                  ) ) CERTIFICATION )  
                  ) ) OF )  
LINDA SALOMÓN, ) ) RECORD )  
                  ) APPELLEE. )

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EDDIE SOTO, Appellant, by and through his lay advocate, pursuant to Section 1.17 and Section 1.19 of the Court of Appeals Procedures Act of 2000 amending Title I, Chapter I, of the Pascua Yaqui Law and Order Code, hereby moves this Court to provide to the parties a transcript of the record, as well as certification of the transcript, of this Court's proceedings resulting in the Order dismissing the pending *claims of contempt* of the permanent injunction, filed to this Court on or about November 16<sup>th</sup>, 2001. Although filed subsequent to closure of the original case, this case was also docketed as, CV-01-119.


Respectfully submitted this 24<sup>th</sup> day of March, 2003.

By,   
Michelle E. Ereaux,  
Lay Advocate for Eddie Soto, Appellant

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CERTIFICATE OF SERVICE

I hereby certify that I served the original and copies of the three corrected  
*Requests for Transcripts and Certification of the Transcripts* in the matter,  
CV-01-119, captioned as Soto v. Salomón, to the Pascua Yaqui Court and to the  
parties by personal delivery on March 24<sup>th</sup>, 2003.

By,   
Michelle E. Ereaux, J.D.  
Advocate for Eddie Soto, Appellant

Pascua Yaqui Tribal Court of Appeals, Pascua Yaqui Indian Reservation  
Lourdes S. Lopez, Gonzalez Law Firm, or 3414 W. Avenida Del Pueblo, Tucson, AZ

03 MAR 12 PM 2:38

DOCKET NO. CV-01-119

FRK cmw

1 Michelle E. Ereaux, J.D.  
2 %o 4700 N. Kolb Road  
3 The Arboretum, Apt. #6105  
4 Tucson, Arizona 85750  
5 Tel. 520-312-5378  
6 Lay Advocate for Appellant, Eddie Soto

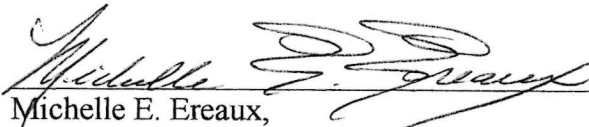
9 IN THE PASCUA YAQUI TRIBAL COURT  
10 IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION  
11 TUCSON, ARIZONA

14	EDDIE SOTO,	)	CV-01-119
15	APPELLANT	)	
16		)	<b>NOTICE OF</b>
17	VS	)	<b>TEMPORARY</b>
18		)	<b>CHANGE OF ADDRESS</b>
19	LINDA SALOMÓN,	)	
20	APPELLEE.	)	

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21  
22 Appellant, Eddie Soto, by and through his lay advocate, Michelle E. Ereaux, hereby  
23  
24 informs the Court that his advocate can be reached at the address and telephone number  
25  
26 listed herein above the caption until further notice.


27  
28  
29 Respectfully submitted this 11<sup>th</sup> day of March, 2003.

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32 By,   
33 Michelle E. Ereaux,  
34 Lay Advocate for Eddie Soto, Appellant  
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CERTIFICATE OF SERVICE

I hereby certify that I served the original and copies of the *Notice of Temporary Change of Address* for Michelle E. Ereaux, Lay Advocate for Eddie Soto to the Pascua Yaqui Court and to the parties by personal delivery on March 11<sup>th</sup>, 2003.

By,   
Michelle E. Ereaux, J.D.  
Advocate for Eddie Soto, Appellant

Pascua Yaqui Tribal Courts, Pascua Yaqui Indian Reservation  
Lourdes S. Lopez, Gonzalez Law Firm, or 3414 W. Avenida Del Pueblo, Tucson, AZ

1 MICHELLE EREAUX  
2161 Alan St. #2, Aspen Park  
2 Idaho Falls, Idaho, 83404

03 JAN 17 PM 4:53  
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CKET NO. CV-01-119  
ERK *[Signature]*

3  
4 PASCUA YAQUI TRIBAL COURT  
IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION  
5 TUCSON, ARIZONA

CA-03-002

) Case No.: No. CV-01-119.

6 EDDIE SOTO,

7 Petitioner,

8 and

9 LINDA SALOMON,

10 Respondent

) **NOTICE OF APPEAL**  
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12 COMES NOW EDDIE SOTO, BY AND THROUGH LAY ADVOCATE MICHELLE EREUAX notifying  
13 the court that the final court order of the Pascua Yaqui Tribal Court issued without hearing  
14 on January 6, 2003 is being appealed on the following grounds:

- 15 1. The Trial Court exceeds its authority by *sua sponte* dismissing a final order of the  
16 Tribal Court.  
17 2. The Trial Court's *sua sponte* dismissal of the final order of the Tribal Court violates  
18 Petitioner's right to due process, specifically his right to notice and opportunity to be  
19 heard.  
20 3. The Trial court erred in interpreting the Final Order of the Pascua Yaqui Appellate  
21 Court's reference to "Pending Judicial Matters" to include cases that were  
22 adjudicated.

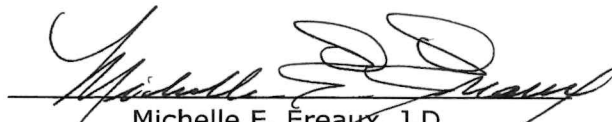
23 Dated this 15<sup>th</sup> day of January, 2003

24 *[Signature]*  
25 MICHELLE EREAUX

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CERTIFICATE OF SERVICE

I hereby certify that I notified Pascua Yaqui Tribal Court and the parties of the Notice of Appeal, in the matter of Soto v. Salomon by hand delivering a copy to the Pascua Yaqui Tribal Court and by mailing a copy to Lourdes Salomon Lopez on January 17, 2003.

  
Michelle E. Ereaux, J.D.  
Lay Advocate for Eddie Soto, Appellant

IN THE PASCUA YAQUI TRIBAL COURT

IN AND FOR THE PASCUA YAQUI INDIAN RESERVATION

SOTO, EDDIE )  
Plaintiff, )  
VS. )  
SOLOMON, LINDA )  
Respondent. )

NO. CV-01-119

ORDER

Upon review of the Petition For Reconsideration of Closing Of Permanent Injunction filed by the Plaintiff the Court finds good cause to deny the Plaintiff's Petition. The Court finds that the decision of the Pascua Yaqui Court of Appeals is clear to this Court that the restraining order must be re-filed. As the Final Order states, "Matters of equitable relief sought by the parties in the context of these matters, such as **restraining orders** and garnishments, must be filed or re-filed, if continued necessity dictates, to the trial level courts of this jurisdiction." Should the Plaintiff feel the need to continue with his Petition he may petition the Appellate Court for clarification.

IT IS ORDERED THAT the Petition For Reconsideration of Closing Of Permanent Injunction is denied. Should the Plaintiff feel the need to continue with his Petition he may petition the Appellate Court for clarification.

SO ORDERED THIS 3rd DAY OF January, 2003.

*Margaret A. Flores*  
Judge, Pascua Yaqui Tribal Court

Cc:  Plaintiff/Petitioner  Counsel for Petitioner  Defendant/Respondent  Counsel for Respondent  Other  
Date: 1-6-03  
Clerk: cm