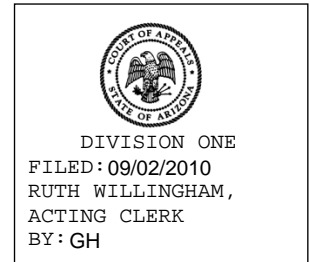


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



ROBERT A. LEVY and PHYLLIS B.) No. 1 CA-SA 10-0168
LEVY,)
) DEPARTMENT E
Petitioners,)
) Maricopa County
v.) Superior Court
) No. CV2001-011987
THE HONORABLE PATRICK ELDRIDGE,)
Judge of the SUPERIOR COURT OF) **DECISION ORDER**
THE STATE OF ARIZONA, in and for)
the County of Maricopa,)
)
Respondent Judge,)
)
WILLIAM A. ENGLUND,)
)
Real Party in Interest.)
_____)

This special action was considered by Presiding Judge Sheldon H. Weisberg and Judges Peter B. Swann and Jon W. Thompson during a regularly scheduled conference held on August 31, 2010. After consideration, and for the reasons that follow, it is ordered that the Court of Appeals, in the exercise of its discretion, accepts jurisdiction and denies relief.

In this special action, petitioners contend that the trial court did not comply with the mandate that followed our decision in *Levy v. Englund*, 1 CA-CV 07-0260. In that decision, we ordered that a judgment against the petitioners be reduced

from \$279,901.00 to a total of \$212,481.09 plus any attorney's fees and costs awarded on appeal. We awarded \$19,564.50 to respondents on appeal.

The parties submitted competing forms of judgment, and the superior court entered judgment in the form proposed by respondents, containing separate awards of \$212,481.09 and \$19,564.50.¹ Petitioners argue that the post-remand judgment failed to comply with the mandate because they had satisfied the earlier, larger judgment and are entitled to a refund of the balance.

The superior court's entry of judgment based on a specific mandate and appellate decision is not appealable. *Scates v. Ariz. Corp. Comm'n*, 124 Ariz. 73, 75, 601 P.2d 1357, 1359 (App. 1979). Because petitioners' only avenue of review is by special action, we accept jurisdiction.

We deny relief, however, for two reasons. First, the judgment that the superior court entered is not defective -- it conforms precisely to the terms of the mandate. Second, the record contains nothing from which we can accept at face value petitioners' assertion that they have overpaid on their liability to respondents. To the extent that they have

¹ We note that, contrary to Ariz. R. Civ. P. 54(a), the judgment contains extensive recitals of pleadings, findings of fact and conclusions of law. This defect in form does not render the judgment ineffective, nor is it important to the issue presented by this special action.

overpaid, and respondents do not voluntarily refund the overpayment, petitioners may seek redress in the superior court once the material facts have been established.

/s/

Peter B. Swann, Judge