

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



DIVISION ONE  
FILED: 04/19/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

RAIN MORGAN, a single woman, ) 1 CA-SA 12-0069  
)  
Petitioner, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
THE HONORABLE ANNA YOUNG, Judge ) Rule 28, Arizona Rules  
of the SUPERIOR COURT OF THE ) of Civil Appellate  
STATE OF ARIZONA, in and for the ) Procedure)  
County of YAVAPAI, )  
)  
Respondent Judge, )  
)  
LISA DELFINI, a single woman; )  
JAY CALHOUN; JOHN DOE CALHOUN, )  
and THE CALHOUN LAW FIRM PLC, )  
)  
Real Parties in Interest. )  
\_\_\_\_\_ )

Petition for Special Action from the  
Yavapai County Superior Court

Cause No. P1300CV201100496

The Honorable Anna C. Young, Judge

**Jurisdiction Accepted; Relief Denied**

Rain Morgan  
Petitioner

Prescott

Wong Fujii Carter, PC  
By Craig Y. Fujii  
And Matthew Klopp  
Attorneys for Real Party in Interest Lisa Delfini

Phoenix

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**G O U L D**, Judge

¶1 Petitioner, Rain Morgan, seeks special action review of the superior court's grant of a motion to change venue. Because "[v]enue rulings are appropriately reviewable by special action[,]" we accept jurisdiction. *Almadova v. Arnold*, 130 Ariz. 115, 115, 634 P.2d 403, 403 (App. 1981). Having accepted jurisdiction, we deny relief.

***Discussion***

¶2 On March 25, 2011, Morgan filed a complaint in Yavapai County naming Lisa Delfini and her attorney, Jay Calhoun, as defendants. Delfini was personally served with the complaint on July 14, 2011 at her home address in New Jersey, and Calhoun was served on October 28, 2011. Delfini filed an answer and counterclaim on November 30, 2011. Calhoun filed a motion for change of venue on December 2, 2011 and Delfini moved to join Calhoun's motion on January 6, 2012. Morgan did not file a response and the court granted the motion. Morgan then filed a motion for reconsideration, which the court denied.

¶3 A change of venue is mandatory if the defendant files an affidavit stating the action was not brought in the proper county "before expiration of the time allowed to answer" the

complaint. Arizona Revised Statutes ("A.R.S.") section 12-404; see also *Campbell v. Deddens*, 21 Ariz. App. 295, 297, 518 P.2d 1012, 1014 (1974). Failure to file within that time does not preclude a defendant from moving to change venue. In fact, A.R.S. § 12-406 provides that venue may be changed if either party, "after [an] answer has been filed, files an affidavit" alleging certain grounds to change venue. A.R.S. § 12-406(A). If the motion is filed after an answer has been filed, the party seeking to change venue must allege one of the statutorily enumerated grounds to change venue. A.R.S. § 12-406(B).

¶4 The superior court did not abuse its discretion in granting the defendants' motion to change venue. See *Almadova*, 130 Ariz. at 115, 634 P.2d at 403. Calhoun moved to change venue before filing an answer to Morgan's complaint, and the motion was supported by a declaration made under penalty of perjury by Calhoun's counsel stating that Calhoun resides in Maricopa County, that the Calhoun Law Firm is a professional limited liability company domiciled in Maricopa County, and that Yavapai County is not the proper venue. See Ariz. R. of Civ. P. 80(i). Delfini, in her motion to join Calhoun's motion for change of venue, properly filed a declaration alleging that transfer would promote "the convenience of witnesses" and "the ends of justice." See A.R.S. § 12-406(B). Morgan did not file a controverting affidavit in response to the defendants' motion

to change venue. Accordingly, the court was required to change venue. See *Albins v. Superior Court (Gardner)*, 7 Ariz. App. 264, 265, 438 P.2d 333, 334 (1968) (“[W]hen a proper request for a change of venue has been made, the cause must be transferred.”).

**Conclusion**

¶15 For the reasons above, we accept jurisdiction and deny relief.<sup>1</sup>

/S/

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ANDREW W. GOULD, Judge

CONCURRING:

/S/

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MAURICE PORTLEY, Presiding Judge

/S/

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ANN A. SCOTT TIMMER, Judge

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<sup>1</sup> On April 10, 2012, Morgan filed a motion requesting additional time for defendants to file a response. Calhoun timely filed a response on April 9, 2012. On April 11, Delfini filed a response and joinder in Calhoun’s response essentially adopting Calhoun’s arguments and position. Having accepted jurisdiction, considered the responses filed by both Respondents, and denied Petitioner relief, we dismiss Morgan’s motion as moot.