

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



DIVISION ONE
FILED: 08/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

MELINDA GABRIELLA VALENZUELA,) No. 1 CA-CV 11-0538
)
Plaintiff/Appellant,) DEPARTMENT E
)
v.) Yuma County
) Superior Court
STATE OF ARIZONA,) No. S1400CV201000161
)
Defendant/Appellee.) **DECISION ORDER ACCEPTING**
) **SPECIAL ACTION JURISDICTION;**
) **DISMISSING AS MOOT**

The Court, Presiding Judge Patricia K. Norris and Judges Diane M. Johnsen and Jon W. Thompson, has considered Melinda Gabriella Valenzuela's appeal from an order by the superior court on her petition for change of name. In the order at issue, the superior court denied the petition "while [Valenzuela] remains in custody with the Arizona Department of Corrections."

Because the order from which Valenzuela appeals did not finally dispose of her petition for change of name, but instead was akin to a stay order, we lack jurisdiction over her appeal. See *Roeder v. Huish*, 105 Ariz. 508, 509-10, 467 P.2d 902, 903-04 (1970) (order staying superior court proceedings pending arbitration was interlocutory, not appealable); *Ruesga v.*

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Kindred Nursing Centers, L.L.C., 215 Ariz. 589, 593, ¶ 12, 161 P.3d 1253, 1257 (App. 2007) (“substance or effect of an order determines its character for appeal purposes”). Nevertheless, we elect to exercise our discretion to accept special action jurisdiction over the matter. See *State v. Perez*, 172 Ariz. 290, 292, 836 P.2d 1000, 1002 (App. 1992); see also A.R.S. § 12-120.21(A)(4) (West 2012) (special action jurisdiction).¹

Although the superior court ruled in advance that Valenzuela could appear telephonically at the hearing on her petition, it denied her petition after she twice failed to call at the appointed time. Valenzuela argues the superior court erred by failing to order corrections officials to allow her to call in for the hearing. See *Ariz. Dep’t of Econ. Sec. v. Valentine*, 190 Ariz. 107, 110, 945 P.2d 828, 831 (App. 1997) (despite minute entry allowing inmate litigant to appear telephonically at hearing, court erred by failing to order Arizona Department of Corrections to grant telephone access to inmate at the time of the hearing).

As noted, however, the superior court’s order denied Valenzuela’s petition only “while [Valenzuela] remains in

¹ Absent material revision after the relevant date, we cite a statute’s current version.

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custody with the Arizona Department of Corrections." The Court takes judicial notice that Valenzuela was released from custody on February 28, 2012. By its terms, therefore, the order no longer bars her petition for name change, and Valenzuela now is free to request a new hearing on her petition.

Accordingly, upon consideration,

IT IS ORDERED accepting special action jurisdiction over the appeal, but dismissing it as moot.

/s/

DIANE M. JOHNSEN, Judge