

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: 10/18/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

SOLOMON ODUYALE; DONNA BLY; ONI) 1 CA-CV 11-0573
AZ LIMITED PARTNERSHIP; TOYIN)
EQUITY PARTNERSHIP; and) DEPARTMENT E
SOUTHWESTERN EQUITIES MANAGEMENT,)
LTD; Individually and on behalf) **MEMORANDUM DECISION**
of other persons similarly) (Not for Publication
situated,) - Rule 28, Arizona
) Rules of Civil
Plaintiffs/Appellants,) Appellate Procedure)
)
v.)
)
CITY OF YUMA, by and through the)
COUNCIL OF THE CITY OF YUMA, Its)
governing body, the members of)
the COUNCIL OF THE CITY OF YUMA:)
ALAN L. KRIEGER, Mayor; PAUL B.)
JOHNSON, Deputy Mayor/Member;)
CODY T. BEESON, Member; LESLIE)
L. MCCLENDON, Member; RAUL)
MENDOZA, Member; JERRY STUART,)
Member; and BOBBI BROOKS-GURROLA,)
Member,)
)
Defendants/Appellees.)
)

Appeal from the Superior Court in Yuma County

Cause No. S1400CV201100503

The Honorable John Neff Nelson, Judge

AFFIRMED

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By Donald B. Engler
Attorney for Plaintiff/Appellant

Yuma

Snell & Wilmer LLP
By Craig A. Logsdon
and Martha E. Gibbs
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Phoenix

N O R R I S, Judge

¶1 This appeal arises out of a superior court order declining special action jurisdiction of an action filed by Plaintiffs/Appellants Solomon Oduyale, Donna Bly, and three business entities to enjoin criminal misdemeanor prosecutions pending against them in the Municipal Court of the City of Yuma for allegedly violating various City of Yuma ordinances. On appeal, Appellants argue first, the superior court should not have declined special action jurisdiction because Arizona Rule of Criminal Procedure 16.6(b) precludes them from raising jurisdictional challenges to the prosecutions; and second, even if they could raise such challenges, the municipal court does not have jurisdiction to determine whether it has jurisdiction over the prosecutions.¹ We disagree with both arguments and, accordingly, affirm the superior court's order declining special action jurisdiction.

¹Appellants argue Defendants/Appellees ("City") agreed to their special action. While the City agreed to postpone the criminal trial against Appellants until their special action petition was resolved, nothing in the record suggests the City agreed Appellants' special action was proper.

¶12 As an initial matter, we have an independent duty to determine whether we have jurisdiction over this appeal. See *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Although Appellants did not address this court's jurisdiction in their opening brief, the City asserts we have jurisdiction under Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1) (Supp. 2011). In *State v. Bayardi*, 230 Ariz. 195, 197-98, 281 P.3d 1063, 1065-66 (App. 2012), however, this court questioned whether we had appellate jurisdiction over an appeal from a special action initially filed in the superior court. *But see Merlina v. Jejna*, 208 Ariz. 1, 3, ¶¶ 5-6, 90 P.3d 202, 204 (App. 2004) (noting appellate jurisdiction under a prior version of A.R.S. § 12-2101(A)(1)). Without deciding this issue, we have elected to treat this appeal as a special action and to accept special action jurisdiction. See A.R.S. § 12-120.21(A)(4) (2003); Ariz. R.P. Spec. Act. 1(a).

¶13 Turning to Appellants' arguments, we agree with the superior court Appellants can challenge the prosecutions pending in municipal court for lack of jurisdiction. Rule 16.6(b) provides a criminal defendant can move to dismiss a prosecution on the ground that "the indictment, information, or complaint is insufficient as a matter of law." Ariz. R. Crim. P. 16.6(b).

Nothing in Rule 16.6(b) precludes Appellants from challenging the court's jurisdiction through a motion to dismiss. In fact, courts have read Rule 16.6(b) to allow criminal defendants to seek dismissal of charges against them on a variety of grounds, including jurisdiction. See *Chronis v. Steinle*, 220 Ariz. 559, 561, ¶ 9, 208 P.3d 210, 212 (2009) (motion to dismiss under Rule 16.6(b) can be based on "any ground recognized by law") (citation omitted).

¶14 Appellants argue the only way they may challenge a denial of a motion to dismiss is through a special action, citing *State v. Meza*, 203 Ariz. 50, 54-55, ¶ 18, 50 P.3d 407, 411-12 (App. 2002). However, Appellants' reliance on *Meza* is misplaced. *Meza* stands for the well-established proposition that the only way to challenge a denial of a motion to dismiss before entry of a final judgment is through special action. *Id.* Neither *Meza* nor other cases recognizing this rule support Appellants' argument that such a ruling can only be challenged in a special action and not on appeal. See *State v. Willoughby*, 181 Ariz. 530, 535, 892 P.2d 1319, 1324 (1995) (defendant renewed jurisdictional challenge on appeal after superior court denied motion to dismiss for lack of subject matter jurisdiction). Thus, although a municipal court's denial of a motion to dismiss for lack of jurisdiction is not independently

appealable, a superior court may still review the jurisdictional ruling on appeal. See A.R.S. §§ 22-425(B) (2002), -0371(A) (2002) (criminal defendant may appeal to superior court from final judgment of a municipal court). Therefore, Rule 16.6(b) neither bars Appellants from raising a jurisdictional challenge in the municipal court, nor prevents them from appealing the municipal court's decision on jurisdiction to the superior court.

¶15 Further, as the superior court recognized, the municipal court has the authority to resolve whether it has jurisdiction over Appellants in the criminal prosecutions. This is known as a court's jurisdiction to determine its jurisdiction. See *Alegria v. Redcherries*, 168 Ariz. 267, 268-69, 812 P.2d 1085, 1086-87 (App. 1991). Additionally, as the superior court also recognized, Appellants can -- and should -- first challenge subject matter jurisdiction in the municipal court; and if convicted, they can then appeal to the superior court and raise jurisdictional arguments on appeal. See generally A.R.S. § 22-371(A). Since Appellants have an equally plain, speedy, and adequate remedy by appeal, the superior court did not abuse its discretion in declining special action jurisdiction. See *Pompa v. Superior Court*, 187 Ariz. 531, 533, 931 P.2d 431, 433 (App. 1997) (acceptance of special action

jurisdiction "highly discretionary" and "[j]urisdiction is generally accepted only in those cases in which 'justice cannot be satisfactorily obtained by other means.'" (quoting *King v. Superior Court*, 138 Ariz. 147, 149, 673 P.2d 787, 789 (1983)).

¶16 For the foregoing reasons, we affirm the superior court's order declining special action jurisdiction.

/s/
PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/
DIANE M. JOHNSEN, Judge

/s/
JON W. THOMPSON, Judge