

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: 11/29/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

CHRISTINA ACKER, ) 1 CA-CV 12-0023  
)  
Petitioner/Appellant, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
) Rule 28, Arizona Rules of  
MARICOPA COUNTY SUPERIOR COURT; ) Civil Appellate Procedure)  
)  
CLERK MICHAEL JEANES; DEPUTY )  
CLERK C. ALFARO ARNDT; DEPUTY )  
CLERK K. SULLIVAN; TOM HORNE; )  
ARIZONA ATTORNEY GENERAL, )  
)  
Respondents/Appellees, )  
)  
STATE OF ARIZONA, )  
)  
Real Party in Interest/ )  
Appellee. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. LC2011-000496-001

The Honorable Dean M. Fink, Judge

**AFFIRMED**

Christina Acker  
Appellant *in propria persona*

Goodyear

Thomas C. Horne, Arizona Attorney General Phoenix  
By Eryn M. McCarthy, Assistant Attorney General  
Attorneys for Respondents/Real Party in Interest/Appellees

**S W A N N**, Judge

¶1 Christina Acker, an inmate in the custody of the Arizona Department of Corrections ("ADOC"), appeals the superior court's dismissal of her petition for special action relief. Acker contends that she is entitled to an order directing the Clerk of the Maricopa County Superior Court to provide her with records related to various civil actions she has filed in that court and a waiver of the deferred court fees and costs from those actions. We disagree, and therefore affirm.

*FACTS AND PROCEDURAL HISTORY*

¶2 Acker's ADOC inmate account has been "on hold" for outstanding debt for many years. The debt is, in part, the result of deferred court fees and costs from the many civil actions Acker has filed in Arizona courts. In July 2010, the debt totaled approximately \$15,000, and Acker commenced efforts to obtain a waiver for the portion of the debt related to the deferred court fees and costs.

¶3 Acker first requested that the Clerk of the Maricopa County Superior Court provide her with a list of her civil actions and the fees and costs owed in each case. In response to Acker's request, the clerk of the court provided Acker with a printout showing thirty-six civil case numbers associated with her name, advised her of the per-page copy fee for court documents, and informed her that copy fees must be paid in advance and cannot be deferred or waived. Acker repeated her

request for the information about her outstanding fees and costs but did not submit any payment. Accordingly, the clerk of the court did not provide Acker with any copies of records showing the fees and costs deferred in her cases.

¶4 Acker next requested that the clerk of the court grant her a permanent waiver for all sums owed. She submitted a letter and a single fee waiver application for all thirty-six cases, but the clerk of the court returned the application with the explanation that a separate application was required for each case. Acker then unsuccessfully renewed her request for a list setting forth the fees and costs owed in each case.

¶5 Acker finally filed a petition for special action relief in the superior court, naming the court, the clerk of the court, several deputy clerks, and the state attorney general as respondents. In that petition, Acker requested: (1) an order requiring the clerk of the court to provide a list setting forth the fees and costs due in each of her cases; and (2) orders accepting and granting her waiver application with respect to all deferred fees and costs in all cases. The state, as the real party in interest, moved to dismiss. The superior court granted the motion, and Acker appeals. We have jurisdiction under A.R.S. § 12-2101(A)(3).

DISCUSSION

¶6 When reviewing an appeal from a special action initiated in the superior court, the first question we must resolve is whether the court declined to accept special action jurisdiction or accepted jurisdiction and ruled on the merits. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). If the court declined jurisdiction, there is no determination for us to review and the sole issue on appeal is whether the court abused its discretion by declining jurisdiction. *Id.*

¶7 Here, it is difficult to ascertain from the superior court's minute entry whether the court accepted or declined jurisdiction. On the one hand, the court held that Acker was not denied access to records, and "denie[d] special action relief." On the other hand, the court held that it was "not persuaded that Ms. Acker's petition for special action is properly brought" because "[i]t does not appear that the court, as opposed to the Clerk of the Superior Court, has been asked in proper form to waive [fees and costs]. . . . [and] Ms. Acker's constitutional arguments can equally well be raised in that forum." Out of an abundance of caution, we assume that the court accepted jurisdiction and ruled against Acker on the merits on all issues. We will affirm if the dismissal of Acker's petition was correct for any reason. *See Judicial*

*Watch, Inc. v. City of Phoenix*, 228 Ariz. 393, 397, ¶ 16, 267 P.3d 1185, 1189 (App. 2011).

*I. ACCESS TO JUDICIAL RECORDS*

¶8 We first consider Acker's contention that she was denied access to the records she sought. Under Rule 123 of the Arizona Rules of the Supreme Court, most judicial records are open to the public and available for inspection and copying. Ariz. R. Sup. Ct. 123(c)(1), (d). But "[t]he court is not required to index, compile, re-compile, re-format, program or otherwise reorganize existing information to create new records not maintained in the ordinary course of business." Ariz. R. Sup. Ct. 123(c)(4). Nor is the clerk of the court required to provide copies of existing records free of charge. Copy fees are set by statute, A.R.S. § 12-284(A)(F), and, unless incurred in connection with the preparation of the record on appeal, are not eligible for deferral or waiver. See A.R.S. § 12-302(H) (listing types of fees eligible for deferral or waiver). Further, Rule 123(f)(3)(C) allows the clerk of the court to require that copy fees be paid in advance: "[t]he custodian may make billing or payment arrangements with the applicant before satisfying the request, and is authorized to receive and hold deposits for estimated costs until costs are finally determined." Ariz. R. Sup. Ct. 123(f)(3)(c).

¶19 Here, Acker sought a list setting forth the deferred fees and costs in each of her thirty-six superior court cases. The clerk of the court's responses to Acker's requests suggest that the court does not ordinarily keep comprehensive lists of litigants' deferred fees and costs -- in which case the creation of such a record would not be required. But, regardless whether the information sought was available in a comprehensive list or in separate, case-specific records, the clerk of the court was entitled to require advance payment before providing copies to Acker. The clerk of the court's actions in informing Acker of this requirement did not amount to a denial of access and did not entitle her to special action relief. The clerk of the court did not fail to perform a non-discretionary duty, did not act in excess of legal authority, and did not act in an arbitrary and capricious manner. See Ariz. R. P. Spec. Act. 3 (limiting questions that may be raised in a special action to: whether defendant failed to exercise discretion which defendant has duty to exercise, or to perform non-discretionary duty required by law; whether defendant proceeded or threatened to proceed without or in excess of jurisdiction or legal authority; and whether determination was arbitrary and capricious or an abuse of discretion).

II. WAIVER OF DEFERRED COURT FEES AND COSTS

¶10 We next consider Acker's contention that she is entitled to a waiver of all deferred fees and costs in her civil cases because she is indigent. Acker relies on A.R.S. § 12-302(D), which provides that the court shall waive fees and costs on proof that an applicant is permanently unable to pay them. But Acker, as an inmate in ADOC custody, is governed by A.R.S. § 12-302(E). A.R.S. § 12-302(E) provides that in most civil actions, inmates' fees and costs are subject to deferral only, not waiver:

Except in cases of dissolution of marriage, legal separation, annulment or establishment, enforcement or modification of child support, and notwithstanding subsection A of this section or chapter 9, article 4 of this title, *if the applicant is an inmate who is confined to a correctional facility operated by the state department of corrections and who initiates a civil action or proceeding, the inmate is responsible for the full payment of actual court fees and costs.* On filing the civil action or proceeding, the clerk of the court shall assess and, when monies exist, collect as a partial payment of any court fees and costs required by law a first time payment of twenty per cent. Thereafter the state department of corrections shall withhold twenty per cent of all deposits into the prisoner's spendable account administered by the department until the actual court fees and costs are collected in full . . . .

A.R.S. § 12-302(E) (emphasis added).

¶11 Significantly, A.R.S. § 12-302(E)'s elimination of waiver for inmates does not prevent indigent inmates from filing civil actions. *Inzunza-Ortega v. Superior Court*, 192 Ariz. 558,

560, ¶ 10, 968 P.2d 631, 633 (App. 1998). Though the statute makes inmates responsible for their fees and costs, it also allows them to pay over time. *Id.* at 561, ¶ 18, 968 P.2d at 634. As the United States District Court for the District of Arizona put it in *Beck v. Symington*, "Arizona's statutes do not affect an inmate's ability to gain adequate, effective, and meaningful access to the courts. Rather, they simply force an inmate to make the same economic choices otherwise required of unincarcerated litigants." 972 F.Supp. 532, 536 (D. Ariz. 1997) (upholding constitutionality of A.R.S. § 12-302(E)'s predecessor).

¶12 Acker has made no showing that any of her superior court cases are "cases of dissolution of marriage, legal separation, annulment or establishment, [or] enforcement or modification of child support" for which waiver may be available under A.R.S. § 12-302(E). Under A.R.S. § 12-302(E), Acker is eligible for fee and cost deferral only. She cannot receive a waiver. To the extent that the superior court's ruling suggests otherwise, we specifically disapprove of it. Denial of special action relief was appropriate not because Acker failed to request a waiver in "proper form[,]" but because she is not eligible for a waiver.



CONCLUSION

¶13 We affirm for the reasons set forth above.

/s/

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PETER B. SWANN, Judge

CONCURRING:

/s/

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PHILIP HALL, Presiding Judge

/s/

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SAMUEL A. THUMMA, Judge