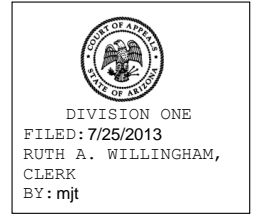


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CALIFORNIA STATE UNIVERSITY OF ) No. 1 CA-SA 13-0162  
LONG BEACH, )  
) DEPARTMENT D  
)  
Petitioner, )  
)  
) Yuma County  
v. ) Superior Court  
) No. S1400PB2012-00040  
)  
THE HONORABLE JOHN N. NELSON, )  
Judge of the SUPERIOR COURT OF ) **DECISION ORDER**  
THE STATE OF ARIZONA, in and for )  
the County of YUMA, )  
)  
) Respondent Judge, )  
)  
VICKI FRASER, as personal )  
representative for the estate of )  
VANITA A. SCHENN; PHYLLIS WRIGHT )  
and PATRICIA KAVORSKI, )  
)  
)  
Real Parties in Interest. )  
\_\_\_\_\_ )

The Court, Chief Judge Diane M. Johnsen, presiding, and Judges Randall M. Howe and Lawrence F. Winthrop participating, has reviewed and considered the Petition for Special Action, the Response and the Reply.

Petitioner appealed the superior court's order that Petitioner is not a beneficiary of the estate and filed a motion to stay distribution of the estate's assets pending the appeal. The superior court entered a stay preventing distribution of \$150,000 of the assets in the estate and conditioned the stay on

Petitioner's posting of a \$50,000 bond. It is from this order that Petitioner requests relief. See ARCAP 7(a)(1) (granting superior court discretion to enter orders to preserve the status quo during the pendency of the appeal); Ariz. R. Civ. P. 65 (preliminary injunctions); *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410-11, ¶¶ 9-10, 132 P.3d 1187, 1190-91 (2006) (establishing balancing test for courts to use in evaluating request for stay).

Addressing first the portion of the petition that challenges the decision of the superior court to stay distribution of no more than \$150,000 of the estate, Petitioner does not dispute Real Party's argument that if Petitioner prevails on appeal and ultimately wins a judgment, but the estate has been distributed in the meantime, Petitioner has a remedy in that it may seek to recover on its judgment from the beneficiaries of the estate.

Addressing next the portion of the petition that challenges the decision of the superior court to impose a bond of \$50,000, Arizona Rule of Civil Procedure 65(e) provides that an injunction must be secured "in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." So far as we have been able to determine, on the question of the amount of the bond, the

parties offered no evidence, and the superior court made no findings, about any costs or damages the estate would incur as a result of the court's decision to stay distribution of \$150,000 of the assets of the estate pending appeal. Accordingly, and upon consideration,

**IT IS ORDERED** that the Court of Appeals, in the exercise of its discretion, declines to accept jurisdiction of the special action petition insofar as it challenges the decision of the superior court to stay distribution of no more than \$150,000 of the assets in the estate.

**IT IS FURTHER ORDERED** that the Court of Appeals, in the exercise of its discretion, accepts special action jurisdiction of the petition insofar as it challenges the order requiring Petitioner to post a bond of \$50,000 to secure the stay order;

**IT IS FURTHER ORDERED** vacating and remanding the bond for further proceedings by the superior court consistent with this order.

\_\_\_\_\_/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Chief Judge