

NOTICE: NOT FOR PUBLICATION.
THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS
AUTHORIZED. ARIZ. R. SUP. CT. 111(c).

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

JAMES CASKEY, *Petitioner*,

v.

THE HONORABLE JOHN HANNAH and THE HONORABLE
TIMOTHY RYAN, Judges of the SUPERIOR COURT OF THE STATE OF
ARIZONA, in and for the County of MARICOPA, *Respondent Judges*,

STEPHANIE BATTANI, *Real Party in Interest*.

No. 1 CA-SA 13-0300

FILED 12-26-2013

Petition for Special Action from the Superior Court in Maricopa County

No. FC2011-090177

The Honorable John R. Hannah, Jr., Judge

The Honorable Timothy J. Ryan, Judge

JURISDICTION ACCEPTED; RELIEF GRANTED; REMANDED

COUNSEL

James Caskey, Tempe
Petitioner

Stephanie Battani, Chandler
Real Party in Interest

DECISION ORDER

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kenton D. Jones joined.

NORRIS, Judge:

¶1 In this special action, Petitioner James Caskey challenges the superior court's order holding him in criminal contempt and imposing two years probation as punishment for writing a check for the wrong amount to the real party in interest, Stephanie Battani. Because contempt orders are not appealable, but may be reviewable in appropriate circumstances by special action, *Riley v. Superior Court*, 124 Ariz. 498, 499, 605 P.2d 900, 901 (App. 1979) (citations omitted), the court accepts special action jurisdiction and grants relief.

¶2 The superior court, the Honorable John R. Hannah, Jr. presiding, held Caskey in criminal contempt under Rule 33 of the Arizona Rules of Criminal Procedure. Judge Hannah then referred the contempt matter to the Honorable Timothy J. Ryan to impose punishment. Judge Ryan imposed two years summary probation.

¶3 As we construe his special action, Caskey essentially argues, *inter alia*, Judge Hannah should not have held him in criminal contempt because he did not have sufficient evidence to do so.¹

¶4 The record before us reflects Judge Hannah held Caskey in criminal contempt because, following a three-hour hearing to enforce

¹Caskey also argues neither Judge Hannah nor Judge Ryan made an actual finding of contempt; Judge Hannah engaged in impropriety by choosing Judge Ryan to impose punishment and both judges should have recused themselves from the matter; and Judge Ryan denied Caskey due process because he denied his request for a jury trial, found guilt without a hearing, denied him counsel, improperly used family law procedures for a criminal contempt proceeding, and denied him the ability to present evidence and witnesses and to confront his accuser. Based on our review of the record, these arguments are without merit.

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Decision Order of the Court

spousal maintenance and medical reimbursements, Caskey wrote Battani a check for \$265 when he was supposed to write the check for \$2,265. Although Judge Hannah was clearly frustrated with Caskey, the record before us fails to demonstrate whether Judge Hannah held Caskey in contempt for the sole act of writing the check for the wrong amount or for writing the check for the wrong amount combined with actions and positions taken by Caskey at the hearing. We therefore vacate the superior court's order holding Caskey in criminal contempt and remand the matter to the superior court for it to reconsider whether Caskey's conduct in writing the check for the wrong amount amounted to contemptuous conduct beyond a reasonable doubt. *See Riley*, 124 Ariz. at 499, 605 P.2d at 901 (burden of proof is beyond a reasonable doubt both as to the act committed and intent).

¶5 Although we vacate the superior court's order holding Caskey in criminal contempt, we nevertheless address Caskey's additional argument that, under Rule 33 of the Arizona Rules of Criminal Procedure, Judge Ryan could not impose probation as a punishment for contempt.

¶6 Rule 33.4(a) governs with precision what the available punishment is for criminal contempt. It states "[t]he court may not punish a person under the provisions of this rule by imprisonment longer than 6 months, or a fine greater than \$300, or both, unless the person has either been found guilty of contempt by a jury or has waived the right to trial by jury." Ariz. R. Crim. P. 33.4(a). The rule, on its face, does not authorize probation. Furthermore, probation is a matter of legislative grace, and the authority to impose probation is derived from statute. *State v. Harris*, 122 Ariz. 593, 593, 596 P.2d 731, 731 (App. 1979) (citations omitted). Unlike criminal contempt under Arizona Revised Statutes ("A.R.S.") section 12-861 (2003), which is punishable as a Class 2 misdemeanor, *see* A.R.S. 12-863(B) (2003), there is no statutory authorization for probation for criminal contempt under Rule 33. Accordingly, if, on remand, the superior court holds Caskey in criminal contempt, it must comply with the requirements of Rule 33.4 in imposing any punishment.

¶7 For the foregoing reasons, we accept special action jurisdiction, grant relief, and remand this matter to the superior court for further proceedings consistent with this decision order.



Ruth A. Willingham - Clerk of the Court
FILED: mjt