

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: 10/11/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

CHRISTINA ACKER, ) No. 1 CA-CV 10-0643  
)  
Plaintiff/Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
PARALEGAL CHACON; MRS. KELLY; ) Rule 28, Arizona Rules  
CO3 MORRIS; CO3 MOORE; CO4 ) of Civil Appellate  
KEPNEY; LACY SCOTT; WARDEN T. ) Procedure)  
SCHROEDER; CHARLES RYAN; JANICE )  
BREWER; KARYN KLAUSNER; DARYL )  
JOHNSON; ROBERT PATTON; CO2 )  
WILLIAMS; SGT COGLIANESE; CO2 )  
CARPENTER; SGT MITCHELL; TERRY )  
GODDARD; STATE OF ARIZONA, )  
)  
Defendants/Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. LC2010-000492-001 DT

The Honorable Joseph C. Kremer, Judge

**AFFIRMED**

Christina Acker  
Appellant

Goodyear

Thomas C. Horne, Attorney General  
By Michael L. Brodsky, Assistant Attorney General  
Attorneys for Appellees

Phoenix

O R O Z C O, Judge

¶1 Christina Acker (Appellant) appeals the superior court's order declining jurisdiction and dismissing her petition for special action filed against several defendants in their official capacities and the State of Arizona. For the following reasons, we affirm.

#### FACTS AND PROCEDURAL HISTORY

¶2 Appellant, an Arizona inmate, filed a petition for special action in superior court, seeking an "emergency ex parte ruling" on her requests for declaratory judgment, injunctive relief, and a jury trial. In her seventy-four page petition, Appellant alleged various constitutional violations but focused mainly on access to legal resources and supplies.

¶3 In her petition, Appellant acknowledged she raised these same issues in a separate federal action. Her petition stated, "This special action is the [first] of five cases, and the issues in this case re-appear in a federal petition for writ of habeas corpus."<sup>1</sup> The superior court declined jurisdiction and dismissed the petition, concluding that the claims raised in the

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<sup>1</sup> Appellant did not specifically identify or provide any additional information regarding the federal actions.

petition are already part of a federal action, are constitutional in nature, and should be litigated in federal court.<sup>2</sup>

¶4 Appellant timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) section 12-2101(B) (2003).

#### DISCUSSION

¶5 A petition for special action seeks extraordinary relief, and jurisdiction is accepted only when justice cannot be obtained by other means. *Haag v. Steinle*, 227 Ariz. 212, 213-14, ¶ 4, 255 P.3d 1016, 1017-18 (App. 2011). When a special action is initiated in superior court and the superior court exercises its discretion to decline jurisdiction, there is no decision on the merits to review on appeal; the only issue on appeal is whether the court abused its discretion in declining jurisdiction. *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). In evaluating whether the superior court has abused its discretion, we must determine only whether the court "exceeded the bounds of reason by performing the challenged act." *Toy v. Katz*, 192 Ariz. 73, 83, 961 P.2d 1021, 1031 (App. 1997).

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<sup>2</sup> The superior court also found the petition "violate[d] the provisions of Rule 8, Arizona Rules of Civil Procedure." Because we affirm the decision to decline jurisdiction on other grounds, we need not address whether the superior court should have allowed Appellant to file an amended petition.

¶16 Appellant's petition was based on Rule of Procedure for Special Actions 3(b), which allows a special action petition that alleges "the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority." Appellant argued that current Arizona Department of Corrections policies violate her constitutional right to meaningful access to the courts. She requested a declaratory judgment that the prison's legal access program is unconstitutional and requested preliminary and permanent injunctions preventing the enforcement of prison policies regarding access to legal supplies and legal assistance. She further requested that certain policies be rewritten and suggested several new policies. Appellant also demanded a jury trial "on all issues so triable."

¶17 As Appellant herself admitted, she has already raised these issues in a federal action. Recognizing that Appellant is seeking the same relief in federal court, the superior court declined jurisdiction because, in the court's opinion, a federal court is a more appropriate place to litigate these issues. We find the superior court's decision to be reasonable based on Appellant's statements regarding the procedural history of her claims. Accordingly, the superior court did not abuse its discretion in declining to exercise special action jurisdiction.

**CONCLUSION**

¶8 Because the superior court did not abuse its discretion, we affirm its order declining special action jurisdiction and dismissing the petition.

/S/

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PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

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DIANE M. JOHNSEN, Presiding Judge

/S/

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JOHN C. GEMMILL, Judge