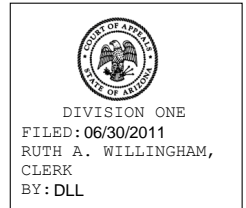


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



THE TOWN OF SUPERIOR, AN ARIZONA) No. 1 CA-SA 11-0140
MUNICIPALITY,)
) DEPARTMENT B
)
Petitioner,)
) Maricopa County
v.) Superior Court
) No. TJ2010-000180
THE HONORABLE BENJAMIN E. VATZ,)
Commissioner of the SUPERIOR) **DECISION ORDER**
COURT OF THE STATE OF ARIZONA,)
in and for the County of)
Maricopa,)
)
Respondent Commissioner,)
)
GLENN WILT,)
)
Real Party in Interest.)
_____)

This special action was considered by Presiding Judge Peter B. Swann, and Judges Daniel A. Barker and Patricia K. Norris after oral argument and during a regularly scheduled conference held June 21, 2011. After consideration, and for the reasons that follow, it is ordered that the Court of Appeals, in the exercise of its discretion, accepts jurisdiction but denies relief. It is further ordered that the stay previously ordered is lifted.

Petitioner Town of Superior ("Town") challenges the superior court's grant of Real Party In Interest Glenn Wilt's

application for an order to show cause hearing to determine whether the Town and/or its counsel should be sanctioned for "inappropriate behavior" while attempting to collect a criminal fine imposed in magistrate court for Wilt's violation of Town code.¹ The Town also advances arguments pertaining to the jurisdictional basis for its collection efforts, but these issues are not appropriately presented by special action - an adequate remedy exists by appeal after final resolution by the trial court.

During oral argument on the petition, Wilt clarified that the OSC hearing was necessary to support his request for sanctions, including attorney's fees and costs, against the Town pursuant to A.R.S. § 12-349.² Contrary to Petitioner's assertion

¹ Although the Petition for Special Action discusses additional topics, Petitioner clarified at oral argument that there are two essential issues: (1) its objection to the court's discovery order because it potentially violated attorney-client privilege between Petitioner and its counsel; and (2) the trial court's authority to issue an OSC and impose sanctions against the Town and/or its counsel. The attorney-client privilege issue was mooted during oral argument when Wilt agreed not to inquire into communications between the Town and its counsel at subsequent proceedings. We accept that agreement as binding.

² Wilt also clarified at oral argument that the only other viable remedy in his application for OSC was his request that the trial court "return him to the position" he had before it allowed the Town to collect the fine owed (i.e., that he be reimbursed for the relevant portion of the November 2010 payment he made to satisfy the Town's collection matter and be allowed to pay his fine in \$1000 increments as the magistrate court ordered). The trial court, however, has not ruled on this request so we decline to address it.

otherwise, a superior court commissioner has the authority to issue an order to show cause -- even before a response to an application is filed. See Ariz. Sup. Ct. R. 96(a)(8) (allowing a commissioner to issue an order to show cause); Ariz. R. Civ. P. 6(d) (prescribing the process to issue an order to show cause); *Smith v. Smith*, 133 Ariz. 384, 385, 651 P.2d 1209, 1210 (App. 1982) (“[A] responsive pleading to an order to show cause is not required unless ordered by the court.”). In addition, the Town cites no applicable statute or case holding, and we have found none, that denies a commissioner the authority to impose sanctions pursuant to A.R.S. § 12-349. We therefore deny the Town’s requested relief.

We note that the parties agreed during oral argument that an OSC hearing could be avoided if they jointly stipulated to facts from which the trial court could rule on the application for sanctions. We encourage the parties to engage in that endeavor after they have complied with and fulfilled their disclosure obligations.³

/s/

Peter B. Swann, Presiding Judge

³ Although not raised on special action appeal, we suggest that the differing legal authorities cited by the Town and Wilt to support their jurisdictional assertions below could be relevant to whether the Town’s collection action was filed without substantial justification.