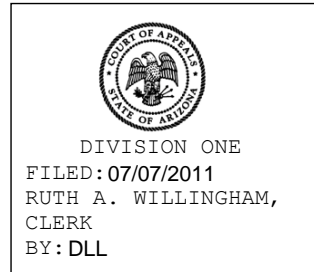


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



JOHN MACMULLIN,) Court of Appeals
) Division One
Petitioner,) No. 1 CA-SA 11-0155
)
v.) Maricopa County
) Superior Court
THE HONORABLE DAVID O. CUNANAN,) No. PB1995-001647
Commissioner of the SUPERIOR) PB2003-004924
COURT OF THE STATE OF ARIZONA,)
in and for the County of)
MARICOPA,)
) DEPARTMENT B
Respondent Commissioner,)
)
DONAL D. CHILDERS, Special) **DECISION ORDER**
Administrator of the Estate of)
Sylvia M. H. Levering,)
(Decedent); MARION HUBBARD,)
Conservator,)
)
Real Parties in Interest.)
_____)

The court has reviewed the Petition for Special Action, the Special Administrator's response, the Conservator's response, and petitioner's reply.

We may accept jurisdiction when the case presents a pure question of law for which there is no "equally plain, speedy, and adequate remedy by appeal." Ariz. R.P. Spec. Act. 1(a); see also *State ex rel. Pennartz v. Olcavage*, 200 Ariz. 582, 585,

¶ 8, 30 P.3d 649, 652 (App. 2001). “[T]he appropriate method of seeking review of a trial court’s judgment on remand entered pursuant to specific directions of an appellate court is through special action” because entry of judgment “based on [an appellate court’s] specific mandate and opinion is not appealable.” *Scates v. Ariz. Corp. Comm’n*, 124 Ariz. 73, 75, 76, 601 P.2d 1357, 1359, 1360 (App. 1979). In the exercise of our discretion, we accept jurisdiction of this special action and, for the following reasons, grant relief in part.

Petitioner first argues the superior court misconstrued a prior order of this court in ordering on June 3, 2011 that an award of attorney’s fees and costs in the amount of \$13,249.22 in favor of the Conservator be offset entirely against petitioner’s share of the estate. We agree with the petitioner. Our order dated July 1, 2008, provided that the award to the Conservator of \$13,065.36 in attorney’s fees and \$183.86 in costs be assessed against the Estate, not against petitioner.

Petitioner also argues the superior court erroneously offset against his share of the distribution the entire liability for \$1,820.00 in attorney’s fees and \$70.00 in costs awarded to the Special Administrator by this court in an order dated July 3, 2007. We disagree with the petitioner. This court awarded the Special Administrator’s request for fees and

costs based on Arizona Rule of Civil Appellate Procedure 25, for the reason that an appeal petitioner brought had no merit.

Finally, petitioner argues the superior court violated our mandate by approving payment of fees incurred by the Conservator's counsel that constitute double payment of fees already approved and paid. Petitioner argues the Special Administrator did not demonstrate that this court's mandate had been complied with in that regard. We are unable to conclude from the record that the superior court erred in approving payment of the Conservator's attorney's fees.

Accordingly, and upon consideration,

IT IS ORDERED exercising our discretion to accept jurisdiction of this special action;

IT IS FURTHER ORDERED granting petitioner relief only insofar as we vacate that portion of the superior court's June 3, 2011, judgment that provides that the entire liability for this court's award to the Conservator of \$13,065.36 in attorney's fees and \$183.86 in costs be assessed against petitioner, and we direct on remand that the superior court adjust the distribution so that the estate, and not petitioner, is liable for that award;

IT IS FURTHER ORDERED denying petitioner's motion to consolidate;

IT IS FURTHER ORDERED dissolving the stay this court entered on June 21, 2011.

/s/
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/
DANIEL A. BARKER, Presiding Judge

/s/
MAURICE PORTLEY, Judge