

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000165-001 DT

06/24/2009

COMMISSIONER EARTHA K. WASHINGTON

CLERK OF THE COURT
T. Melius
Deputy

STATE OF ARIZONA

ELIZABETH B ORTIZ

v.

JENNIFER LYNNE JAMES (001)

DAVID BURNELL SMITH

MCDOWELL MOUNTAIN JUSTICE
COURT
REMAND DESK-LCA-CCC

RECORD APPEAL RULE / REMAND

Lower Court Appeal No. CT2008200227

This Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The court has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

On August 29, 2008, a traffic ticket and complaint was issued and mailed to the appellant, Jennifer James. The complaint alleged that on July 30, 2008, the appellant violated A.R.S. 28-702.01(C) by driving 66 miles per hour (mph) in 55 mph zone. After receiving the complaint in the mail the appellant hired an attorney. The attorney filed a notice of special appearance only on September 29, 2008. The purpose of the appearance was to challenge service of the complaint upon the appellant. The attorney in his motion argued the appellant had not been properly served and sought dismissal of the complaint for that reason. The State did not file a response the appellant's motion. On November 3, 2008, a civil traffic hearing was conducted. The appellant's attorney appeared without her still alleging that the service was incomplete. The State through the citing officer presented testimony and evidence in support of its belief that the appellant was responsible for the violation. The officer had no evidence that showed that the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000165-001 DT

06/24/2009

appellant was the driver behind the wheel at the time of the alleged violation; he could neither identify her in court (because she was not present) nor had any other proof that supported that the person behind the wheel was the appellant. When challenged on improper service of the complaint, the officer argued that service was proper because the appellant had hired counsel to represent her. The trial court agreed with the officer and found the appellant responsible for the violation.

The appellant having filed a timely notice of appeal now brings the matter before this Court for review. The appellant challenges whether service of process was sufficient; whether certification of the complaint was proper; and whether there was sufficient evidence before the trial court to have found her responsible for the traffic violation.

1. Service of Process.

Service of a traffic complaint is governed by A.R.S. § 28-1593(A).

(A). A traffic complaint may be served by delivering a copy of the uniform traffic complaint citation to the person charged with the violation *or by any means authorized by the rules of civil procedure*. At the discretion of the issuing authority, a complaint for a violation issued after an investigation in conjunction with a traffic accident may be sent by certified mail, return receipt requested and delivered to addressee only, to the address provided by the person charged with the violation. Service of the complaint is complete on filing the receipt in the court having jurisdiction of the violation. (Emphasis added.)

General service of process on an individual residing in Arizona is governed by Rule 4.1(d) of the Arizona Rules of Civil Procedure.

Service of Summons Upon Individuals. Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.

The State had two legal methods of serving the appellant with process in this case. Neither method was utilized. Mailing the summons and complaint to the appellant without a waiver by her of service fails to provide the trial court with jurisdiction over her.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000165-001 DT

06/24/2009

If the acknowledgment of receipt is not executed, service is not complete under this method even if there is evidence that the summons and complaint were received. *See Worrell v. B.F. Goodrich Co.*, 845 F.2d 840, 841-42 (9th Cir.1988), *cert. denied*, 491 U.S. 907, 109 S.Ct. 3191, 105 L.Ed.2d 699 (1989). Until service is complete, no personal jurisdiction is obtained, and any judgment entered is void. *Endischiee v. Endischiee*, 141 Ariz. 77, 79, 685 P.2d 142, 144 (App.1984); *Kadota v. Hosogai*, 125 Ariz. 131, 134, 608 P.2d 68, 71 (App.1980).¹

Because the trial court did not have jurisdiction over the appellant, the motion to dismiss filed by her should have been granted.

2. Sufficiency of the Evidence.

In Civil Traffic cases in Arizona the State's burden of proof is by a preponderance of evidence.² The ultimate test for finding a preponderance of the evidence is "does the evidence convince the trier of fact that one theory of the case is more probable than the other."³ An appellate court affords great weight to the trial court's assessment of witnesses' credibility and will not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court examines the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in *State v. Tison*⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

If conflicts in evidence exist, the appellate court resolves such conflicts in favor of sustaining the judgment and against the appellant.⁸

¹ *Tonner v. Paradise Valley Magistrate's Court*, 171 Ariz. 449, 450, 831 P.2d 448, 451 (Ariz.App. Div. 1, 1992).

² *Arizona Rules of Procedure in Civil Traffic Violation Cases, Rule 17.*

³ *Cole v. Town of Miami*, 52 Ariz. 488, 497, 83 P.2d 997, 1001 (1938).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 62 3 P.3d 977, 982 review granted in part, opinion vacated in part, 9 P.3d1062 (March 2000).

⁵ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 53 961 P.2d 449, 451 (1998).

⁶ 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

⁷ *Id.* at 553, 633 P.2d at 362.

⁸ *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2009-000165-001 DT

06/24/2009

Although the trial court had no jurisdiction over the appellant in this case, it is important to also note that there was insufficient evidence to support a finding of responsibility. The citing officer could not identify the appellant as the driver in the vehicle at the time of the alleged A.R.S. § 28-702.01(C) violation. The statute makes it unlawful for person to drive more than 55 mph on a public highway where 55 mph is the preset speed; a person who is found to have driven more than 65 mph in a 55 mph zone by a trial court has committed a civil traffic violation. The trial court had no evidence before it to support the belief that the appellant was the person who was driving her vehicle at the time of the traffic offense. The officer had never met the appellant and presented no independent evidence that supported a finding that the traffic enforcement photo taken at the time showed her behind the wheel. The trial court therefore erred in finding the appellant responsible for the offense because the State could not meet its burden of proof based on the evidence presented.

It is unnecessary for this Court to determine whether the traffic complaint had been properly certified based on the findings that the trial court had no jurisdiction over the appellant and because there was insufficient evidence to uphold a finding of responsibility even if jurisdiction was not an issue.

IT IS THEREFORE ORDERED reversing the judgment of responsibility and the sanction imposed.

IT IS FURTHER ORDERED remanding this matter back to the McDowell Mountain Justice Court for all further proceedings consistent with this Court's ruling.