# Court of Appeals, Division One

## Civil Appeal

# 1 CA-CV 13-0697 MARICOPA v. WHITE MTN

**Appellate Case Information**

Case Filed: 4-Dec-2013

Case Closed:

**Dept/Composition**

**Dept D**

Hon. Donn Kessler
Hon. Michael J Brown
Hon. Peter B Swann

**Consolidated with:** 1 CA-CV 12-0831 1 CA-CV 14-0372

**Side 1. MARICOPA COUNTY; WILLIAM G. MONTGOMERY, Maricopa County Attorney, Defendant/Appellant**

**(Litigant Group) MARICOPA COUNTY**

- **Maricopa County**
- **William G Montgomery**
  **AZ Bar No. 21246**
  **[Current Member]**
  **Admitted 10/29/01**

**Attorneys for: Defendant/Appellant**

Thomas P Liddy, Esq. (AZ Bar No. 19384)
Bruce P White, Esq. (AZ Bar No. 4802)
Joseph I Vigil, Esq. (AZ Bar No. 18677)

**Side 2. WHITE MOUNTAIN HEALTH CENTER, INC., an Arizona non-profit corporation, Plaintiff/Appellee**

**(Litigant Group) WHITE MOUNTAIN HEALTH CENTER INC**

- **White Mountain Health Center Inc**

**Co-Counsel for: Plaintiff/Appellee**

Jeffrey S Kaufman, Esq. (AZ Bar No. 3269)
Steven M White, Esq. (AZ Bar No. 20061)
Ezekiel R Edwards, Esq. (NY Bar No. 4189304)
Emma A Andersson, Esq. (CA Bar No. 260637)
Daniel Joseph Pochoda, Esq. (AZ Bar No. 21979)
Kelly J Flood, Esq. (AZ Bar No. 19772)

**Side 3. STATE OF ARIZONA, Intervenor/Appellee**

**(Litigant Group) STATE OF ARIZONA**

- **State of Arizona**
- **Thomas C Horne**
  **AZ Bar No. 2951**
  **[Current Member]**
  **Admitted 4/22/72**

**Attorney for: Intervenor/Appellee**

Charles A Grube, Esq. (AZ Bar No. 11511)

## CASE STATUS

**Dec 20, 2016....Decision Rendered**

| PREDECESSOR CASE(S) | | Cause/Charge/Class | Judgment/Sentence | Judge, Role <Comments> | Trial | Dispo |
|---|---|---|---|---|---|---|
| MAR | CV2012-053585 | Summary Judgment | | Michael D Gordon, Authoring Judge of Order | | |

**DESCENDENT CASE(S)**

ASC CV-17-0016-PR

## 2 OPEN DUE DATES

**Response to Attorneys Fees due** **Due By:** Friday, January 27, 2017

*Re: FILED: Appellee's Application for Attorneys' Fees on Appeal; Certificate of Service; Affidavit of Steve White with Exhibit; Affidavit of Emma Andersson with Exhibit (Appellee)*

**Petition for Review to ASC due** **Due By:** Monday, February 20, 2017 [1 extension]

*Re: OPINION (Affirmed in Part, Reversed in Part) Hon Donn Kessler - Author; Hon Peter B Swann - Concur; Hon Michael J Brown - Concur*

## PENDING MATTER

**General Motion** Filed: 12-Jan-2017

*Appellee's Application for Attorneys' Fees on Appeal(Appellee)*



*Information presented in this document may not reflect all case activity and is subject to change without notice.*

# Court of Appeals, Division One

## Civil Appeal

# 1 CA-CV 13-0697 MARICOPA v. WHITE MTN

**CASE DECISION**

**20-Dec-2016 OPINION**

**Donn Kessler**.....Author
**Peter Swann**.....Concur
**Michael Brown**.....Concur

Filed: **20-Dec-2016** Mandate:

| Decision Disposition |
|---|
| ***Affirmed in Part*** |
| ***Reversed in Part*** |

| DECISION APPLIES TO THE FOLLOWING OTHER CASE(S) | |
|---|---|
| **1 CA-CV 12-0831** | WHITE MTN v. MAR COUNTY |
| **1 CA-CV 14-0372** | WHITE MTN v. MAR COUNTY et al. |

**52 PROCEEDING ENTRIES**

| | | |
|---|---|---|
| 1. | 4-Dec-2013 | FILED: Motion for Stay of Judgment Pending Appeal of November 20, 2013 Final Judgment as Amended by the December 2, 2013 Minute Entry and Request for Expedited Ruling and Request for Oral Argument; Notice of Appeal; Certificate of Service; Exhibits (Appellants Maricopa County and William Montgomery) (filed in 1 CA-CV 13-0697 prior to consolidation with 1 CA-CV 12-0831) |
| 2. | 10-Dec-2013 | ORDERED: consolidating the appeals in 1 CA-CV 12-0831 and 1 CA-CV 13-0697. The parties shall use the above caption on all future filings on appeal. FURTHER ORDERED: remanding these consolidated appeals until and through 12/20/13, to permit the superior court to resolve White Mountain's Motion to Amend 11/20/13 or 11/25/13 Judgment, filed on 12/4/13 ("Motion to Amend") and file a signed order or judgment (as appropriate reflecting that resolution. On or before 12/20/13, the parties shall file a copy of any such signed order or judgment with the Clerk of this court in these consolidated appeals or file a notice with the clerk of this court of the status of the Motion to Amend. If no such order or judgment or notice is filed by 12/20/13, jurisdiction will automatically revest in this court to determine appellate jurisdiction and for further proceedings. FURTHER ORDERED: during this remand, no response or reply shall filed to the Motion for Stay. The court will set a briefing schedule on the Motion to Stay after 12/20/13. Hon Donn Kessler - Author |
| 3. | 12-Dec-2013 | FILED: Notice Of Compliance With Order Of 12/10/2013; Certificate Of Service Of Notice Of Compliance With Order Of 12/10/2013 (Appellants Maricopa County et al.) |
| 4. | 31-Dec-2013 | ORDERED: Appellee White Mountain Health Center to file response to County's Motion for Stay of Judgment on/before 1/15/2014. FURTHER ORDERED County may file reply on/before 1/23/2014. FURTHER ORDERED, if court desires to have oral argument, it will notify parties. FURTHER ORDERED, as part of briefing of Motion for Stay of Judgment, parties shall address whether any action of County is pending amending its zoning for medical marijuana dispensaries which might affect jurisdiction of appeals. FURTHER, staying any merits briefing on issues raised in 1 CA-CV 13-0697 until further order of this court. Hon Donn Kessler - Author |
| 5. | 14-Jan-2014 | FILED: Response to County Defendants' Motion for Stay of Judgment Pending Appeal of November 20, 2013 Final Judgment Amended by The December 2, 2013 Minute Entry; Certificate of Service; Exhibits 1-3 (Appellee) |
| 6. | 29-Jan-2014 | FILED: Notice of Change of Circumstances; Certificate of Service; Exhibit A (Appellee) |
| 7. | 26-Mar-2014 | ORDERED: counsel shall not contact the panel members' chambers with inquires about the pending matters. Counsel shall direct future inquiries to the Clerk's Office at 602-542-4821. Hon Donn Kessler - Author |
| 8. | 31-Mar-2014 | ORDERED: denying the Motion to Stay of Judgment. FURTHER ORDERED: denying as moot the request for oral argument and the request for expedited ruling on the motion for stay. FURTHER ORDERED: on or before 4/10/14 Appellants shall file a civil appeals docketing statement. FURTHER ORDERED: on or before 5/12/14, Appellant shall file their separate or consolidated opening briefs in 1 CA-CV 13-0697. FURTHER ORDERED: if any party require additional time to file briefs because of the need to order, prepare, and file with the Clerk of the Court transcripts of hearings held in the superior court, counsel shall file a motion for extension of time no later than ten days before their respective briefs are due to be filed. Hon Donn Kessler - Author |
| 9. | 10-Apr-2014 | FILED: Civil Appeals Docketing Statement; Certificate of Service of Civil Appeals Docketing Statement; Exhibits (Appellant) |
| 10. | 1-May-2014 | FILED: Appellants' Unopposed Motion for Extension of time to File Opening Brief; Certificate of Service; Exhibit (Appellant) |
| 11. | 2-May-2014 | ORDERED: Appellants Maricopa County and William Montgomery and Intervenor/Appellant State of Arizona shall have until and through 6/11/14 to file their separate or consolidated opening brief(s) in 1 CA-CV 13-0697. FURTHER ORDERED: All other provisions of this Court's order filed 3/31/14 remain in effect. Hon Donn Kessler - Author |
| 12. | 11-Jun-2014 | FILED: Appellants Maricopa County And William Montgomery's Opening Brief; Certificate of Compliance; Certificate of Service For County Defendants' Opening Brief (Appellant) (In Re 1 CA-CV 13-0697) |



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**52 PROCEEDING ENTRIES**

| | | |
|---|---|---|
| 13. | 18-Jul-2014 | ORDERED: consolidating the appeal in 1 CA-CV 14-0372 with the previously consolidated appeals in 1 CA-CV 12-0831 and 1 CA-CV 13-0697. FURTHER ORDERED: opening brief in 1 CA-CV 14-0372 shall be filed on or before 9/2/14. The answering and any reply brief in 1 CA-CV 14-0372 shall be filed pursuant to Arizona Rule of Civil Appellate Procedure 15. All briefs shall also be served on counsel for amici curiae. Hon Donn Kessler - Author |
| 14. | 18-Jul-2014 | FILED: Appellee's Unopposed Motion for Extension of Time to File Answering Brief; Certificate of Service (Appellee) |
| 15. | 23-Jul-2014 | ORDERED: Appellee's Unopposed Motion for Extension of Time to File Answering Brief = GRANTED. Due date EXTENDED from Monday, 07-28-2014 to Wednesday, 08-27-2014. Nothing in this order affects the briefing schedule for 1 CA-CV 14-0372 set in this Court's Order filed 7/18/14. Hon Donn Kessler - Author |
| 16. | 1-Aug-2014 | FILED: Notice of Errata; Certificate of Service (Appellee) |
| 17. | 27-Aug-2014 | FILED: Appellee's Answering Brief; Certificate of Compliance; Certificate of Service (Appellee White Mountain Health) |
| 18. | 2-Sep-2014 | FILED: Appellants Maricopa County and William Montgomery's Opening Brief relating to Attorney's Fees; Certificate of Compliance; Certificate of Service (Appellant) |
| 19. | 10-Sep-2014 | FILED: Appellants' Motion For Extension Of Time To File Reply Brief Re 1 CA-CV 13-0697; Certificate Of Service Of Appellants' Motion For Extension Of Time To File Reply Brief Re 1 CA-CV 13- (Appellant) |
| 20. | 11-Sep-2014 | ORDERED: Appellants' Motion For Extension Of Time To File Reply Brief Re 1 CA-CV 13-0697 = GRANTED. Due date EXTENDED from Monday, 09-22-2014 to Wednesday, 10-22-2014 Hon Donn Kessler - Author |
| 21. | 30-Sep-2014 | ORDERED: White Mountain shall have until and through 11/12/14 to file its answering brief in 1 CA-CV 14-0372 in response to Appellants Maricopa County and William Montgomery's opening brief filed 9/2/14. Hon Donn Kessler - Author |
| 22. | 15-Oct-2014 | FILED: Appellants Maricopa County and William Montgomery's Reply Brief Re 1 CA-CV 13-0697; Certificate of Compliance for Appellants' Reply Brief re 1 CA-CV 13-0697; Certificate of Service of Appellants' Reply Brief re 1 CA-CV 13-0697 (Appellant) |
| 23. | 24-Oct-2014 | FILED: Appellant's Request for Oral Argument; Certificate of Service for Request for Oral Argument (Appellant) |
| 24. | 31-Oct-2014 | ORDERED: Appellant's Request for Oral Argument = GRANTED. Hon Donn Kessler - Author |
| 25. | 12-Nov-2014 | FILED: Appellee's Answering Brief relating to Attorneys' Fees; Certificate of Compliance; Certificate of Service (Appellee White Mntn Health for CV 14-0372) |
| 26. | 12-Dec-2014 | ORDERED: holding these consolidated cases in abeyance until the Arizona Supreme Court issues its decision in Reed-Kaliher v. Hoggatt. Nothing in this order precludes the Appellants from filing their reply brief on attorneys' fees. Hon Donn Kessler - Author |
| 27. | 8-Apr-2015 | ORDERED: continuing to hold these consolidated cases in abeyance until ASC issues its mandate in Reed-Kaliher v. Hoggatt. Hon Donn Kessler - Author |
| 28. | 1-May-2015 | FILED: Appellants Maricopa County and William Montgomery's Motion to Lift the Stay Re 1 CA-CV 13-0697 Only; Certificate of Service of Appellant's Motion to Lift the Stay Re 1 CA-CV 13-0697 Only (Appellant) |
| 29. | 27-May-2015 | ORDERED: Appellants Maricopa County and William Montgomery's Motion to Lift the Stay Re 1 CA-CV 13-0697 Only (Appellant) = DENIED. Hon Donn Kessler - Author |
| 30. | 14-Sep-2015 | ORDERED: (Court has determined that ASC has issued mandate in Reed-Kaliher v. Hoggatt and no petition for a writ of certiorari was filed) lifting orders of abeyance in this matter. FURTHER ORDERED: On/before 10/15/15, parties and amici may file briefs on application of Reed-Kaliher to issues in these consolidated appeals. Each supplemental brief shall not exceed ten pages, excluding tables and certificates and any appendices. FURTHER ORDERED: This case will be set for oral argument after filing of above supplemental briefs. Hon Donn Kessler - Author |
| 31. | 15-Sep-2015 | FILED: Supplemental Amicus Curiae Brief of The Yavapai County Attorney in Support of Appellants County of Maricopa, State of Arizona; Certificate of Compliance; Certificate of Service |
| 32. | 6-Oct-2015 | FILED: State's Supplemental Brief; Certificate of Compliance; Certificate of Service (Intervenor/Appellant) |
| 33. | 15-Oct-2015 | FILED: Memorandum: Judge Swann for Judge Thumma (Chief Judge Brown) |



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**52 PROCEEDING ENTRIES**

| | | |
|---|---|---|
| 34. | 15-Oct-2015 | FILED: Courtesy Copy of Supplemental Brief of Appellants Maricopa County and William Montgomery (includes Table of Contents and Table of Authorities) |
| 35. | 15-Oct-2015 | FILED: Appellee's Supplemental Brief; Certificate of Compliance; Certificate of Service (White Mountain Appellee) |
| 36. | 15-Oct-2015 | FILED: Appellants Maricopa County and William Montgomery's Supplemental Brief; Certificate of Compliance for Appellants Maricopa County and William Montgomery's Supplemental Brief; Certificate of Service for Appellants Maricopa County and William Montgomery's Supplemental Brief |
| 37. | 28-Oct-2015 | FILED: Appellee's Second Supplemental Citation to Legal Authority; Certificate of Service; Order Re Motion to Dissolve Permanent Injunction dated 10/19/15 |
| 38. | 11-Dec-2015 | FILED: Supplemental Citation of Legal Authorities of Appellants Maricopa County and William Montgomery; Certificate of Service of Supplemental Citation of Legal Authorities (Appellant) |
| 39. | 13-Jan-2016 | ORDERED: Court will hear oral argument on these consolidated appeals on 3/3/16 @ 10 am. Hon Donn Kessler - Author |
| 40. | 28-Jan-2016 | FILED: Return Receipt of Notice of Oral Argument signed by Steve White on 1/13/16 (Appellee) |
| 41. | 1-Feb-2016 | FILED: Appellee's Third Supplemental Citation to Legal Authority; Certificate of Service |
| 42. | 23-Feb-2016 | FILED: Receipt of Notice of Oral Argument signed by Charles A Grube on 1/13/16; Certificate of Service (Intervenor/Appellant/State of AZ) |
| 43. | 24-Feb-2016 | FILED: Receipt of Notice of Oral Argument signed by Thomas P. Liddy on 1/13/16; Certificate of Service (Appellant) |
| 44. | 26-Feb-2016 | FILED: Return Receipt Re Oral Argument, signed by Thomas P. Liddy, on 1/13/16 (Appellant Maricopa County) |
| 45. | 3-Mar-2016 | FILED: Sign-in Sheet/Case is Under Advisement (Dept D) |
| 46. | 20-Dec-2016 | OPINION (Affirmed in Part, Reversed in Part) Hon Donn Kessler - Author; Hon Peter B Swann - Concur; Hon Michael J Brown - Concur |
| 47. | 20-Dec-2016 | FILED: Opinion Distribution List |
| 48. | 3-Jan-2017 | FILED: Motion for Extension of Time to File Application for Attorneys Fees and Costs; Certificate of Service (Appellee) |
| 49. | 4-Jan-2017 | FILED: Defendants Appellants Maricopa County and William Montgomerys Response to Appellee Motion for Extension of Time to File Application for Attorneys Fees and Cost; Certificate of Service (Appellant) |
| 50. | 5-Jan-2017 | ORDERED: extending the time for filing Appellee's application (application for attorneys fees and costs) to/including 01/12/2017. Hon Donn Kessler - Author |
| 51. | 12-Jan-2017 | FILED: ASC Order filed 01/12/2017 re: extending time for filing Petition for Review to 02/20/2017 |
| 52. | 12-Jan-2017 | FILED: Appellee's Application for Attorneys' Fees on Appeal; Certificate of Service; Affidavit of Steve White with Exhibit; Affidavit of Emma Andersson with Exhibit (Appellee) |



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