

**Court of Appeals, Division One**

**Civil Appeal**

**1 CA-CV 15-0371**

**CUNDIFF et al. v. COX**

**Appellate Case Information**

Case Filed: 5-Jun-2015

Case Closed:

**Dept/Composition**

**Department E**

Hon. Kent E Cattani  
Hon. Lawrence F Winthrop  
Hon. Rebecca White Berch

**Side 1. JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust; JAMES VARILEK, as Joined Plaintiff property owner, Plaintiff/Appellee**

**(Litigant Group) JOHN B CUNDIFF et al.**

- John B Cundiff
- Barbara C Cundiff
- Elizabeth Nash
- Kenneth Page
- Kathryn Page

**Attorneys for: Plaintiffs/Appellees**

J Jeffrey Coughlin, Esq. (AZ Bar No. 13801)

**(Litigant Group) JAMES VARILEK**

- James Varilek

**Attorneys for: Joined Plaintiff/Appellee**

David K Wilhelmsen, Esq. (AZ Bar No. 7112)

Lance B Payette, Esq. (AZ Bar No. 7556)

**Side 2. DONALD COX and CATHERINE COX, husband and wife, Defendant/Appellant**

**(Litigant Group) DONALD COX et al.**

- Donald Cox
- Catherine Cox

**Attorneys for: Defendants/Appellants**

Mark W Drutz, Esq. (AZ Bar No. 6772)

Sharon Flack, Esq. (AZ Bar No. 21590)

Jeffrey Gautreaux, Esq. (AZ Bar No. 28104)

**CASE STATUS**

Jan 4, 2017.....Pending in ASC

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
YAV CV 2003-0399	Injunctive Relief		Jeffrey G Paupore, Authoring Judge of Order		

**DESCENDENT CASE(S)**

ASC CV-17-0006-PR

**CASE DECISION**

03-Nov-2016 **MEMORANDUM DECISION**

Lawrence Winthrop.....Author

Kent Cattani.....Concur

Rebecca Berch.....Concur

Filed: **03-Nov-2016**

Mandate:

Decision Disposition

**Affirmed**

**44 PROCEEDING ENTRIES**

1. 5-Jun-2015 FILED: Index of Record, Notice of Appeal from Yavapai County Superior Court filed 05/06/15  
Docketing Statement filed in Superior Court: 5/20/15
2. 9-Jun-2015 FILED: e-Record on Appeal:  
Instruments/Minute Entries  
e-Exhibits: Reporter's Transcript - 7/29/04 (M Lisa Edgar); Reporter's Transcript - 7/26/05 (David W Lundy); Reporter's Transcript - 2/13/13 (Christine Anne Harrington)
3. 10-Jun-2015 FILED: Notice to Parties re: Appellants' Fee/Brief Due

**Court of Appeals, Division One****Civil Appeal****1 CA-CV 15-0371****CUNDIFF et al. v. COX****44 PROCEEDING ENTRIES**

4. 10-Jun-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record
5. 15-Jun-2015 RECEIPT No.: 2015-00824 ; \$280.00, Check Number: 13617, Applied to: DONALD COX et al. - Class A Filing Fee (\$280.00) Paid for: Musgrove Drutz Kack & Flack PC - By Musgrove Drutz Kack & Flack PC
6. 16-Jun-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record (including Ruling filed 6/10/15 re: Final Judgment Rule 54(c))
7. 22-Jun-2015 FILED: Appellee's Notice re: Appellee's Fee/Appellant's Brief Due
8. 29-Jun-2015 FILED: Additional Record on Appeal:  
Exhibit # 533 - Statement of Facts in Support of Plaintiffs' Motion for Summary Judgment filed 12/28/12; Exhibit # 545 - Controverting Statement in Response to Plaintiffs' Separate Statement of Facts in Support of Motion for Summary Judgment and Defendants' Separate Statement of Facts in Support of Response to Motino for Summary Judgment filed 6/29/15
9. 6-Jul-2015 FILED: Notice of Appellee James Varilek Filing Fee Payment; Certificate of Service (Appellee)
10. 9-Jul-2015 RECEIPT No.: 2015-00941 ; \$140.00, Authorization: #89019694743, Applied to: JAMES VARILEK - Class B Filing Fee (\$140.00) Paid for: Favour Moore & Wilhelmsen PA - By Integrated Resource Systems IN
11. 14-Jul-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record  
Reporters Transcript: 2/13/13 & 4/16/13 (Christine Olesek)
12. 17-Jul-2015 FILED: Case Management Statement (Appellant)
13. 22-Jul-2015 RECEIPT No.: 2015-01012 ; \$280.00, Authorization: #02011757474, Applied to: DONALD COX et al. - Overpayment Class A (\$280.00) Paid for: Musgrove Drutz Kack & Flack PC - By Integrated Resource Systems IN [Memo: Duplicate Pmt - See Rcpt 2015-00824 Refund needed]
14. 31-Jul-2015 FILED: Stipulation for Procedural Order Re: Consolidation and Enlargement of Time to File Opening Brief; Certificate of Service and Filing; Order Re: Consolidation and Briefing Schedule (Appellant)
15. 3-Aug-2015 FILED: Notice of Payment of Filing Fee (Appellees Cundiff, et al.)
16. 4-Aug-2015 ORDERED: Stipulation for Procedural Order Re: Consolidation (Appellant) = DENIED as moot. FURTHER ORDERED: Granting in part motion for an extension of time and extending deadline to file opening brief to/including 9/9/15. Barbara Vidal Vaught ProTem Judge - Author
17. 6-Aug-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record
18. 7-Aug-2015 RECEIPT No.: 2015-01094 ; \$140.00, Authorization: # 18015753927, Applied to: JOHN B CUNDIFF et al. - Class B Filing Fee (\$140.00) Paid for: J Jeffrey Coughlin PLLC - By Integrated Resource Systems IN
19. 11-Aug-2015 FILED: Letter, 8/11/15, to Musgrove Drutz Kack & Flack PC re: Refund of duplicate filing fee
20. 9-Sep-2015 FILED: Appellant's Opening Brief; Certificate of Compliance; Certificate of Service and Filing
21. 14-Sep-2015 FILED: Answering Brief of Appellee James Varilek; Appellee James Varilek's Certificate of Compliance for Answering Brief; Appellee James Varilek's Certificate of Service and Filing for Answering Brief
22. 6-Oct-2015 FILED: Stipulation for Procedural Order Re: Consolidation of Reply Brief; Certificate of Service and Filing; Order Re: Consolidation of Reply Brief (Appellant)
23. 7-Oct-2015 ORDERED: Stipulation for Procedural Order Re: Consolidation of Reply Brief (Appellant) = GRANTED. FURTHER ORDERED: Answering brief of Cundiff Appellees is due on/before 10/26/15. FURTHER ORDERED: Appellants may file a consolidated reply brief to both answering briefs w/in 20 days after service of Cundiff appellees' answering brief. Melina Brill ProTem Judge - Author
24. 22-Oct-2015 FILED: Motion for Procedural Order to Extend Time for (1) Appellees Cundiff, Nash and Page to File Their Answering Brief and, (2) Appellants to File Their Consolidated Reply to Appellees' Briefs; Certificate of Service (Appellee)
25. 23-Oct-2015 ORDERED: Motion for Procedural Order to Extend Time for (1) Appellees Cundiff, Nash and Page to File Their Answering Brief and, (2) Appellants to File Their Consolidated Reply to Appellees' Briefs (Appellee) = GRANTED. FURTHER ORDERED: Answering brief of appellees Cundiff, Nash, and Page shall be filed on 11/30/15. FURTHER ORDERED: Combined reply brief shall be filed on/before 1/11/16. Melina Brill ProTem Judge - Author

**Court of Appeals, Division One**

**Civil Appeal**

**1 CA-CV 15-0371**

**CUNDIFF et al. v. COX**

**44 PROCEEDING ENTRIES**

26. 20-Nov-2015 FILED: Supplemented Superior Court e-Record with Revised Index of Record
27. 30-Nov-2015 FILED: Appellee's Answering Brief; Certificate of Compliance; Certificate of Service and Filing (Appellees Cundiff)
28. 11-Jan-2016 FILED: Appellant's Reply Brief; Certificate of Compliance; Certificate of Service and Filing (Appellant)
29. 29-Aug-2016 CLNDR: MONTHLY COURT CASE CALENDAR, Department E, 10-19-16, 03:00 pm, COURTROOM 2.
30. 8-Sep-2016 ORDERED: vacating oral argument in this matter scheduled for 10/19/2016 at 3:00 p.m. Hon Kent E Cattani Judge - Author
31. 12-Oct-2016 FILED: Defendants/Appellants' Request for Oral Argument; Certificate of Service and Filing (Appellant)
32. 14-Oct-2016 ORDERED: Defendants/Appellants' Request for Oral Argument(Appellant) = DENIED. Hon Kent E Cattani Judge - Author
33. 3-Nov-2016 MEMORANDUM DECISION (Affirmed) Hon Lawrence F Winthrop - Author; Hon Kent E Cattani Judge - Concur; Hon. Rebecca White Berch - Concur
34. 3-Nov-2016 FILED: Memorandum Decision Distribution List
35. 10-Nov-2016 FILED: Varilek-Statement of Attorneys' Fees and Costs; Varilek - Certificate of Filing and Service; Exhibit 1-Affidavit of DKW in Support of Award of Attorneys' Fees and Costs; Ex. A-Itemized Billing Entries (Amicus Curiae)
36. 16-Nov-2016 FILED: Verified Statement of Attorneys' Fees and Costs on Appeal; Certificate of Filing and Service of Verified Statement of Attorneys Fees and Costs on Appeal; Exhibit 1 (Appellee)
37. 18-Nov-2016 FILED: Appellants' Motion for Partial Reconsideration; Certificate of Compliance; Certificate of Service and Filing (Appellant)
38. 29-Nov-2016 FILED: Objection to Appellee James Varilek's Itemized and Verified Statement of Attorneys' Fees and Costs on Appeal; Certificate of Service and Filing; Exhibit 1 to Objection (Appellant)
39. 1-Dec-2016 FILED: Objection to Appellees John B. Cundiff and Barbara C. Cundiff; Elizabeth Nash; Kenneth Page and Kathryn Page, as Trustee of the Kenneth Page and Catherine Page Trust's Itemized and Verified Statement of Attorneys' Fees and Costs on Appeal; Certificate of Service and Filing (Appellant)
40. 5-Dec-2016 FILED: Appellee James Varilek's Response to Appellants' Objection to His Itemized and Verified Statement of Attorneys' Fees and Costs on Appeal; Appellee James Varilek's Response to Appellants' Objection to His Itemized and Verified Statement of Attorneys' Fees and Costs on Appeal (Duplicate) (Appellee Varilek)
41. 20-Dec-2016 ORDERED: Appellants' Motion for Partial Reconsideration (Appellant) = DENIED. FURTHER ORDERED: denying Defendants/Appellants' request for attorneys' fees. Hon Lawrence F Winthrop - Author
42. 4-Jan-2017 FILED: Email Notice from ASC re: Petition for Review filed 1/4/17; request for partial record
43. 5-Jan-2017 FILED: Letter forwarding partial record to Arizona Supreme Court
44. 5-Jan-2017 ORDERED: granting Appellees Cundiff's Itemized and Verified Statement of Attorneys' Fees and Costs and awarding \$26,727.75 in fees and \$443.00 in costs to Appellees Cundiff and against Appellants. FURTHER ORDERED: granting Appellee Varilek's Itemized and Verified Statement of Attorneys' Fees and Costs in part and awarding \$25,000.00 in fees and \$164.00 in costs to Appellee Varilek and against Appellants. Hon Lawrence F Winthrop - Author