



ANN A. SCOTT TIMMER
CHIEF JUDGE

PHILIP G. URRY
CLERK OF THE COURT

PATRICK IRVINE
VICE CHIEF JUDGE

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CHIEF DEPUTY

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JUDGES

Court of Appeals

STATE OF ARIZONA
DIVISION ONE
STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007

April 6, 2009

FILED
4:00 O'Clock, P M
APR 09 2009
JEANNE HICKS, CLERK
BY Deputy

Jeanne Hicks, Clerk
Yavapai County Superior Court
Yavapai County Courthouse
120 S Cortez St No 300
Prescott AZ 86301-3868

Dear Ms. Hicks:

RE: 1 CA-SA 08-0231

CUNDIFF v. HON MACKEY/COX

Yavapai County Superior Court
CV 2003-0399

The following are enclosed in the above entitled and numbered cause:

Certified Copy of ORDER denying relief.

There are no records to be returned.

PHILIP G. URRY, CLERK

By GT
Deputy Clerk

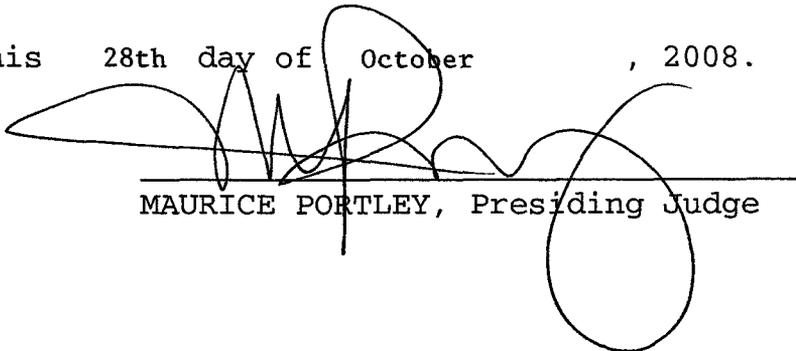
Enclosures (as noted)

c:
David K Wilhelmsen
Marguerite A Kirk
Jeffrey R Adams
David L Mackey

640, 645, ¶ 11, 74 P.2d 952, 957 (App. 2003) (citations omitted).

IT IS FURTHER ORDERED denying relief because Ariz. R. Civ. P. 42(f)(1)(E) is inapplicable. In our memorandum decision in *Cundiff v. Cox*, 1 CA-CV 06-0165 (Ariz. App. May 24, 2007), we did not remand for a **new** trial on one or more issues because the issues have yet to be tried. Instead, we reversed the grant of summary judgment to Cox because his use of the property did violate the restrictive covenant. We also remanded the matter to allow the superior court to determine whether the absent Coyote Spring Ranch subdivision property owners were indispensable under Ariz. R. Civ. P. 19(a). Consequently, the superior court did not abuse its jurisdiction in denying the petitioner's peremptory notice of change of judge.

DATED this 28th day of October, 2008.


MAURICE PORTLEY, Presiding Judge

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1 CA-SA 08-0231

Yavapai County Superior Court
CV 2003-0399

A true copy of the foregoing
was mailed October 28, 2008 to:

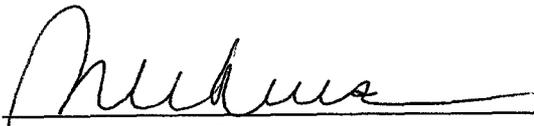
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Hon David L Mackey
Judge, Civil Presiding Judge
Yavapai County Superior Court
Yavapai County Courthouse
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Philip G Urry, Clerk
By


Deputy Clerk

The foregoing instrument is a full, true and correct **copy** of
the original on file in this office.

ATTEST 4-6-09
PHILIP G URRY, Clerk Division One
Court of Appeals, State of Arizona

By 97