

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>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,</p> <p align="center">Plaintiffs,</p> <p>vs.</p> <p>DONALD COX and CATHERINE COX, husband and wife, et al., et ux.,</p> <p align="center">Defendants.</p>	<p>Case No. P1300CV20030399</p> <p>ORDER</p>	<p align="center">FILED</p> <p align="center">JAN - 9 2015</p> <p>DATE: _____</p> <p>8:39 O'Clock <u>A</u> M.</p> <p align="center">DONNA McQUALITY, CLERK B. Chamberlain</p> <p>BY: _____</p> <p align="center">Deputy</p>
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<p>HONORABLE DAVID L. MACKEY DIVISION 1</p>	<p>BY: Jennifer Jaramillo, Judicial Assistant DATE: January 8, 2015</p>
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The Court in its duties as Presiding Judge has received the Plaintiffs' Withdrawal of Application For Attorneys' Fees Against Joined Defendants And Request That Remaining Matters Be Returned To Judge Jones For Consideration. The Court has considered that motion as well as the Response and Reply. The Court also has reviewed the file.

The Court notes that there are currently pending a Motion For Reconsideration Re: August 25, 2014 Ruling Re: Attorneys' Fees Awarded In Favor of Varilek as well as James Varilek's Motion To Strike Exhibits 5-12 To Motion For Reconsideration Re: August 25, 2014 Ruling Re; Attorneys' Fees Awarded In Favor Of Varilek.

This Judge was under the impression that James Varilek's July 27, 2009 Notice of Change of Judge filed in P1300CV20090822 was still an impediment to this Court issuing substantive rulings in the case. Upon consolidation of P1300CV20090822 into this case, that notice necessitated the reassignment of this case to the Honorable Kenton Jones who ruled upon the consolidation.

After the appointment of the Honorable Kenton Jones to the Court of Appeals, this Judge gave the parties an opportunity to file a waiver of that notice on November 5, 2013. No-one filed anything or even advised this Court that on February 28, 2013 a Stipulation To Dismiss Without Prejudice was filed and an Order Re: Stipulation To Dismiss Without Prejudice was signed on March 5, 2013 that dismissed P1300CV20090822. This Court is now aware of that dismissal.

However, when no-one filed anything in response to the Court's invitation to allow the case to be reassigned back to this Judge, the Court reassigned the case to the Honorable Patricia Trebesch. Judge Trebesch was then noticed, and this Judge again undertook a search for a judge who had no conflicts, who had not been noticed and who had the experience to handle a case that has been pending since 2003 and has 23 volumes of files.

This Judge was able to obtain the limited approval of Judge Jones to reassign the case to him for the limited purpose of attempting to resolve the pending motions. To do so, approval of the Presiding Judge for the Court of Appeals Division 1 was obtained as well as the approval of the Chief Justice. However, that approval was for a limited purpose and a limited time. Judge Jones had some time available due to the summer Court of Appeals calendar and graciously attempted to bring finality to the trial court process by issuing rulings on the pending motions. Unfortunately, those rulings did not resolve all issues. The reassignment to Judge Jones is no longer an option.

THEREFORE, IT IS ORDERED the Request That Remaining Matters Be Returned To Judge Jones For Consideration is **DENIED**.

The Court finds that the March 5, 2013 dismissal of P1300CV20090822 rendered the July 27, 2009 Notice of Change of Judge filed in P1300CV20090822 against this Judge moot. This Court can now hear the remaining issues.

IT IS ORDERED assigning this matter to the Honorable David L. Mackey, Division 1, for all further proceedings.

IT IS FURTHERED ORDERED that any objections to the Order assigning this case to Division 1 **SHALL** be filed by **January 20, 2014** after which time the pending motions shall be at issue before this Court.

cc: J. Jeffrey Coughlin – electronically via Clerk’s Office (e)
Jeffrey R. Adams – electronically via Clerk’s Office (e)
Mark W. Drutz/Sharon M. Flack – Musgrove, Drutz & Kack – electronically via Clerk’s Office (e)
David K. Wilhelmsen/Lance B. Payette – Favour & Wilhelmsen – electronically via Clerk’s Office (e)
Robert E. Schmitt – Murphy, Schmitt, Hathaway & Wilson – electronically via Clerk’s Office (e)
✓ Noel J. Hebets- Noel J. Hebets, PLC, 2515 North 48th Street #3, Phoenix, AZ 85008
✓ William H. “Bill” Jensen, 14556 Howard Mesa Loop, Williams, AZ 86046
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✓ William R. and Judith K. Stegeman Trust- 9200 East Far Away Place, Prescott Valley, AZ 86315
✓ Karen L. and Michael P. Wargo- 9200 East Spurr Lane, Prescott Valley, AZ 86315
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