Judicial Writing

2023 AJPA/AMA Conference
6 September 2023
Justice of the Peace Gerald A. Williams

Some Examples of Great Legal Writing

Justice GORSUCH:

Great opening line:

"On the far end of the Trail of Tears was a promise." *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020).

Great explanation using simple words:

"Today, the Court rejects a request the Navajo Nation never made. This case is not about compelling the federal government to take "*affirmative steps* to secure water for the Navajos." *Ante,* at 1810. Respectfully, the relief the Tribe seeks is far more modest. Everyone agrees the Navajo received enforceable water rights by treaty. Everyone agrees the United States holds some of those water rights in trust on the Tribe's behalf. And everyone agrees the extent of those rights has never been assessed. Adding those pieces together, the Navajo have a simple ask: They want the United States to identify the water rights it holds for them. And if the United States has misappropriated the Navajo's water rights, the Tribe asks it to formulate a plan to stop doing so prospectively. Because there is nothing remarkable about any of this, I would affirm the Ninth Circuit's judgment and allow the Navajo's case to proceed." *Arizona v. Navajo Nation*, 143 S. Ct. 1804, 1819 (2023)(Gorsuch, J. dissenting).

Great use of analogy:

Justice SCALIA:

"I agree with the proposition, felicitously put by Constable Rankin's counsel, that no law enforcement agency is required by the First Amendment to permit one of its employees to "ride with the cops and cheer for the robbers." App. 94. The issue in this case is whether Constable Rankin, a law enforcement official, is prohibited by the First Amendment from preventing his employees from saying of the attempted assassination of President Reagan—on the job and within hearing of other employees—"If they go for him again, I hope they get him." ...

I, for one, do not look forward to the new First Amendment world the Court creates, in which nonpolicymaking employees of the Equal Employment Opportunity Commission must be permitted to make remarks on the job approving of racial discrimination, nonpolicymaking employees of the Selective Service System to advocate noncompliance with the draft laws, and

(since it is really quite difficult to contemplate anything more absurd than the present case itself), nonpolicymaking constable's deputies to express approval for the assassination of the President." *Rankin v. McPherson*, 107 S. Ct. 2891, 2902 & 2905 (1987)(Scalia, J dissenting).

Mic Drop Statement

Justice Bolick

"In the meantime, Mr. Gray has been sentenced to over nine years in jail for accepting an undercover officer's invitation to obtain twenty dollars' worth of crack for a fee of ten dollars. Because he was not allowed to present an entrapment defense without surrendering fundamental rights, we will never know whether Gray was a cunning drug courier awaiting precisely such an opportunity, or whether he was simply waiting for a bus." *State v. Gray*, 372 P.3d 999, 1010 (Ariz. 2016)(Bolick, J. dissenting).

Why Do We Write?

Marbury v. Madison: The Supreme Court held it is emphatically the province and duty of the judicial branch to say what the law is [and not what it should be].

Judges are required to given reasoned opinions, whether they are written or not.

Functions of a Written Opinion:

Written opinions communicate a court's conclusions and the reasons for them to the parties and to their lawyers.

They imposes intellectual discipline on the author, requiring the judge to clarify his or her reasoning and assess whether it is supported by both the facts and the law.

Goal of a Written Opinion:

The opinion should fairly, clearly, and accurately state the significant facts, the relevant law, and demonstrate the reasonableness of its conclusions.

Basic Structure: IRAC

Issue – What is being contested in the case?

Rule – What law (e.g. statute, court rule, case law) applies to the issue before the court?

Application – Apply the relevant facts of the case to the law.

Conclusion - Announce your ruling

Example: I: The tenant alleged she does not owe rent because her hot water heater did not work and therefore her landlord violated an implied warranty of habitability. **R:** A landlord has a duty to supply reasonable amounts of hot water; but before a tenant can withhold rent for failing to supply an essential service, the tenant must first give the landlord a five-day notice and an opportunity to fix the problem. **A:** In this case, it is undisputed that did not occur. **C:** Therefore, the court holds the landlord is entitled to rent, to late fees in the amount requested in the lease, and to court costs.

When to Do a Written Opinion

After almost anything you have taken under advisement

Format for a Written Opinion

Question Presented: The Plaintiff alleges that the Defendant breached a contract to rent a pontoon boat by returning it with damages to such a degree that it needed repairs costing more than the security deposit. The Plaintiff established the boat was damaged; but the majority of the evidence offered to prove the actual repair cost was not admitted. The Court therefore finds in favor of the Plaintiff in an amount substantially smaller than what was requested.

The Defendant filed a Motion to Dismiss the charges in this case alleging the State cannot establish that the law enforcement officer had a reasonable suspicion to initiate a traffic stop. This motion is granted.

Findings of Fact
Explain what happened and resolve any relevant factual disputes.

Conclusions of Law and Analysis
Apply the law to the facts of the case.

Additional Suggestions

Avoid Humor & Personal Embellishments
Be respectful to parties and to attorneys
Avoid references to popular culture

How do you say, "I don't believe the police officer?"

Independent evidence did not support the law enforcement agent's testimony.

How do you say, "You lost because you did not prove damages?"

Although the Plaintiff established the Defendant breached the contract by planting the wrong plants, he did not offer any evidence of what it would cost to replace those plants with the ones stated in the contract.

Explaining Rulings on Ruling on Motion Forms

Sometimes one sentence is enough

Example: The Court dismissed the counterclaim alleging the Plaintiff filed a false lien against the Defendants' home because that type of case must be filed in Superior Court. A.R.S. § 33-420(B).

Another Example: Note: Due to a change in Arizona garnishment law, not more than ten percent of the judgment debtor's disposable earnings can be garnished. A.R.S. § 12-1598.10(F).

Proofread with a Purpose

Justice Amy Coney Barrett said after she has written an opinion, she reads it again from the point of view of the party that lost.

Attachments:

1. Ruling on Motion, Traffic Stop (2 pages)
2. Minute Entry, "I want my stuff back" case (2 pages)
3. Minute Entry, Business Dispute (3 pages)

Maricopa County Justice Courts, State of Arizona
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, Arizona 85374
(602) 372-2000

CASE NUMBER: [redacted]

STATE OF ARIZONA

Plaintiff(s)

[redacted]

Defendant(s)

ATTORNEY for Plaintiff

[redacted]
Deputy County Attorney
14264 West Tierra Buena Lane
Surprise, AZ 85374

ATTORNEY for Defendant

[redacted]

RULING ON MOTION

The Defendant filed a Motion to Dismiss the charges in this case alleging the State cannot establish that the law enforcement officer had a reasonable suspicion to initiate a traffic stop. This motion is granted.

Facts

A trooper from the Arizona Department of Public Safety (DPS) testified at the evidentiary hearing. He testified that he was on duty and was conducting speed enforcement on I-17 on the charged date. The DPS trooper testified that he was traveling in the left lane at a rate of 75 mph when the Defendant's vehicle passed him on the right. He testified that after he visually estimated her speed at 85 mph and then confirmed her speed with radar as 84 mph. The posted speed limit for the area is 65 mph. The DPS trooper further testified he pulled directly behind the Defendant's vehicle and that he paced her speed for approximately one mile. He then initiated a traffic stop, which resulted in a DUI investigation.

Independent evidence did not support the DPS's trooper's testimony. Automatic Vehicle Location (AVL) is a GPS type system that allows law enforcement agencies to track the locations of their vehicles. According to the AVL data on the DPS's trooper's vehicle, he traveled from a stopped position to 83 mph, and then two minutes later, went from a stopped position to 127 mph. (Defendant's Exhibit 1). The DPS trooper confirmed the unit number on the printout referred to his vehicle.

Law

Traffic stops are seizures within the meaning of the Fourth Amendment, but because they are less intrusive than arrests, an officer needs only reasonable suspicion that a traffic violation has occurred to initiate a stop. *Arizona v. Johnson*, 555 U.S. 323, 29 S.Ct. 781, 784 (2009). An officer who has observed a traffic violation has reasonable suspicion to initiate a traffic stop. *State v. Majalca*, 491 P.3d 1132 (Ariz. Ct. App. 2021)(Call for canine unit was also justified because police had reasonable suspicion defendant was involved in criminal activity unrelated to traffic violations).

The requirements for a police officer to pull someone over are well established. A.R.S. § 28-1594. If an officer has "an articulable, reasonable suspicion, based on the totality of the circumstances," that a traffic violation has occurred, he or she may conduct a limited investigatory stop. *State v. Teagle*, 170 P.3d 266, 271-72 (Ariz. Ct. App. 2008). The State has the burden of proving that evidence was obtained lawfully. Ariz. R. Crim. P. 16.2(b).

In this case, the State cannot establish that was a factual basis for the traffic stop. As the DPS trooper testified, he presented as having a clear memory of events that he was in a position to observe. In contrast, the objective AVL data is wildly inconsistent with the DPS trooper's testimony. There could be numerous explanations for this contradiction (e.g. time on the ticket is incorrect, trooper had a different vehicle that day, etc.); but they were not presented at the hearing. In fact, the first time the DPS trooper saw the AVL data was during cross-examination from the Defendant's attorney. In argument, the State attacked the credibility of the AVL data; but the Defense correctly noted that information came from a document the State produced in response to a discovery request.

If the Defendant was speeding, then there would have been a basis for the traffic stop. Whether someone is speeding is often established by a law enforcement officer's testimony that is bolstered by evidence of a radar type device. In this case, the DPS trooper's testimony has limited credibility and the State did not offer evidence concerning the radar equipment that was used. Consequently, the State was unable to meet its evidentiary burden to prove the warrantless seizure was lawful.

IT IS ORDERED THAT the Defendant's motion is granted. The four charges in this case are dismissed.

Date: _____

_____
GERALD A. WILLIAMS
Justice of the Peace

I CERTIFY that I mailed a copy of this Ruling to:

☐ Plaintiff at the above address or ☐ Plaintiff's attorney ☐ Defendant at the above address or ☐ Defendant's attorney

Date: _____ By: _____
Clerk

Maricopa County Justice Courts, State of Arizona
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374
(602) 372-2000

CASE NUMBER: [redacted]

[redacted]

Plaintiff(s)

[redacted]

Defendant(s)

MINUTE ENTRY

Question Presented

The issue in this case is whether the Defendant wrongfully withheld the Plaintiff's property. The Court finds the Plaintiff did not abandon his property and therefore finds in his favor.

Discussion

Findings of Fact

Conversion is the wrongful control of someone else's personal property. Although he did not use that term, the Plaintiff filed this case, originally as a small claims action, for $3,498.70 against his former girlfriend alleging she should pay him for the value of the personal property that she continues to possess after their relationship ended.

The Plaintiff moved into the Defendant's residence and they lived together in a romantic relationship. On or about April 26, 2021, the Defendant had the locks changed. Both parties referred to this action as an "eviction."

From April 26, 2021 until May 29, 2021, the parties exchanged written messages concerning the Plaintiff returning to the Defendant's residence to obtain his belongings. These efforts were not productive in part because the Plaintiff failed to appear as promised.

Both sides presented evidence concerning personal property that was eventually moved to a storage unit; but this opinion will focus only on the items referenced in this lawsuit. They are: a sofa (purchased for $869.34), a refrigerator (purchased for $1,754.19), a grill (valued at $415.17), and a mattress (purchased for $460.00). (Plaintiff's Exhibit 1). The Defendant admits that she still has this property and even offered photographs showing that the items remain in good condition. (Defendant's Exhibit 2).

While they lived together, the parties shared expenses. The Plaintiff testified that he paid the Defendant $600.00 each month as "rent" as well as money for APS utilities. In response, to questions from the Court, he said there was no written lease and could not state any additional terms for a verbal lease other than it was month-to-month. At the conclusion of the Plaintiff's case, the Court volunteered that the parties did not appear to be in a landlord and tenant relationship.

During the Defendant's case, she maintained she ***was*** the Plaintiff's landlord, that she had made reasonable efforts for the Plaintiff to reclaim his property; but he had abandoned it. Her abandonment defense is based on the abandoned property provisions of Arizona landlord and tenant law, which only require a landlord to hold a tenant's former property for 14 days. A.R.S. § 33-1370(F).

Conclusions of Law

Many of the facts in this case are undisputed. The central issue is whether the Plaintiff abandoned the personal property he purchased.

The Defendant relies on A.R.S. § 33-1370(F). It states in part, "The landlord shall hold the tenant's personal property for a period of fourteen calendar days after the landlord retakes possession of the dwelling unit." *Id.* However, for that statute to apply, the parties must have been in a landlord and tenant relationship. Even if they were, for this law to apply, either a landlord must have regained possession of the residence lawfully or the tenant must have abandoned the residence. Neither occurred here.

Both sides agreed there was no court ordered residential eviction. The Defendant simply changed the locks to the residence and prohibited the Plaintiff from continuing to live there. Arizona law does not allow a landlord to use self-help to lock a tenant out of a residence. A.R.S. § 33-1367. So the next question is whether the Plaintiff abandoned the property independent of landlord and tenant law.

To abandon personal property, "one must voluntarily and intentionally give up a known right." *Grande v. Jennings,* 278 P.3d 1287, 1291 (Ariz. Ct. App. 2012). Abandonment involves an intent to abandon, together with an act or omission that carries that intention into effect. *Mason v. Hasso,* 367 P.2d 1, 3 (Ariz. 1961). "Abandonment of personal property must be affirmatively proved, with clear and convincing evidence, by the party asserting it." *Strawberry Water Co. v. Paulsen,* 207 P.3d 654, 661(Ariz. Ct. App. 2008); S*ee also Grande,* 278 P.3d at 1292 (abandonment not presumed).

In this case, the Plaintiff did not intentionally leave his personal property at the Defendant's residence. In fact, he returned to the location where he had been living only to discover he suddenly no longer had access to it. He did not consent to being locked out and under any objective standard, he did not abandon the property.

The clear weight of the evidence presented established that the Plaintiff did not abandon his personal property and the Defendant continues to have possession of it. This court has no authority to order the return of property. For these reasons, the Court finds in favor of the Plaintiff in the amount of $3,498.70, plus costs.

The court will not enter this judgment for 30 days to allow the parties to successfully transfer the property in question. Judgment will be entered on Sept 1, 2022, unless the parties file a stipulation to dismiss before that date.

IT IS THEREFORE ORDERED THAT the Court finds in favor of the Plaintiff.

Date: _____

_____
GERALD A. WILLIAMS
Justice of the Peace

Maricopa County Justice Courts, State of Arizona
North Valley Justice Court
14264 West Tierra Buena Lane
Surprise, AZ 85374
(602) 372-2000

CASE NUMBER: [redacted]

[redacted]

Plaintiff(s)

ATTORNEY for Plaintiff:

[redacted]

[redacted]

Defendant(s)

ATTORNEY for Defendant:

[redacted]

MINUTE ENTRY

The question presented is whether the Defendant is obligated to pay the amount claimed in connection with a supply contract for automotive parts. This Court concludes that the Plaintiff was unable to establish either the amount claimed or a sum certain that was due. As a result, the Court finds in favor of the Defendant.

Procedural and Evidentiary Issues

At the beginning of the trial, the Plaintiff moved to amend the complaint to add Defendant Andy Meyer's wife as a party. The Court denied the motion. The Defendant objected to the Plaintiff's only witness because that witness was not disclosed by name. The Court allowed the witness to testify. At the end of the Plaintiff's case, the Plaintiff moved to amend the complaint to add a new cause of action. The Court denied the motion. The Plaintiff objected to Defendant's Exhibit 16 (which is an e-mail between the Plaintiff's witness and the Plaintiff's office manager) because it was not disclosed as an exhibit. The Court admitted Defendant's Exhibit 16.

Findings of Fact

Many of the facts are undisputed. The parties entered into an agreement for the Plaintiff to supply automotive parts to the Defendant's business. Defendant Andy Meyer personally guaranteed payment on behalf of his business.

The Plaintiff apparently kept a ledger with a running balance on-line; but no such accounting was offered as evidence. Instead, the Plaintiff submitted two invoices. (Plaintiff's Exhibit 3). The parties began with one account, reflecting parts. A second account, for equipment, was subsequently added.

During the course of the business relationship, the Plaintiff's accounting system was confusing to the Defendant. During the trial, the Plaintiff's accounting system seemed confusing to the Plaintiff's witness. By way of example, at one point, there was an undisputed mistake made where a payment toward one account was improperly credited to another. This was apparently fixed; however, no documents were submitted indicating

that any such correction occurred. Perhaps more significantly, the Defendant never received anything indicating either that payments were being made or that amounts were being subtracted from a total. When a payment was made, or when a part was returned, the line item on a paper invoice was removed from future invoices. When a partial payment was made, the amount on the paper invoices apparently changed. On one of the documents in Plaintiff's Exhibit 3, there is an entry for $888.64 for "TERMS PAYMTS." The Plaintiff's witness testified, "I am not aware of what that is" in response to a question on direct exam. Also during direct exam, the Plaintiff's witness repeatedly stated that he would have to check with the company's accounts receivables representative in order to answer the question.

The parties' relationship was complicated further after the Plaintiff gave the Defendant an automotive lift in return for purchasing a certain amount of automotive parts. The parties did not dispute that the lift was delivered incomplete. The Plaintiff maintained that the necessary parts were subsequently supplied. The Defendant testified that he had to pay for $1,000.00 worth of lift parts himself. After the business arrangement broke down, the Plaintiff charged the Defendant for the lift. The Defendant refused to pay for it and told the Plaintiff to come pick it up. However, even this could not be accomplished because the Defendant wanted whoever came to his property to pick it up to be insured.

At one point, the Defendant's wife and a Plaintiff's representative met and went over the amounts due. The Defendant and his wife determined that the amount due at that point was $625.47. (Defendant's Exhibit 1). The Plaintiff's representative initially agreed with that amount; but then subsequently stated it was not accurate. An e-mail between the Plaintiff's witness and the Plaintiff's office manager showed the final amount due as $1,853.19. (Defendant's Exhibit 16). The Defendant also submitted over a year's worth of text messages between himself and the Plaintiff where he repeatedly sought clarification of accounting issues. (Defendant's Exhibit 4). Eventually, the Plaintiff filed this suit seeking a balance of $4,614.71.

Conclusions of Law

The Plaintiff proved a contractual relationship between the parties. Although it is not clear whether only one or both parties breached this relationship, this analysis is unnecessary because of the insufficient evidence presented concerning damages.

Generally, courts award damages for breach of contract in an amount that would put a plaintiff in the position it would have been in had the contract been performed. However, that amount must be for a sum certain. *Coury Bros. Ranches v. Ellsworth*, 446 P.2d 458, 464 (Ariz. 1968) (Where testimony was speculative and conjectural, lost profits were not established with reasonable certainty); *Gilmore v. Cohen*, 386 P.2d 81 (Ariz. 1963)(Concluding that damages had not been established with reasonable certainty where all evidence relating to damages was in the form of testimony by plaintiffs, without any accounts or other cost records introduced, and where testimony itself was ambiguous and confused).

In this case, based on the evidence presented, the Plaintiff did not establish damages. The Plaintiff's witness was unable to explain some of the terms on the invoices and no ledger (reflecting amounts due and payments made) was offered into evidence. In addition, significantly different amounts were claimed to be due. Consequently, the Court finds in favor of the Defendant.

As an aside, there is an outstanding issue concerning the automotive lift. If the Defendant keeps it without paying for it, he and his business will be unjustly enriched. The Court cannot order that it be returned because it does not have the authority to order injunctive relief. The Court cannot award monetary damages in connection with the lift because no estimate of its' value was offered as evidence.

During the closing argument, the Defendant acknowledged that it owed an amount less than $300.00. As the prevailing party, the Defendants' attorney shall file a proposed judgment.

Date: _____

_____
GERALD A. WILLIAMS
Justice of the Peace

I CERTIFY that I mailed a copy of this Minute Entry to:

☐ Plaintiff at the above address or ☐ Plaintiff's attorney ☐ Defendant at the above address or ☐ Defendant's attorney

Date: _____ By: _____
Clerk