

THE PASCUA YAQUI COURT OF APPEALS

-----  
FRANCES BALTAZAR, )  
Appellant )  
v. )  
DOLORIS LOPEZ, ALMA )  
LESPRON & DANIEL LOPEZ, )  
Appellees )  
-----

Case No.: CA-02-001

MEMORANDUM DECISION

Amanda Sampson, Esq., Pascua Yaqui Legal Services, for the Appellant.

John Crow, Esq., for the Appellees.

This Court reviewed the record and heard oral arguments and reverses the Tribal Court findings. About 1969, Gerardo and Gregoria Alvarez purchased a house (Alvarez house) that was built on land held by the Pascua Yaqui Association, an Arizona Corporation. The Pascua Yaqui Tribe was not a federally recognized tribe in 1969, so the tribe members were organized as the Association. See 78 Stat. 1197.

On September 18, 1978, the Pascua Yaqui Tribe received federal recognition and the land held by the Association was placed into trust status for the Tribe. 25 U.S.C. § 1300f. There is no evidence in the record that the Tribe assumed ownership of the houses, including the Alvarez house, when the land was placed into trust status. In fact, the Tribe's housing officials were named originally as defendants in this action, but they were dismissed upon motion made by the Tribe's Attorney General's office. The trial court was told by the Attorney General that the "house which is the subject ... of the dispute here would not fall under the jurisdiction of the Tribe since it was a house that

was in the name of a tribal member.” Transcript at p. 2. The Tribe’s interest, by its own stated admission, is therefore only in the land itself, and not the Alvarez house. Accordingly, we hold at the outset that the Alvarez house is private property, and is governed by relevant tribal law respecting rules of descent and inheritance by testamentary disposition.

On June 21, 1973, Mr. and Mrs. Alvarez designated the Appellees to receive their house. On February 4, 1998, Mr. and Mrs. Alvarez signed a “Request to Change Designation of Preference” regarding the house before a notary public. The change of designation document has the property’s address (7650 South Camino Huivisim) and declares the owners’ intention to change their 1973 designation to the Appellant and others:

The undersigned parties [Mr. and Mrs. Alvarez] hereby remove Dolores Lopez, Daniel Lopez, and Alma Lopez as the designated persons for occupancy and substitute the following persons as the designated persons for preference in occupancy after expiration of the occupancy of the undersigned parties:

- 1) Frances Baltazar, daughter
- 2) Randolph Baltazar, grandson
- 3) Randolph Baltazar, great grandson
- 4) Desiree Baltazar, great granddaughter

The document has Mrs. Alvarez’s “X” mark (which was witnessed by Belinda Baltazar) and Mr. Alvarez’s signature. The document is notarized by Erin E. Rosovic, a Pima County Notary Public.

Although the Alvarez house is private property, is there a Pascua Yaqui Tribe law that requires the tribal council to approve its transfer to new owners, as the Appellees successfully argued to the trial court? The Appellees introduced into evidence at trial a 1998 memorandum by a tribal attorney that states that Mr. and Mrs. Alvarez were required to submit their request to change their designation by filing a written request to the Council. This, in fact, was done. A signed and notarized copy of the request was submitted to the Tribal Council Secretary, Alma Lespron, one of the named Appellees ( i.e., Alma Lopez) in this case, whose official duties, as she admitted at trial, were to receive and distribute to the Tribal Council for approval just such documents. It also appears on the record that the Council had routinely approved such transfer requests of homes located on former Association land in the past. But, as Appellee Lespron admitted at trial under oath that while she in fact had received the statement from the tribal attorney, she failed to distribute or submit the Alvarez's request to the Council for approval. Mr. and Mrs. Alvarez did what they were told was required, and there was nothing more they could have done to affect the change. For whatever reasons, whether personal or professional, Appellee Lespron admitted she did not submit the request to the Council, and therefore failed in her duty and the Alvarez's request never reached formal Council action. No matter, for it appears to the Court that neither party has provided sufficient evidence that at the time of the Alvarez's 1998 request submission, there was any governing tribal law or code provision that required the tribal council to formally approve ownership changes of houses located on former Association land. Even the tribal attorney's memo stated that Council approval was "required to make this designation a matter of record." Trial Exhibit 1. Clearly, the record at trial proves here that Appellees

were on notice as to the designation request, and cannot claim the protection that tribal law might afford to those who justifiably might rely on matters of public record to protect their rights and interests in private property held on the reservation. Accordingly, under the circumstances of this case, Mr. and Mrs. Alvarez did not need the tribal council to approve their designation.

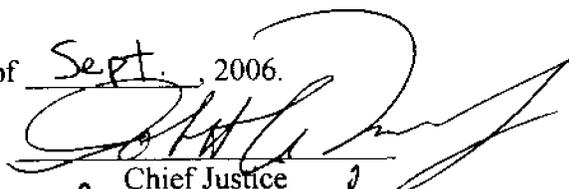
Is the change of designation document executed by Mr. and Mrs. Alvarez valid and enforceable? Pascua Yaqui Tribe members can designate who can get their property after their death by declaring their desires in writing. 1 PYTC § 14.15 (Wills). A writing that complies substantially with section 14.15 is valid, 1 PYTC § 14.17, and will revoke a prior designation, 1 PYTC § 14.18. In this case, the 1998 change of designation document declares the owners' intentions in writing and contains the signature of Mr. Alvarez and Mrs. Alvarez's "X" mark, which were witnessed by Belinda Baltazar and a notary public. The document is officially notarized by Erin Rosovic, a notary public.

No evidence was presented that Mr. and Mrs. Alvarez were not of sound mind when they executed the 1998 document. There is also no proof that fraud induced the making and finalization of the document. Therefore, we hold that the document entitled "Request to Change Designation of Preference," executed on February 4, 1998, is valid and enforceable.

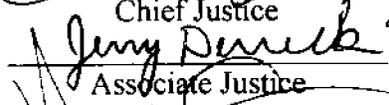
Accordingly, the judgment of the Pascua Yaqui Tribal Court is reversed. The Tribal Court shall enter an ORDER granting the house to the Appellant, Frances Baltazar, and those persons listed on the 1998 change of designation document.

Reversed and remanded.

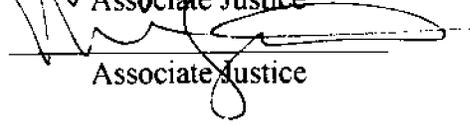
Filed this 14 day of Sept., 2006.



Chief Justice



Associate Justice



Associate Justice