

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 08/31/2021
AMY M. WOOD,
CLERK
BY: KLE

CLAUDIA LUNA,)
) Court of Appeals
) Division One
Petitioner,) No. 1 CA-SA 21-0169
)
v.) La Paz County
) Superior Court
THE HONORABLE MATTHEW NEWMAN,) No. CR2016-00044
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for)
the County of LA PAZ,)
)
Respondent Judge,)
)
MARIA LOPEZ,)
)
Real Party in Interest.)
_____)

ORDER ACCEPTING SPECIAL ACTION JURISDICTION AND GRANTING RELIEF

The Court, Presiding Judge Randall M. Howe, and Judges Brian Y. Furuya and Michael J. Brown participating, has considered Petitioner's petition for special action and request for expedited ruling. In addition, the Court heard oral argument presented via telephonic hearing on August 31, 2021. Present were attorneys Eric Aiken and Colleen Clase, representing the Petitioner; attorneys Fred Welch and Sandra Carr, representing the real party in interest Maria Lopez; and Shawn Fuller and Rachel Shackelford, representing the State.

Based on the arguments presented and review of the petition for special action, together with all documents submitted therewith, the Court

addresses this petition as follows, which constitutes the decision of the Court in this matter:

FACTS AND BACKGROUND

A.L., age five, is the victim of a crime that has taken over five years to come to trial. At the final trial management conference, the superior court discussed that due to space limitations created by social distancing precautions imposed in light of the COVID-19 pandemic, A.L. – and perhaps other victims – would not be permitted to be present. Instead, the court suggested that Petitioner could act as the representative for all victims at trial.

Following the conference, Petitioner requested that A.L. be allowed to physically attend the trial. The superior court elected to impose social distancing as the safety measure to address pandemic concerns. It was proposed that the jury be seated, socially distanced, in the gallery of the courtroom, with court staff and the Petitioner to be seated, also socially distanced, in the jury box.

The superior court denied Petitioner's request, finding that the courtroom had insufficient occupancy to accommodate A.L. due to the election to use social distancing. Masking was not to be required of any trial participants other than those seated at the Defense table, who, because of their numbers, could not be socially distanced. This special action followed.

DISCUSSION

I. Jurisdiction

Acceptance of jurisdiction in a special action is discretionary. See *State v. Hutt*, 195 Ariz. 256, 259, ¶ 5 (App. 1999). Acceptance of such jurisdiction is appropriate when the issues presented are framed and turn solely on legal principles rather than factual determinations, see, e.g., *Univ. of Ariz. Health Scis. Ctr. v. Superior Court*, 136 Ariz. 579, 581 (1983), as well as where there is no effective appellate remedy, see *Nataros v. Superior Court*, 113 Ariz. 498, 499 (1976).

Here, the issues presented cannot await the conclusion of trial because the opportunity for Petitioner and A.L. to exercise their constitutional rights under the Arizona Victims' Bill of Rights to physically attend trial would have already passed. In our discretion, we accept jurisdiction.

Further, trial in this matter is scheduled to begin today, August 31, 2021, creating an exigency that requires us to consider and act immediately. We therefore grant petitioner's request for expedited ruling.

II. Standard of Review.

Preliminarily, though a court's inherent authority to control the courtroom and trial proceedings is a matter of discretion vested in the trial court, see *E.H. v. Slayton in & for County of Coconino*, 249 Ariz. 248, 255, ¶ 25 (2020), misapplication of law or legal principles constitutes an abuse of discretion. *Tobin v. Rea*, 231 Ariz. 189, 194, ¶ 14 (2013). Further, we review interpretations of victims' rights pursuant to the Arizona Constitution and implementing statutes and court rules *de*

novo. State ex rel. Montgomery v. Padilla, 238 Ariz. 560, 564, ¶ 12 (App. 2015).

III. Victims have a Constitutional Right to Attend Trial Co-Extensive with Defendants' Right to Attend Trial.

In Arizona, crime victims unquestionably have a right, enshrined in our constitution, to be present at all criminal proceedings where the defendant also has the right to be present. Ariz. Const. art. II, § 2.1(A)(3). See also A.R.S. § 13-4420.

This right is bestowed upon all persons against whom a criminal offense has been committed. A.R.S. § 13-4401(19) (defining "victims"). It is bestowed without differentiation as to the age, mental capacity, disability, or other such characteristics of the victim. See *id.* (expressly including minors and the incapacitated).

Here, trial has been scheduled and ordered to proceed with the Defendant physically present in the courtroom. Counsel for Defendant observed that given his young age, A.L. is unlikely to understand the proceedings at which Petitioner desires him to be present. However, A.L.'s age is irrelevant to his status as a victim. As a crime victim, A.L. has a right to physically attend any and all criminal proceedings where the Defendant also has a right to be present.

IV. Pandemic Safety Precautions Must Accommodate Victims' Right to Attend Trial in Person if Defendant is Permitted to Attend Trial in Person.

We are asked in this case to evaluate whether a victim's right to attend a criminal trial in person must yield when social distancing requirements limit the capacity of a courtroom.

We acknowledge, as did the superior court, that a worldwide pandemic has impacted the normal operations of society, including those of Arizona's courts. Safety measures during the COVID-19 pandemic have been addressed by various administrative orders, including the Arizona Supreme Court's Administrative Order No. 2021-109 ("A.O. 2021-109"). Our supreme court notes in A.O. 2021-109 that court proceedings can and should be adjusted as may be appropriate and necessary to safeguard litigants, attorneys, court staff, and the public from the dangers of the COVID-19 pandemic. A.O. 2021-109, at pp. 1-2. However, where in-person proceedings are permitted, courts are directed to include victims within the ambit of "necessary persons" allowed to attend. A.O. 2021-109, at p. 3.

Moreover, the Supreme Court recently held that even where special impositions must be made regarding courtroom seating due to physical limitations within a courtroom or "to allow for physical distancing during a pandemic," nevertheless, "[a]t all times, [] a trial court's discretion to address seating arrangements must honor a victim's constitutional right to be present and heard at criminal proceedings" *E.H. v. Slayton*, 249 Ariz. 248, 256, ¶ 25 (2020).

In this case, the superior court's order excluding A.L. from attending trial in-person does not "honor [A.L.]'s constitutional right to be present and heard at [Defendant's] criminal proceeding[]." *Id.* If Defendant is permitted to attend trial in this matter in-person, then A.L. must likewise be permitted to attend in-person. Ariz. Const. art. II, § 2.1(A)(3). See also A.R.S. § 13-4420. Therefore, the court's order constitutes an abuse of discretion and we vacate the superior court's order

denying A.L.'s request to attend trial in-person. We further direct the superior court to enter such orders as will honor A.L.'s constitutional rights as a crime victim, while providing for those safeguards permissible pursuant to A.O. 2021-109 as may be reasonable and necessary.

As noted above, the authority to control the courtroom and trial proceedings lies within the superior court's discretion, whether that might be mandating universal mask-wearing during trial in lieu of social distancing, or any other safety mechanism deemed appropriate and necessary by the court. *E.H. v. Slayton*, 249 Ariz. at 255, ¶ 25. We advise only that such discretion must be exercised subject to the requirements of law, among them being respect for victims' constitutional rights as discussed herein.

CONCLUSION

In summary and for the foregoing reasons:

IT IS ORDERED that the Court of Appeals, in the exercise of its discretion, accepts special action jurisdiction in the above-captioned matter.

IT IS FURTHER ORDERED granting petitioner's request for expedited ruling.

IT IS FURTHER ORDERED granting relief, as requested by Petitioner, vacating the superior court's order denying A.L.'s request to attend trial in-person, and directing the superior court to enter such orders as will honor A.L.'s constitutional rights as a crime victim, while providing those safeguards permissible pursuant to A.O. 2021-109 as may be reasonable and necessary.

IT IS FURTHER ORDERED lifting the stay issued August 31, 2021.

IT IS FURTHER ORDERED vacating this Court's previous order requiring the filing and service of a response and setting any further proceedings in this matter.

/s/ _____
Randall M. Howe, Presiding Judge

A copy of the foregoing
was sent to:

Colleen Clase
Eric Aiken
Sandra Carr
Fred H Welch
Hon Matthew G Newman