

SUPREME COURT CIVIL MATTERS

Affidavits of persons circulating an initiative petition substantially complied with the requirement that the circulator believed the persons signing the petition were qualified electors of the city which was affected by the initiative. The affidavit followed the statutory form, leaving the name of the city blank, but the petition clearly identified the City of Prescott as the subject of the initiative. *Feldmeier v. Watson*, CV 05-0325-AP/EL, 11/30/05 ... Agricultural landowners did not have vested rights to Central Arizona Project water and were not third party beneficiaries to challenge contracts and subcontracts between the United States, the Central Arizona Water Conservation District and certain irrigation districts. *Maricopa-Stanfield Irrigation and Drainage District v. Robertson*, CV 04-0385-SA, 11/30/05.

COURT OF APPEALS CIVIL MATTERS

Under the Adult Protective Services Act, A.R.S. §§ 46-451 through 46-457, a party need only show he or she is either incapacitated or vulnerable to be protected under the act. A person is vulnerable if she suffers from an impairment, such as that she was physically frail and unable to walk and was unable to fully care for herself because of age or health problems and was unable to protect herself from abuse, neglect or exploitation because of that impairment. *Davis v. Zlatos*, 1 CA-CV 04-0413, 12/6/05 ... Mere compliance with the Federal Fair Housing Amendments Act of 1988, 42 U.S.C. §§ 3601-3631, and the Housing for Older Persons Act, 42 U.S.C. § 3607, does not give a homeowners' association authority to impose age-based occupancy restrictions on housing units absent a valid

declaration to its own Declaration of Covenants, Conditions and Restrictions. Restrictions or declarations limiting the age of residents must expressly restrict occupancy to persons of a specific age-group rather than simply specifying the community as an "adult community." *Wilson v. Playa de Serran*, 2 CA-CV 05-0072, 11/30/05 ... When questions of material fact exist in a severance matter that cannot be resolved without credibility determinations and the weighing of evidence, a juvenile court errs in entering summary judgment in favor of the Arizona Department of Economic Security ("ADES") by terminating a mother's parental rights on statutory grounds pursuant to A.R.S. §§ 8-533(B)(3) and (B)(8). A juvenile court may presume the truth of evidence presented by ADES at summary judgment in termination matters when only one inference can be drawn from the evidence, rather than when the opposing parent fails to controvert same. *Jennifer G. v. ADES*, 2 CA-JV 04-0095, 11/29/05 ... In considering whether to grant a stay pending appeal from an administrative agency order, the superior court need not apply the stringent test for a preliminary injunction. Rather, the standard for such a stay is "good cause," meaning that the appellant demonstrates a colorable claim on the merits (that the claim is seemingly valid, genuine or plausible) and that harm to the appellant from immediate implementation of the decision would be greater than any harm to the agency or other parties if stay were granted. *P&P Mehta LLC v. Jones*, 1 CA-SA 05-0183, 11/17/05.

physical harm to a victim, the criminal defendant does not have standing to assert a victim's physician-patient privilege to exclude either testimonial or documentary evidence of the victim's injuries and medical treatment. *State v. Miles*, 2 CA-CR 04-0329, 11/30/05 ... A defendant's indictment charging him with a single count of continuous sexual abuse of a child in violation of A.R.S. § 13-1417 (involving three or more acts of sexual abuse with a minor under age 14) is not constitutionally duplicitous. Although indictments charging separate or multiple crimes in the same count are generally constitutionally duplicitous, charges under this statute are not duplicitous because: (1) a continuing scheme or course of conduct (including that where one of the elements of the crime alleged is a separate indictable offense) may properly be alleged in a single count and thus a defendant is provided with adequate notice of the crime charged necessary to defend against the charge; (2) although a defendant is entitled to a unanimous jury verdict on whether a criminal act charged has been committed, he is not entitled to a unanimous verdict on the precise manner in which the act was committed; and (3) the description of continuous sexual abuse in A.R.S. § 13-1417 (A) is sufficiently clear to disallow prosecutions involving prior jeopardy. *State v. Ramsey*, 2 CA-CR 04-0105, 11/30/05 ... The State may introduce evidence at a DUI trial that the defendant refused to participate in field sobriety tests because such a test, when supported by reasonable suspicion that a DUI offense has been committed, is a lawful search to which the suspect has no legal right to refuse. *State v. Jones*, 1 CA-SA 05-0187, 11/1/05.

* indicates a dissent

SUPREME COURT PETITIONS

compiled by Barbara McCoy Burke, Staff Attorney,
Arizona Supreme Court



The Arizona Supreme Court accepted review or jurisdiction of the following issues on November 29, 2005*:

Elizabeth Espinosa v. Carrington Schulenburg, et al., 1 CA-CV 04-0438 (Opinion) (CV 05-0158-PR)

"Where an off-duty professional rescuer stops at an accident scene to render aid, and acts in her capacity as a professional rescuer, can she sue the accident victim for negligently creating the need for aid?"

State v. Israel Joaquin Alvarez, 2 CA-CR 2002-0084 (Opinion) (CR 05-0104-PR)

"1. Whether the trial court committed reversible error when it instructed the jury on felony murder.

"2. Whether the trial court committed reversible error in admitting the deceased victim's hearsay statements to a sheriff's deputy, contradicting *Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004)."

State of Arizona v. David Patrick Parks, 1 CA-CR 03-0573 (Opinion) (CR-05-0373-PR)

"Did the court of appeals improperly extend the constitutional right of confrontation to excited utterances and informal, unstructured statements to police at crime scenes, when those statements are not 'testimonial' statements within the narrow 'core concerns' of the Confrontation Clause?"

Walter A. Dressler v. Dona Morrison fka Dona M. Dressler, et al., 1 CA-CV 03-0785 (Memorandum Decision) (CV 05-0119-PR)

"1. Is a party who claims to be a tenant in common with a former spouse in marital real estate not addressed in a decree of dissolution (A.R.S. Section 25-318 B) entitled to litigate co-tenancy issues with the former spouse/co-tenant in an independent civil action, or does ARIZ.R.CIV.P. 60(c) provide the exclusive remedy?

"2. Under what circumstances do the provisions of ARIZ.R.CIV.P. 60(c) prohibit an independent, post-decree action between former spouses and mandate a reopening of the dissolution proceedings?"

*Unless otherwise noted, the issues are taken verbatim from either the petition for review or the certified question.

COURT OF APPEALS CRIMINAL MATTERS

Pursuant to A.R.S. § 13-3601.02, a charge of aggravated domestic violence requires proof of two prior convictions of domestic violence. *State v. Gaynor-Fonte*, 1 CA-CR 04-0755, 12/6/05 ... In a criminal prosecution involving aggravated assault with a deadly weapon or dangerous instrument or other charges alleged to have caused

The Arizona Supreme Court and Arizona Court of Appeals maintain Web sites that are updated continually. Readers may visit the sites for the Supreme Court (www.supreme.state.az.us/opin), the Court of Appeals, Div. 1 (www.cofad1.state.az.us) and Div. 2 (www.apltwo.ct.state.az.us).