

Court of Appeals, Division One

Civil Appeal

1 CA-CV 23-0636

IVEY, et al. v. CAPTIVA, et al.

Appellate Case Information

Case Filed: 11-Oct-2023

Case Closed:

Dept/Composition

Department B

Hon. Andrew M Jacobs
Hon. Jennifer M Perkins
Hon. David D Weinzweig

Side 1. KENNETH IVEY AND CYNTHIA IVEY, husband and wife; KENNETH R. IVY and CYNTHIA C. IVEY as Trustees of The Ivey Family Living Trust dated July 23, 2008, Plaintiff/Appellant

(Litigant Group) KENNETH IVEY, et al.

- Kenneth Ivey
Cynthia Ivey
The Ivey Family Living Trust

Co-Counsel for: Plaintiffs/Appellants

J Jeffrey Coughlin, Esq. (AZ Bar No. 13801)
David L Abney, Esq. (AZ Bar No. 9001)

Side 2. CAPTIVA INVESTMENTS III, LLC, an Arizona limited liability company; PHILLIP L. STEWART and KATHLEEN STEWART, Trustees of the Phillip and Kathleen Stewart Revocable Trust, Defendant/Appellee

(Litigant Group) CAPTIVA INVESTMENTS III, LLC

- Captiva Investments III LLC

Attorneys for: Defendant/Appellee Captiva

Robert C Kozak, Esq. (AZ Bar No. 6699)
William Pietragallo, II, Esq. (AZ Bar No. 016413)
Michael O Bethune, Esq. (PA Bar No. 332148)

(Litigant Group) PHILLIP L. STEWART, et al.

- Phillip L Stewart
Kathleen B Stewart
Phillip and Kathleen Stewart Revocable Trust

Attorneys for: Defendants/Appellees Stewart

Mark W Drutz, Esq. (AZ Bar No. 6772)
Jeffrey Gautreaux, Esq. (AZ Bar No. 28104)

CASE STATUS

Aug 27, 2024...Pending Closure

Nov 21, 2023...Reinstated Case

Table with 6 columns: PREDECESSOR CASE(S), Cause/Charge/Class, Judgment/Sentence, Judge, Role <Comments>, Trial, Dispo. Rows include case numbers like P1300CV201801126 and judge names like John David Napper.

DESCENDENT CASE(S)

ASC CV-24-0213-PR

3 OPEN DUE DATES

Response to Costs due

Due By: Wednesday, September 18, 2024

Re: \* FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Itemized and Verified Statement of Attorneys' Fees and Taxable Costs; Certificate of

Response to Attorneys Fees due

Due By: Wednesday, September 18, 2024

Re: \* FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Itemized and Verified Statement of Attorneys' Fees and Taxable Costs; Certificate of

Petition for Review to ASC due

Due By: Friday, October 11, 2024

[1 extension]

Re: ORDERED: Appellants' Motion for Reconsideration (Appellant) = DENIED. Hon David D Weinzweig - Author

3 PENDING MATTERS

General Motion

Filed: 15-Jul-2024

\* Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Verified Statement of Taxable Costs (Appellees Stewart)

Court of Appeals, Division One

Civil Appeal

1 CA-CV 23-0636

IVEY, et al. v. CAPTIVA, et al.

3 PENDING MATTERS

General Motion

Filed: 4-Sep-2024

\* Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Itemized and Verified Statement Of Attorneys' Fees and TAXABLE COSTS (Appelles Stewart)

General Motion

Filed: 4-Sep-2024

\* Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Itemized and Verified Statement of ATTORNEYS' FEES and Taxable Costs (Appelles Stewart)

CASE DECISION

11-Jul-2024 MEMORANDUM DECISION

Amended Per Order Filed 8-27-2024

Filed: 11-Jul-2024

Mandate:

David Weinzweig.....Author
Andrew Jacobs.....Concur
Jennifer Perkins.....Concur

Table with 1 row: Decision Disposition Affirmed

61 PROCEEDING ENTRIES

- 1. 11-Oct-2023 FILED: Index of Record, Notice of Appeal from Yavapai County Superior Court filed 09/13/23
2. 11-Oct-2023 FILED: e-Record on Appeal: (P1300CV201801126) Instruments/Minute Entries Exhibits: Hearing Date 1/9/19 1, 2, 4, 5, 7, 8, 9, 11, 12
3. 11-Oct-2023 FILED: e-Record on Appeal: (P1300CV201901051) Instruments/Minute Entries Exhibits: None
4. 11-Oct-2023 FILED: Record on Appeal:(P1300CV202000967) Instruments/Minute Entries Exhibits: None
5. 12-Oct-2023 FILED: Appellate Clerk Notice re: Appellant's Fee/Case Management Statement/Brief Due
6. 23-Oct-2023 FILED: Notice of Payment of Required Filing Fee; Certificate of Service of Notice of Payment of Required Filing Fee (Appellant)
7. 27-Oct-2023 RECEIPT No.: 2023-01014 ; \$280.00, Authorization: 00011066464, Applied to: KENNETH IVEY, et al. - Class A Filing Fee (\$280.00) Paid for: J Jeffrey Coughlin PLLC - By nCourt LLC
8. 31-Oct-2023 FILED: Appellate Clerk Notice re: Appellee's Fee's; Appellant's Brief/Case Management Statement Due
9. 31-Oct-2023 FILED: Notice of Payment of Defendant/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Filing Fee; Certificate of Service and Filing (Appellee Stewart)
10. 1-Nov-2023 FILED: Case Management Statement; Certificate of Service of Appellants' Case Management Statement (Appellant)
11. 3-Nov-2023 FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Statement Correcting Appellants' Case Management Statement; Certificate of Service and Filing (Appellee Stewart)
12. 3-Nov-2023 ORDERED: (per Sorensen v. Farmers) staying appeal until 12/04/2023. Signed order with certification of finality pursuant to Rule 54(c) due within 10 days after its entry. If appeal reinstated by filing of signed order, opening brief due 01/03/2024. Melina Brill ProTem Judge - Author [vacated per order filed 11/07/2023]
13. 6-Nov-2023 RECEIPT No.: 2023-01043 ; \$140.00, Authorization: #10019655069, Applied to: PHILLIP L. STEWART, et al. - Class B Filing Fee (\$140.00) Paid for: Musgrove Drutz Kack & Gautreaux, PC - By nCourt LLC

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14. 6-Nov-2023 FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Motion to Reinstate Appeal; Certificate of Service and Filing (Appellee Stewart)
15. 7-Nov-2023 ORDERED: Vacating the 11/03/2023 order staying this appeal. FURTHER ORDERED: Appellants shall file a response to the motion to reinstate by 11/20/2023. The court will address the briefing schedule when it rules on the motion to reinstate. Melina Brill ProTem Judge - Author
16. 8-Nov-2023 FILED: Notice of Payment of Defendant/Appellee Captiva Investments III, LLC's Filing Fee; Certificate of Service and Filing (Appellee Captiva)
17. 8-Nov-2023 FILED: Joinder in Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of The Phillip and Kathleen Revocable Trust's Statement Correcting Appellants' Case Management Statement; Certificate of Service and Filing (Appellee Captiva)
18. 9-Nov-2023 FILED: Notice of Filing Reporter's Transcript of February 28, 2023 Hearing (Reporter's Transcript - 02/28/2023 - Oral Argument (Laura Ashbrook)); Certificate of Service of Notice of Filing Reporter's Transcript of February 28, 2023 Hearing (Appellant)
19. 14-Nov-2023 RECEIPT No.: 2023-01064 ; \$140.00, Authorization: # 18015279088, Applied to: CAPTIVA INVESTMENTS III, LLC - Class B Filing Fee (\$140.00) Paid for: Robert C Kozak PLLC - By nCourt, LLC
20. 20-Nov-2023 FILED: Appellants' Response to Motion to Reinstate Appeal; Appellants' Certificate of Service on their Response to Motion to Reinstate Appeal (Appellants)
21. 21-Nov-2023 ORDERED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Motion to Reinstate Appeal (Appellee Stewart) = GRANTED and reinstating this appeal. FURTHER ORDERED: The opening brief is due on 12/22/2023. If the opening brief is not timely filed, the court will dismiss this appeal. Melina Brill ProTem Judge - Author
22. 22-Dec-2023 FILED: Appellant's Opening Brief (as to Defendant Appellees Captiva and Stewart); Certificate of Compliance (as to Defendant Appellees Captiva and Stewart); Certificate of Service of Appellants' Opening Brief (as to Defendant Appellees Captiva and Stewart) (Appellant)
23. 22-Dec-2023 FILED: Certificate of Compliance (as to Defendant Appellees Captiva and Stewart) (Duplicate); Certificate of Service on Certificate of Compliance (as to Defendant Appellees Captiva and Stewart) (Appellant)
24. 22-Dec-2023 FILED: Request for Oral Argument; Certificate of Service of Request for Oral Argument (Appellant)
25. 11-Jan-2024 FILED: Supplementation of Citation of Legal Authority (ARCAP Rule 17) (as to Appellees Captiva and Stewart); Certificate of Service on Supplemental Citation of Legal Authority (as to Defendant Appellees Captiva and Stewart) (Appellant)
26. 18-Jan-2024 FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Motion to Strike Appellants' Supplemental Citation of Legal Authority; Certificate of Service and Filing (Appellees Stewart)
27. 24-Jan-2024 FILED: Joinder in Defendants/Appellees Phillip L. Stewart, Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of The Phillip and Kathleen Stewart Revocable Trust's Motion to Strike Appellants' Supplemental Citation of Legal Authority; Certificate of Service and Filing (Appellee Captiva)
28. 30-Jan-2024 FILED: Appellee Captiva Investments III, LLC's Response Brief (Answering Brief); Certificate of Compliance; Certificate of Service of Appellee Captiva Investments III, LLC's Response Brief; Certificate of Service on Certificate of Compliance (Appellee Captiva)
29. 30-Jan-2024 FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Answering Brief; Certificate of Compliance; Certificate of Service and Filing (Appellee Stewart)
30. 5-Feb-2024 FILED: Response to Appellees' Motion to Strike Appellants' Supplemental Citation of Legal Authority; Certificate of Service on Response to Appellees' Motion to Strike Appellants' Supplemental Citation of Legal Authority (Appellant)
31. 8-Feb-2024 FILED: Defendants/Appellees Philip L. Stewart and Kathleen B. Stewart, Trustees of the Philip and Kathleen Revocable Trust's Reply to Motions to Strike Appellants' Supplemental Citation of Legal Authority and Response to Motion to Amend Opening Brief; Certificate of Service and Filing (Appellee Stewart)
32. 9-Feb-2024 ORDERED: Deferring a ruling on the motion (Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Motion to Strike Appellants' Supplemental Citation of Legal Authority) to the panel that considers this appeal on the merits. Melina Brill ProTem Judge - Author
33. 20-Feb-2024 FILED: Appellants' Reply to Response Briefs (as to Appellees Captiva and Stewart); Certificate of Compliance on Appellants' Reply to Response Briefs (as to Appellees Captiva and Stewart); Certificate of Service on Appellants' Reply to Response Briefs (as to Appellees Captiva and Stewart) (Appellant)

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34. 20-Feb-2024 FILED: Certificate of Compliance on Appellants' Reply to Response Briefs (as to Appellees Captiva and Stewart) (Duplicate); Certificate of Compliance on Appellants' Reply to Response Briefs (as to Appellees Captiva and Stewart) (Duplicate) (Appellant)
35. 4-Mar-2024 FILED: Motion to Associate Counsel Pro Hac Vice; Certificate of Service and Filing (Appellee Captiva)
36. 5-Mar-2024 ORDERED: Motion to Associate Counsel Pro Hac Vice (Appellee Captiva) = GRANTED and permitting attorney Michael O. Bethune of Pietragallo Gordon Alfano Bosick & Raspanti, LLP, to appear pro hac vice as co-counsel for appellee Captiva Investments III, LLC, with Robert C. Kozak of Robert C. Kozak, PLLC, as local counsel. Melina Brill ProTem Judge - Author
37. 13-Mar-2024 ORDERED: Request for Oral Argument (Appellant) = GRANTED. Hon David B Gass - Author
38. 26-Mar-2024 CLNDR: MONTHLY COURT CASE CALENDAR, Department B, 5-21-24, 10:45 am, COURTROOM 2.
39. 27-Mar-2024 FILED: Notice of Oral Argument
40. 27-Mar-2024 FILED: Return Receipt for Notice of Oral Argument, signed by Robert Kozak on 03/27/2024 (Appellee Captiva)
41. 28-Mar-2024 FILED: Return Receipt for Notice of Oral Argument, signed by Mark Drutz on 03/27/2024 (Appellee Stewart)
42. 1-Apr-2024 FILED: Return Receipt for Notice of Oral Argument, signed by J. Jeffrey Coughlin on 03/27/2024 (Appellant)
43. 10-Apr-2024 FILED: Defendants/ Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart Trustees of the Phillip and Kathleen Revocable Trust's Motion for Extended Oral Argument; Certificate of Service and Filing (Appellees Stewart)
44. 10-Apr-2024 FILED: Certificate of Service and Filing (Duplicate) (Appellees Stewart)
45. 22-Apr-2024 ORDERED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart Trustees of the Phillip and Kathleen Revocable Trust's Motion for Extended Oral Argument (Appellees Stewart) = DENIED. Hon Andrew M Jacobs - Author
46. 13-May-2024 FILED: Return Receipt for Notice of Oral Argument, signed by Michael Bethune on 03/27/2024 (Appellee Captiva)
47. 21-May-2024 FILED: Sign-in Sheet/Case is Under Advisement as of 05/21/2024
48. 22-May-2024 FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart Trustees of the Phillip and Kathleen Revocable Trust's Supplemental Citation of Authority; Certificate of Service and Filing (Appellee Stewart)
49. 11-Jul-2024 MEMORANDUM DECISION (Affirmed) Hon David D Weinzwieg - Author; Hon Andrew M Jacobs - Concur; Hon Jennifer M Perkins - Concur
50. 11-Jul-2024 FILED: Decision Distribution Notification
51. 15-Jul-2024 FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Motion for Reconsideration; Certificate of Service and Filing; Certificate of Compliance (Appellees Stewart)
52. 15-Jul-2024 FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Verified Statement of Taxable Costs; Certificate of Service and Filing (Appellees Stewart)
53. 23-Jul-2024 FILED: Appellants' Motion for Reconsideration; Certificate of Compliance for Appellants' Motion for Reconsideration; Certificate of Service for Appellants' Motion for Reconsideration; Certificate of Service for Appellants' Certificate of Compliance for Motion for Reconsideration (Appellant)
54. 2-Aug-2024 ORDERED: Appellants may file a response to the motion by 08/23/2024. Hon David D Weinzwieg - Author
55. 19-Aug-2024 FILED: Appellants' Response to Appellee Stewarts' Motion for Reconsideration; Court of Appeal Order Re Response to Motion for Reconsideration; Certificate of Service for Appellants' Response to Appellee Stewarts' Motion for Reconsideration (Appellant)
56. 27-Aug-2024 ORDERED: Appellants' Motion for Reconsideration (Appellant) = DENIED. Hon David D Weinzwieg - Author
57. 27-Aug-2024 ORDERED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Motion for Reconsideration (Appellees Stewart) = GRANTED and awarding Stewart Appellees attorney fees and costs upon compliance with ARCAP 21. Hon David D Weinzwieg - Author
58. 27-Aug-2024 ORDERED: Directing the clerk of this court to amend, by interlineation, paragraph number 24, lines 2 and 3 of the Memorandum Decision issued on July 11, 2024, by changing the sentence to say "The Plat even labels the cross-hatched section as an easement for ingress and egress in favor of Lots 1 and 3." Hon David D Weinzwieg - Author

**Court of Appeals, Division One**

**Civil Appeal**

**1 CA-CV 23-0636**

**IVEY, et al. v. CAPTIVA, et al.**

**61 PROCEEDING ENTRIES**

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| 59. | 4-Sep-2024  | FILED: Defendants/Appellees Phillip L. Stewart and Kathleen B. Stewart and Phillip Stewart and Kathleen Stewart, Trustees of the Phillip and Kathleen Revocable Trust's Itemized and Verified Statement of Attorneys' Fees and Taxable Costs; Certificate of Service and Filing (Appellee Stewart) |
| 60. | 5-Sep-2024  | FILED: Notice of Appearance of Attorney David L. Abney; Certificate Of Service For Notice Of Appearance Of Attorney David L. Abney (Appellant)   |
| 61. | 10-Sep-2024 | FILED: ASC Order filed 09/10/2024 re: extending time for filing Petition for Review to 10/11/2024  |