

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000815-001 DT

02/16/2006

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: 02/20/2006

STATE OF ARIZONA

JAMES D NEUGEBAUER

v.

ANDREA MICHELLE PANICO (001)

ANDREA MICHELLE PANICO
22002 N 55TH ST
PHOENIX AZ 85054

REMAND DESK-LCA-CCC
SCOTTSDALE CITY COURT

REMAND FOR DISMISSAL

Lower Court Case No. PR200509728

The Superior Court has jurisdiction over this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. § 12-124(A). The court has considered the record of the proceedings from the trial court, exhibits made of record, and the memoranda submitted.

On January 23, 2005, a photo radar installment photographed a vehicle owned by Appellant Andrea Michelle Panico traveling at a speed of 56 mph in a zone marked 45 mph. A citation was generated for a violation of A.R.S. § 28-701(A) (speed not reasonable and prudent). Appellant failed to appear for her initial appearance, so personal service was effectuated by serving her 17-year-old sister on May 12, 2005 at the residence where Appellant previously resided. Appellant had moved to California previously and asserts that she never received the summons and complaint served on her sister. When Appellant again failed to appear, the trial court entered a default judgment against her. Appellant filed a Motion to Set Aside Default Judgment. After a hearing, the trial court denied the motion. Appellant filed a timely notice of appeal on August 17, 2005.

Rule 23, Rules of Procedure in Civil Traffic Violation Cases, provides:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2005-000815-001 DT

02/16/2006

Rule 23. Setting Aside Default Judgment

Upon written motion, for good cause or any other reason necessary to prevent a manifest injustice, the court may set aside a judgment entered upon a failure to appear.

A trial court's denial of a motion to set aside a default judgment will not be overturned on appeal absent a clear abuse of discretion. *Alvarez v. Superior Court*, 146 Ariz. 189, 704 P.2d 830 (App. 1985); *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 666 P.2d 49 (1983). However, the law favors resolution on the merits and not by default. *United Imports and Exports, Inc. v. Superior Court*, 134 Ariz. 43, 653 P.2d 691 (1982). Doubts should be resolved in favor of the moving party. *Daou v. Harris*, 139 Ariz. 353, 678 P.2d 934 (1984); *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 666 P.2d 49 (1983).

In the case at bar, manifest injustice would result if the default judgment were affirmed. First, serving Appellant's 17 year-old sister at a residence where Appellant no longer resided is problematic. More importantly, the trial court did not consider the photographic evidence showing that a **male** was driving the vehicle at the time of the offense. **The State concedes that Appellant was not the driver.**¹ It is difficult to comprehend how the "Citing Officer" on the Arizona Traffic Ticket and Complaint could have certified "upon reasonable grounds that I believe the person above [Michelle Andrea Panico] committed the act(s) described and have caused this complaint to be issued on 02/11/2005."

IT IS ORDERED reversing the decision by the Scottsdale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Scottsdale Municipal Court for further appropriate proceedings and with instructions to dismiss the citation against Appellant and refund any fines, fees, or other assessments.

¹ Appellee's Brief, p. 2, ll. 13-14.
Docket Code 511