

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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|--|---|-----------------------|
| WALTER J. BURIEN, JR. |) | 1 CA-SA 01-0106 |
| |) | |
| Petitioner, |) | DEPARTMENT C |
| |) | |
| v. |) | MARICOPA County |
| |) | Superior Court |
| THE HONORABLE DAVID M. TALAMANTE, |) | No. DR 2000-090543 |
| Judge of the SUPERIOR COURT OF THE |) | |
| STATE OF ARIZONA, in and for the |) | DECISION ORDER |
| County of MARICOPA, |) | |
| |) | |
| Respondent Judge, |) | |
| |) | |
| DEBBIE C. BURIEN, |) | |
| |) | |
| Real Party in Interest. |) | |
| <hr style="width:50%; margin-left:0"/> | | FILED 06-14-01 |

¶1 This special action matter was considered by the court, Presiding Judge William F. Garbarino and Judges Jon W. Thompson and Susan A. Ehrlich participating. After due consideration, we hereby accept jurisdiction and grant relief.

¶2 We accept jurisdiction because special action review is appropriate for challenges to rulings on venue matters. *Ford Motor Co. v. Superior Court*, 125 Ariz. 112, 113, 608 P.2d 49, 50 (App. 1979). We grant relief because we conclude that the trial court erred by granting the real party in interest's untimely motion for change of venue. See Ariz. Rev. Stat. (A.R.S.) § 12-404(A) (1992); Ariz. R. Civ. P. 12(a)(1)(A); *Morgan v. Foreman*, 193 Ariz. 405, 408, ¶ 19, 973 P.2d 616, 619 (App. 1999).

¶13 The real party in interest did not file a motion for change of venue until just nine days prior to trial, approximately nine months after service of the petitioner's second petition for dissolution of marriage. Arizona Revised Statutes section 12-404(A) requires a defendant to file a motion for change of venue based on a filing in the wrong county within the time allowed to answer. That time had long since passed when the real party in interest filed her motion in the present case. "[A] change of venue, even if mandatory when timely requested, can be waived if not asserted in a timely fashion." *Yuma County v. Keddie*, 132 Ariz. 552, 554, 647 P.2d 1150, 1152 (1982).

¶14 Accordingly, we vacate the trial court's order transferring venue to Yavapai County, and we remand to the Maricopa County Superior Court for proceedings consistent with this decision order.

DATED this _____ day of June, 2001.

WILLIAM F. GARBARINO, Presiding Judge

CONCURRING:

JON W. THOMPSON, Judge

SUSAN A. EHRLICH, Judge