



**SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COURT OF APPEALS**

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SALT RIVER TRIBAL COURT
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RACHEL MARIE MARTINEZ,

Appellant,

-v-

DANIEL RAYMOND GREY SR.,

Appellee.

Case No.: AP-25-0003

(CV-24-2768)

OPINION AND ORDER

Before, AUSTIN, BENDER, and REES, Justices of the SRPMIC Court of Appeals.

An appeal from the SRPMIC Community Court concerning Case No.: APC-22-0001, the Honorable Judge Todd R. Matha presiding.

Taylor Herring, SRP-MIC Legal Services, for the Appellant.

Dominic Gomez, Taylor & Gomez LLP, for the Appellee.

OPINION DELIVERED BY JUSTICE AUSTIN.

This is an appeal from the Community Court's *ORDER (Final Judgement)*, dated February 7, 2025, finding the Appellant was not entitled to relief under statute and she failed to provide evidence of a customary law. The Appellant alleged that the Appellee's dog was partially responsible for causing extensive damage to her vehicle. Accordingly, she filed a *Civil Complaint* against the Appellee but did not state or identify a specific claim in her *Civil Complaint*. On appeal, the Appellant argues that S.R.O. § 4-1(b) entitles her to bring a tort claim and she is not required to provide evidence of a customary law to proceed with her claim. Given the lack of precedent on this topic, we take this opportunity to clarify the rules governing complaints, S.R.O. § 4-1(b), and the use of customary law in the Community's courts. For the reasons set forth below, we AFFIRM the trial court's *ORDER (Final Judgment)*.

I.

On or about March 7, 2023, the Appellant alleged that two dogs caused damage to her vehicle, one of the dogs belonging to the Appellee. The damage to the vehicle totaled \$16,616.11 according to estimates obtained by the Appellant. The Appellant subsequently made agreements with the dogs' owners where each would pay half the damages. The Appellee paid the Appellant two payments of \$500 and ceased making payments. Consequently, the Appellant filed a *Civil Complaint* against the Appellee, requesting that the trial court set a hearing on the matter and order the Appellee to pay \$7,308.05 to the Appellant.

On February 12, 2024, the Appellee filed a *Response for Civil Complaint and Motion to Dismiss*, and the Appellant responded to the *Motion to Dismiss*. The trial court held a hearing on March 28, 2024 and issued an *Order* thereafter. In the trial court's *Order*, the judge found, ". . . as [Appellant] wishes to invoke the jurisdiction under law, she should be required to identify her claim more clearly." Trial Court Index, No. 12, page 1. The trial court thus ordered the Appellant to amend her *Civil Complaint* within thirty (30) days. He also ordered the Appellee to "more specifically identify the ground upon which he believes he is entitled to dismissal." *Id.*

The Parties then submitted notices to change the presiding judge. After both Parties were afforded their right to a change of judge, the presiding judge convened a hearing to address the issues identified early on in the case. After the hearing, the trial court issued another *Order (Requiring Amended Pleading)* which stated: "If the [Appellant] intends to assert claims arising under tradition or custom, she must capably identify such source(s) of law." Trial Court Index, No. 30, page 1. Appellant subsequently filed her *Civil Complaint Amended* along with a *Brief of Jurisdiction*.

The Appellant's *Civil Complaint Amended* was not much different than her original *Civil Complaint*. Fortunately for the Appellant, the trial court read the *Civil Complaint Amended* together with the Appellant's *Brief* and found in its *ORDER (Sufficient Jurisdictional Basis)*: "... in a roundabout, and perhaps unintended, manner the [Appellant] has identified a source of law upon which this Court may exercise jurisdiction. Section 12-54(d) extends to 'any...damage to property by a vicious dog while at large'. While the [Appellant] has overcome this initial hurdle, several factual matters remain." Trial Court Index, No. 34, page 1. The trial court then set the case for trial.

After the trial, the trial court issued an *ORDER (Final Judgment)*, which focused primarily on the vicious dogs provision of the Animals and Fowl Code. The trial court found that the Appellant provided no evidence that the Appellee's dog met the definition of a vicious dog under Section 12-54 of the SRPMIC Code of Ordinances (S.R.O.), and therefore, the trial court had no subject matter jurisdiction. Trial Court Index, No. 76, page 2. Furthermore, the trial court found the Appellant failed to point to any customary law of the Community that would confer subject matter jurisdiction under S.R.O. § 4-1. *Id.*, page 2-3. Ultimately, the Appellant was not able to obtain relief in the trial court and appealed the *ORDER (Final Judgment)*. We held oral arguments on June 18, 2025 in an attempt to narrow the issues in this case and determine issues of first impression. The Parties' attorneys are commended on their well-presented arguments and answers to our questions.

II.

In their *Principal Brief*, the Parties urge us review a number of issues. However, we find that resolving two questions can determine the outcome of this case and provide guidance in

future cases involving tort claims:

1. What should a complaint contain to allow the Community's trial courts to secure subject matter jurisdiction?
2. Can a plaintiff assert a tort claim under S.R.O. § 4-1(b)? If so, what is the role of customary law in tort claims?

There are four standards of review that may be applied to each question presented: *de novo*, abuse of discretion, clearly erroneous, and substantial evidence.¹ Questions of law, statutory interpretation, and jurisdiction are reviewed under the *de novo* standard which means "to review anew or afresh . . . as if the [Court of Appeals] was sitting as the trial court."² The questions presented in this case involve statutory interpretation and questions of law. Accordingly, they will be reviewed in order under the *de novo* standard.³

III.

A recurring issue in this case pertained to the *Civil Complaint* and subsequent amended complaints filed by the Appellant. This prompts us to provide more clarity to litigants on what must be included in a complaint to allow the trial courts to secure subject matter jurisdiction over claims. Complaints are governed by Rule 5-11 of the Rules of Civil Procedure ("Civil Rule(s)"), which states: "The content of the complaint ordinarily should consist of a: (1) Short and plain statement of the grounds on which the Court's jurisdiction depends; (2) Short and plain statement of the claim showing that the plaintiff is entitled to relief; and (3) Demand for relief including

¹ Rule 12(c)(6), Rules of Civil Appellate Procedure, Appendix, Rules Committee Note.

² *Panzullo v. Salt River Gaming Ent.*, APC-22-0001 at 6 (SR App. Ct. Aug. 17, 2022).

³ *In the Matter of N.A.F., Fragua v. Antone*, APJ-19-0002 ("Under the *de novo* standard of review, this Court affords no deference to the lower court's determination and reviews the case on the same standard applied by the trial court.").

relief in the alternative or of different types.”⁴

The complaint serves as a foundation for a case and sets the stage for everything that will follow. A complaint that is not well pleaded, or one that contains defects or deficiencies, will result in procedural issues as the case progress or even a dismissal. We briefly discussed the importance of complaints adhering to the minimum requirements of Civil Rule 5-11(b) in *Panzullo v. Salt River Gaming Ent.* That case involved multiple issues, one involving the proper procedure for motions for summary judgment. We held that for purposes of moving for summary judgment “it is imperative that the complaint clearly state the complainant’s claims, the elements of each claim, and the relief requested.”⁵ Simply put, a well-pleaded complaint mitigates procedural issues, and most importantly, allows for the trial court to secure subject matter jurisdiction.

To expand on our previous holding in *Panzullo*, a well-pleaded complaint should contain at the very least the three requirements set forth in Civil Rule 5-11(b)(1)-(3). The first requirement involves grounds of jurisdiction which should include the case caption, background information on the parties, and a statement explaining why the trial court has authority to hear the case or pointing to specific jurisdictional laws. There should be sufficient information to allow the trial court, upon first glance, to determine whether it has personal jurisdiction over the parties and subject matter jurisdiction to decide claims.

The second requirement pertains to bringing valid claims. To meet that requirement, a plaintiff should set forth factual allegations, state the specific claims being brought against the defendant, and the elements of each claim. There should be enough factual allegations to support

⁴ Civil Rule 5-11(b)(1)-(3).

⁵ *Panzullo*, APC-22-0001 at 9.

each element of a claim so that the defendant is given fair notice of what, where, when, and how a claim arose thereby allowing the defendant to mount a meaningful defense.

The third requirement is a demand for relief which encompass the plaintiff's request for remedies, damages, injunctive relief, declaratory relief, and any other justifiable relief such as attorney's fees and court costs. In assessing whether a complaint is well pleaded, one could ask whether the plaintiff would be entitled to relief if everything in the complaint were taken as true. If the answer is no, then the complaint may be deficient and subject to amendment or dismissal.

In this case, the Appellant filed a *Civil Complaint* that was amended and refiled twice. The Appellee argues that the Appellant's *Civil Complaint* was deficient as it failed to state a claim upon which relief can be granted. We agree. The *Civil Complaint* contained no statement or legal authority showing that the trial court had jurisdiction to hear the case. Indeed, it set forth factual allegations and made a prayer for relief, but it failed to meet the first two requirements under Civil Rule 5-11(b). The Appellant mentioned legal terms such as "duty," "breach," "injury," and "damages," which suggest a claim of negligence, but there was no specific claim made for negligence. Merely mentioning elements of claims and facts is not enough to constitute a well-pleaded complaint and neither is stating bare legal conclusions or theories.

During the case, the trial court ordered the Appellant to amend her complaint with more specificity. The Appellant responded by refiled an amended complaint that was nearly identical to her original complaint and supplemented it with a *Brief of Jurisdiction*, even though the trial court did not order the Parties to submit briefs. Fortunately for the Appellant, the trial court used specific statutes and cases discussed in the Appellant's *Brief* to secure subject matter jurisdiction. This was not proper procedure because Civil Rule 5-11 mandates that all necessary requirements

be set forth in a complaint; there is no mention of a brief. Litigants are encouraged to make sure their briefs conform to the requirements under Civil Rule 5-11(b) to prevent procedural issues.

IV.

The next issue we address pertains to plaintiffs asserting tort claims under S.R.O. § 4-1(b) and the role of customary law in dispute resolution. We have only discussed customary law in one case: *Panzullo v. Salt River Gaming Ent.* In that case, we used customary law to resolve an issue involving fairness and transparency in discovery matters.⁶ This case presents an opportunity to further expand on the role of customary law in the Community courts and how it can bring about substantial justice in disputes.

Customary law is the original, primordial law for every Native Nation. It governed Native people prior to European contact, and though it may have been unwritten for many, the role it played in the past is just as important as the role it plays today and in the future. Accordingly, we hold that plaintiffs can assert a tort claim under S.R.O. § 4-1(b), but it must be specifically stated and identified in the complaint and comply with the other requirements under Civil Rule 5-11(b) in order for the trial court to secure subject matter jurisdiction.

The trial courts of the Community have subject matter jurisdiction over two types of cases: (1) cases involving tort, contract, and eminent domain to be resolved using the customary law of the Community; and (2) cases brought under statutes or ordinances enacted by the Community Council. To be sure, S.R.O. § 4-1(b) states that the trial courts have subject matter

⁶ *Id.* at 10 (“We hold that under the common law of the Community a party is not permitted to use affidavits from witnesses not previously disclosed to the other party to support a motion for summary judgment.”). In our holding, we used the term “common law” because S.R.O. § 5-1(a) states that common law is comprised of customary law and decisions from the Community courts. In most common law jurisdictions, the highest appellate court recognizes and establishes the common law.

jurisdiction over “all cases involving disputes in contract, tort, and the exercise of the power of eminent domain over any land located within the boundaries of the reservation and shall determine such cases upon the customary law of the Community.” The same provision further states, “In all other respects, the jurisdiction of the Community court is limited to the subject matter of those cases, causes, disputes and prosecutions which the Community Council by enactment accords to the court.”

In this case, the Appellant filed a *Civil Complaint* against the Appellee and asked the trial court to order the Appellee to pay her for damages to her vehicle allegedly caused by Appellee’s dog. The Appellant’s *Civil Complaint* never stated or identified a specific tort claim, but it can be inferred based on her use of certain legal terms that she was attempting to bring a negligence-based tort claim. The trial court ordered the Appellant to amend her *Civil Complaint* to specify which claims she was bringing against the Appellee. Her amended complaints never did so; instead, she submitted, along with her amended complaint, a *Brief of Jurisdiction* that cited to ordinances and cases, which allowed the trial court to secure subject matter jurisdiction and proceed with the case. The trial court ultimately ruled the Appellant was not entitled to relief under ordinance nor customary law because she never proved the existence of a customary law that would support a cause of action based on her factual allegations. On appeal, the Appellant argued that S.R.O. § 4-1(b) did not require her to prove the existence of a customary law to obtain relief.

To start, customary law is a term that is widely used in tribal jurisprudence. Many legal jurists and practitioners understand customary law to be unique to Native Nations and limited to ancient customs and traditions. That understanding is flawed. Outside of tribal jurisprudence, for

example in the United States, the term common law is used instead of customary law. Both are similar in a lot of respects to the point where they may even be synonymous, as they both embody the customs and traditions of the people they govern. As we explained in *Panzullo*:

The common law comes from the interactions between people in the Community. It may not be written, but it lives in the hearts and minds of the people of the Community. It survives through the Community's customs, traditions, and way of life. Where there is a common understanding between people, then most likely there is a common law principle.⁷

Under S.R.O. § 5-1(a), the common law is comprised of the Community's customary law. Accordingly, in *Panzullo* we used the term common law rather than customary law, as we understood them to be the same.⁸ Hereinafter, we will use the term common law.

In *Panzullo*, we held that under the Community's common law, a party cannot use affidavits not disclosed to the opposing party to support a motion for summary judgment.⁹ This is because it affords an unfair advantage to the party moving for summary judgment.¹⁰ More importantly, it was clear, based on oral arguments where both parties were in agreement, that such an unfair advantage was not in conformance with the Community's notion of substantial justice. The notions of fairness and substantial justice were pervasive in the Community's ordinances and part of the Community's morals. Thus, we considered those to be common law principles of the Community that could be used to guide the interpretation and application of ordinances which

⁷ *Id.* at 13.

⁸ S.R.O. § 5-1 is essentially a choice of law statute that instructs the Community courts on which laws take precedence in dispute resolution and it also clarifies the how the Community compartmentalizes the rule of law: "In all actions before the courts of the Community, the law of the Community shall be controlling. The law of the Community consists of this Community Code of Ordinances, and common law of the Community. The common law of the Community is composed of both the customary law of the Community and the rules of law and decisions of the Community court." The statute provides no definition of customary law. Customary law is the body of law that encompasses the customs and traditions of the people it governs.

⁹ *Panzullo*, APC-22-0001 at 10.

¹⁰ *Id.* at 12.

would eventually resolve the dispute.¹¹

It is the role of the Community courts to recognize common law principles such as substantial justice and fairness and apply them in cases to resolve disputes. It is important to note that the common law is not limited to ancient customs and traditions. Customs and traditions change and adapt with the times. Before formal, written codes, Native Nations were governed by the common law which embodied the people's common understandings and ways of doing things. It was understood, and still is, that it was wrong for an individual to intentionally inflict injury on somebody else in the Community, and it was understood, and still is, that individuals who suffered injury or damages must be entitled to justice and restitution.¹² Written codes were not necessary to afford an injured party justice, and they still are not.

Today, we have ordinances which codify many crimes and causes of actions, and we have a formal judicial system to administer substantial justice. Nonetheless, the common law still plays a major role in our judicial system hence its inclusion in various ordinances enacted by the Community Council.

Turning back to this case, a dog caused extensive damage to the Appellant's property. The Appellant was not able to obtain relief under the Community's ordinances. So, the Appellant sought justice in the Community's courts pursuant to S.R.O. § 4-1(b) which permits a plaintiff to bring a tort claim. The Appellant's mistake was overlooking the requirements of a well-pleaded complaint. Civil Rule 11-5(b) requires a plaintiff to state which specific claims they are bringing,

¹¹ See S.R.O. § 4-1(b) (instructing courts to apply certain laws "in order to do substantial justice to the parties in the dispute"); Rules of Civil Appellate Procedure, Rule 1 (instructing this Court to construe court rules liberally "to promote substantial justice and fairness to the parties"); Rules of Criminal Appellate Procedure, Rule 1 (mirroring Rule 1 of the Civil Appellate Rules).

¹² See *generally* Raymond D. Austin, *Navajo Courts and Navajo Common Law: A Tradition of Tribal Self-Governance* (U. Minnesota Press 2009); Karl Llewellyn & E. Adamson Hoebel, *The Cheyenne Way* (U. Oklahoma Press 1941).

the elements of each claim, and factual allegations that support each element.

We agree with the Appellant that S.R.O. § 4-1(b) does not require a showing of customary law for tort claims, but it also does not relieve the Appellant of her duty to identify which tort claim she is bringing against the Appellee. If the Appellant sought to bring a negligence claim, then she should have stated a claim for negligence and set forth the elements. If she sought to bring a breach of contract due to the Appellee not honoring the oral agreement they had, she should have stated a claim for breach and laid out the elements. It would then become the duty of the Community court to apply common law to resolve the dispute among the Parties. This is the procedure mandated by S.R.O. § 4-1(b).

There are three categories of tort claims that are recognized in many state and tribal jurisdictions: intentional torts, negligence-base torts, and strict liability torts. Intentional torts may include assault, battery, trespass, defamation, larceny, or false imprisonment. Negligence-based torts may include malpractice, negligent hire, or negligent infliction of emotional distress, and strict liability torts typically include product malfunction, dangerous conditions on land, and failure to control a pet such as a dog. Some jurisdictions may choose to codify some of the aforementioned tort claims and others may leave it to the courts to decide whether a tort claim should be recognized. In many jurisdictions, negligence-based torts, including their elements and exceptions, were recognized and established in case law.

When considering whether to recognize certain tort and contract claims, the Community courts should question whether doing so would be necessary to give members of the Community access to substantial justice for injuries or damages sustained. This case serves as a prime example of why the Community Council enacted S.R.O. § 4-1(b). The Appellant sustained

damages to her vehicle caused by an unrestrained dog. There are no animal ordinances that grant her the relief and justice she sought. So, she turned to S.R.O. § 4-1(b) which permits her to bring a tort claim; she just needed to identify which tort claim fit. Unfortunately, she did not do so.

If the Appellant identified a tort claim in her complaint, then it would be the duty of the trial court to determine whether the Appellant met the elements required to prevail in her case. It would also be the duty of the trial court to use common law principles, if they exist, to resolve the dispute. In identifying common law principles, the trial courts may use judicial opinions from other Native Nations, learned treatises, academic publications, or hold hearings to take expert testimony from qualified academics, elders in the Community, or spiritual leaders in the Community.¹³ Judges may also use judicial notice if a custom or tradition is generally known or accepted in the Community. This process, under S.R.O. § 4-1(b), ensures that every member of the Community is guaranteed their day in court to seek substantial justice even if the ordinances do not provide for it.

The trial court's *ORDER (Final Judgment)* is affirmed.

¹³ S.R.O. § 4-1(b) states that the Community's common law "may be augmented by the common law as understood in the state to the extent that the court requires." While the Community courts may look to state common law when handling cases, it should also be noted that Native Nations need to look no further than their own common law when resolving disputes. Enhancing and strengthening tribal sovereignty means using the law of the nation rather than the law outside the nation. In fact, it should come at no surprise that the common law of a lot of Native Nations is similar to the common law of the states.

SO ORDERED this 12th day of August, 2025.

Electronically approved 8/12/2025

/s/

Joseph Austin, **Justice**

Electronically approved 8/12/2025

/s/

Paul Bender, **Justice**

Electronically approved 8/12/2025

/s/

Joshua Rees, **Justice**

