

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

05/28/2024

HONORABLE JULIE ANN MATA

CLERK OF THE COURT
L. Overton
Deputy

IN RE THE MATTER OF
LAURA OWENS

DAVID S GINGRAS

AND

CLAYTON ECHARD

GREGG R WOODNICK

JUDGE MATA

ORDER ENTERED BY COURT

The Court reviewed and considered Petitioner's Motion for Judgment on the Pleadings and Renewed Motion to Dismiss filed on May 10, 2024, Respondent's Response/Objection to Petitioner's Motion for Judgment on the Pleadings and Renewed Motion to Dismiss filed on May 15, 2024, and Petitioner's Reply in Support of Petitioner's Motion for Judgment on the Pleadings and Renewed Motion to Dismiss filed on May 22, 2024.

The Petitioner filed the Motion under the belief that the Court had yet to rule on the Respondent's prior Motion for Sanctions against the Petitioner. Formerly, the Respondent withdrew the motion, which was subsequently accepted by the Court. However, due to a clerical error, the acceptance was not remitted to the parties, thereby leading to the instant motion. The substance of the Petitioner's argument is that Rule 26 is the only valid basis under which the Respondent and the Court could bring sanctions against the Petitioner. And since the Court cannot convert the motion for sanctions into its own motion for sanctions, there is nothing left to be decided in the case. Therefore, the Court should grant the motion for judgment on the pleadings. The Petitioner also asserts that any additional motion for sanctions by the Respondent will be untimely.

The Respondent asserts that there are Rule and Statutory bases independent of Rule 26 that would allow the Court to order sanctions against the Petitioner. These bases include: (1)

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A.R.S. § 25-324 (sanctions for unreasonable conduct); (2) A.R.S. § 25-415 (sanctions for presenting false claims or violating orders compelling discovery in family law actions); (3) A.R.S. § 25-809(G) (attorney fees for unreasonable positions in paternity proceedings). The Respondent further asserts that if sanctions were precluded under Rule 26, the parties would still be going to trial to litigate the issue of non-paternity and attorney fees and costs. It is important to note that in Exhibit 3 of this Response, an email from Mr. Marraccini to counsel for the Petitioner, Mr. Marraccini claims that he was willing to talk to the counsel for the Petitioner (as required by witness subpoena). However, after Mr. Marraccini saw that the counsel for the Petitioner had posted a photograph of him and the Petitioner with accompanying audio from a radio show they did together years ago, Mr. Marraccini refused to speak with the counsel for the Petitioner. Mr. Marraccini maintains that such an action was inappropriate, offensive and tantamount to accusing Mr. Marraccini of fabricating evidence and lying. It is also important to note that in Exhibit 4 of the Response, an email from the counsel for the Respondent to the counsel for the Petitioner, counsel for the Respondent includes a significant description of the substance of the testimony of each of the three subpoenaed witnesses. This description appears in both the body of the email as well as the attachment (which is not included in the exhibit). This belies the claims made by counsel for the Petitioner that the Respondent had not properly disclosed the substance of the testimony that would be provided by [REDACTED] Michael Marraccini, and Greg Gillespie. While Exhibit 4 appears in the response to the Petitioner's motion for judgment on the pleadings, it is relevant to the Motion in Limine already ruled on, and demonstrates that the Respondent timely disclosed the identities of the witnesses as well as the substance of their testimony.

Petitioner's Reply contends that that Respondent's failure to comply with Rule 26 is undisputed and precludes alternative relief. Petitioner asserts that the Court retains no sanctionable issues to decide. Petitioner advises she will agree the issue is moot, if Respondent will stipulate that this Court cannot sanction Petitioner sua sponte. Petitioner further asserts the Court cannot award sanctions on hypothetical grounds, but that even if it could, the request was untimely.

As previously stated, the Court finds this Motion, Response and Reply were filed with the belief the Court had not accepted the Respondent's Motion to Withdraw. Upon knowledge of the clerical error, the ruling was filed, rendering this Motion moot.

LET THE RECORD REFLECT the Court declines to take further action.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: https://superiorcourt.maricopa.gov/llrc/fc_gn9/