

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114

05/21/2024

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 received and considered Defendant/Respondent (“Respondent”) **Amended Motion for Relief From Judgment Based on Fraud filed April 26, 2024**, Petitioner/Plaintiff’s (“Petitioner”) Response to Respondent’s Amended Motion for Relief Based on Fraud filed April 26, 2024, and Respondent’s Reply to Petitioner’s Response to Respondent’s Amended Motion for Relief Based on Fraud filed April 30, 2024.

Respondent initially filed a Motion for Relief from Judgment Based on Fraud on March 26, 2024, seeking to set aside the Order of Protection (“OOP”) granted to the Petitioner on October 25, 2023, by Commissioner Doody. Commissioner Doody granted this motion mainly due to the determination that Petitioner’s alleged sonogram of the alleged twins with whom she was pregnant was posted online by the Respondent. This disputed posting, the commissioner found, constituted cyberbullying and qualified as domestic abuse that justified the OOP. The March 26th motion was filed after the Respondent came to believe that the sonogram at issue was fabricated by the Petitioner. Thereafter, the Respondent filed an amended motion after the Respondent became aware of an appointment the Petitioner had at MomDoc on November 14, 2023, for a procedure that was not related to pregnancy.

Respondent seeks (1) to dismiss the OOP in its entirety with prejudice based on fraud; (2) to grant leave to respondent to submit a China Doll Affidavit; (3) to award defendant attorney’s

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fees; and (4) to order further relief as the Court deems just including appending consequence to the current outstanding sanction request by counselor for the Petitioner.

Respondent claims that on both October 6, 2023 (the date the temporary OOP was ordered in an ex parte hearing) and October 25, 2023 (the date the temporary OOP was made permanent) Plaintiff committed fraud by filing her underlying Petition for an OOP and subsequently by testifying before Judge Doody under the false pretense that she was pregnant, respectively. Respondent alleges that this fraud at large involves the Petitioner creating a fictitious sonogram of an alleged pregnancy. As a small part of this larger alleged fraud, the Respondent and the Petitioner agree that the Petitioner changed both her name and the name of the facility at which she procured this alleged sonogram during her alleged pregnancy. More specifically, the Petitioner claims that the sonogram took place at Planned Parenthood in Mission Viejo, California on July 7, 2023, but that she changed the name of the facility to Southwest Medical Imaging (SMIL) and added her name to the record to prevent the Respondent from contacting the medical professionals who allegedly performed the sonogram and harassing them, and by extension her.

Plaintiff also claims that she procured the sonogram anonymously. Neither Planned Parenthood in Mission Viejo nor SMIL have any records for any ultrasound appointment for Plaintiff as noted in the attached exhibits (subpoenas were issued for the medical records, and both locations deny having serviced the Petitioner on July 7, 2023).

Respondent asserts that Plaintiff committed extrinsic fraud upon the court in procuring the OOP as evidenced by the Plaintiff's testification that she had a miscarriage in September (before she filed for an OOP) while representing herself as pregnant with Defendant's twins in the ex parte filing, which occurred in October. Respondent separately asserts that Plaintiff committed both intrinsic and extrinsic fraud when: (1) Plaintiff testified that she sent both a member of the media and the Defendant a photo of the sonogram, but that only the Defendant could have posted the copy of the sonogram; (2) Plaintiff testified that the sonogram had not yet been published online when she alleged that the Defendant published an image of the sonogram (however, she had already published the sonogram online through a publicly accessible DropBox); and (3) Plaintiff testified that she sent Defendant the ultrasound photo and ultrasound video when no ultrasound records exist.

At large, the Petitioner disputes that Commissioner Doody granted the OOP because of the sonogram. Rather, the Petitioner asserts that the OOP was granted because of a combination of alleged text messages that were sent by the Respondent to the Petitioner that were threatening and the sonogram. The Petitioner asserts that, arguendo, even if the sonogram were not at issue, the alleged action of the Petitioner sending threatening text messages was sufficient on its own to justify the OOP under A.R.S. § 13-2916 (using electronic communications to terrify, intimidate,

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threaten, or harass) and A.R.S. § 13-2904(A) (prohibiting disorderly conduct). Specifically, the Petitioner disputes the Respondent's claims that the Petitioner was never pregnant, citing expert testimony from Dr. Medchill, who claimed that Petitioner was pregnant with 99+% certainty based on five HCGs showing positive. This dispute is important, given that A.R.S. § 13-3601 requires a party seeking an OOP to have a specific relationship with the other party. In this case, § 13-3601(A)(3) is pertinent, because it describes cases in which "The victim or the defendant is pregnant by the other party." In short, if the Petitioner was never pregnant by the Respondent, then the OOP would be invalid.

However, the Petitioner claims that even if the Petitioner was never pregnant by the Respondent, § 13 3601(A)(6) allows relief in any case where "the relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship." Parties have stipulated that fellatio was performed by the Petitioner on the Respondent twice, which would create a relationship that falls under the rubric of § 13-3601(A)(6). The Petitioner also notes that Respondent's experts' testimony narrowly defined pregnancy as requiring "a pregnancy diagnosed by ultrasonographic visualization of one or more gestational sacs." The Petitioner also asserts that while the Petitioner did change the sonogram in terms of adding her name and altering the name of the facility, the substance of the sonogram is true.

Respondent brings up, for the first time, medical records from 2016 in which John Chung Kail Chan, MD, diagnosed Laura with "real ovarian cancer, not something that just may be there." The same is true for Rebecca Yee, MD's records who said, "Yesterday (08/30/16) you received ovary removal surgery (oophorectomy) of your right ovary as well as a surgical abortion." The Respondent makes much of the alterations the Petitioner made to the alleged sonogram, to wit, the addition of her name and the changing of the provider. These actions, the Respondent claims, rise above misstatements and themselves constitute fraud. The Respondent again asserts that the primary basis for the OOP decreed by Commissioner Doody was the sonogram at issue: "The way you published this photo . . . it's unflattering . . . that's my reason for making my decision." The Respondent alleges that there were three sonograms that were altered: (1) the one that was the basis of the OOP; (2) the one that is dated September 5, 2023 that the Petitioner now claims was faked by one of her prior alleged victims and was sent by the Petitioner to both the Respondent and one Steve Carbone ("Reality Steve") (this one was identical to a publicly accessible video that was online from years ago); and (3) the one that was sent from the Petitioner's email on October 12, 2023 that was sent to the media with her commentary.

The Respondent also asserts that the Petitioner and her counsel are acting contrary to Court Order by posting their filings online on X (Formerly known as Twitter). The Respondent also asserts that the Expert Testimony referred to by the Petitioner is not credible, given the Petitioner did not disclose the medical records from 2016 referred to above to her expert, which

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may have affected his statements about the likelihood of her pregnancy based on HCG pregnancy tests. Respondent repeats his request for a setting aside of the OOP and attorney's fees.

The Court received and considered **Petitioner's Emergency Motion to Strike and Request for Immediate Telephonic Scheduling Conference filed on April 30, 2024**, Respondent's Objection to Petitioner's Emergency Motion to Strike and Request for Immediate Scheduling Conference filed on May 2, 2024, and Respondent's Reply in Support of Emergency Motion to Strike and Request for Immediate Telephonic Scheduling Conference filed on May 3, 2024.

The Petitioner filed this motion largely on the basis that the Respondent's Reply in the Amended Motion for Relief raised new matters rather than only responding to matters raised in the response. Specifically, the Petitioner notes that for the first time: (1) the Respondent brought up the 2016 medical records of the Petitioner for the first time in the Reply, thereby raising a new issue; (2) the Respondent alleged that the Petitioner concealed information from her medical expert related to the 2016 medical records; (3) the Respondent alleged that the Petitioner fabricated three ultrasounds. Additionally, the Petitioner filed this motion asking for an immediate telephonic scheduling conference to discuss whether or not the Respondent will be permitted to call several "untimely" disclosed witnesses.

Respondent asserts that the Petitioner's Motion to Strike did not conform to Rule 29(e), and that the disclosed material was timely. The medical records were properly disclosed to the Petitioner in a timely manner. The new material, including the Petitioner's medical records, is not new to the Petitioner. As such, the information raised in the Reply was neither untimely nor new. Furthermore, the Respondent asserts that the Reply responded directly to the Response. The Respondent reiterates his prior position on the sonogram, and requests the same relief as before, with the inclusion of a denial of the Motion to Strike.

Petitioner disputes and swears in an affidavit that (1) The records disclosed by the Respondent as part of his Seventh Supplement Disclosure Statement are fake; (2) the Petitioner did not create these allegedly fake records; and (3) the Petitioner never had ovarian cancer and never had an ovary removed. Petitioner also asserts that (1) she was diagnosed with PCOS in June 2022 when she underwent a pelvic CT scan, which confirmed the existence of PCOS and the presence of both ovaries; (2) she disclosed the PCOS diagnosis to Dr. Medchill, along with medical records confirming the presence of both ovaries; and (3) she did NOT disclose the existence of a prior ovarian cancer diagnosis because that diagnosis never happened. Petitioner argues that these disclosures are untimely and do not allow her to respond to the new information.

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The Court received and considered **Petitioner's Motion in Limine filed April 30, 2024**, Respondent's Objection to Petitioner's Motion in Limine filed May 7, 2024, and Petitioner's Reply to Respondent's Objection to Petitioner's Motion in Limine filed May 13, 2024.

The Petitioner seeks to exclude the testimony of Greg Gillespie, Michael Marraccini, and Matthew Mulvey. In short, the Petitioner is arguing that the disclosure from the Respondent indicating that these witnesses would be testifying did not stipulate the substance about which these witnesses would be testifying. The disclosure states "This witness (Mr. Mulvey) is expected to testify about his prior interactions with Petitioner, including his personal knowledge about her alleged fabricated pregnancy back in 2014." The Petitioner disputes that the above sentence is sufficient to meet the standard of disclosing the substance of the testimony. Furthermore, the Petitioner asserts that the Respondent did not disclose any substance about Mr. Marraccini and Mr. Gillespie. Finally, the Petitioner asserts that the testimony of these witnesses is inadmissible because it is evidence of "other wrongs" and that none of the exceptions to this rule apply (e.g. motive, opportunity, intent, preparation, plan, knowledge, etc.).

The Respondent asserts that Rule 404(b)(2) expressly permits the testimony of the three witnesses. The Respondent also asserts that disclosure of the intent of the Respondent to call these witnesses was timely (the disclosure occurred March 29, 2024, and the deadline was May 10, 2024). The Respondent also argues that oral argument is unnecessary. The Petitioner asserts in the Reply, that the Respondent has not disclosed a sufficient summary of the substance of the testimony of the three witnesses. Furthermore, the Petitioner alleges that the Respondent has not provided valid contact information for Michael Marraccini as required by Rule 49(i). However, in the same brief, it is clear that contact information was provided (for Marraccini's lawyer) and the lawyer stated that Mr. Marraccini would not be testifying. Mr. Marraccini has a restraining order against him until September 11, 2025. Petitioner also disputes that 2500 pages of text messages between Marraccini and Owens were timely disclosed, but admits that it was disclosed three days before the end of discovery. Petitioner wants to exclude expert testimony from one Jon Berryhill connected to these text messages since the evidence was allegedly not timely disclosed. The Petitioner asserts that the text messages have not been independently verified (but does not deny their legitimacy). The Petitioner appends court history of case involving Mr. Marraccini.

The Petitioner requested Oral Argument. Rule 35(c) state, "[a]ny party may request, or the Court may order, oral argument on any motion. The Court may limit the length of oral argument. The Court also may decide motions without oral argument, even if requested." The plain reading of this rule indicates that the Court may deny a request for oral argument broadly, which would include a request within the caption of a motion, without limitation. The case law, included below, affirms this proposition without qualification.

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Under the Arizona Family Law Rules of Procedure, the Court is not required to grant a request for oral argument in the caption of a motion. The rule governing this question is AFLRP 35(c), the text of which is expressed above in the brief answer. The rule is further supported by holdings in three unpublished cases in the Arizona Court of Appeals. *In re Marriage of Butler*, No. 2 CA-CV 2023-0034-FC, 2023 WL 5426753, at *2 (Ariz. Ct. App. Aug. 23, 2023) (holding that the Court may decide motions without oral argument, even if requested, under AFLRP Rule 35(c)); *Hille v. Hille*, No. 1 CA-CV 13-0526 FC, 2015 WL 1456641, at *3 (Ariz. Ct. App. Mar. 31, 2015) (holding that the Court's denial of a litigant's request for oral argument is not an abuse of its discretion since the Court has the purview to grant or deny a request for oral argument under AFLRP Rule 35(c)); *Scott v. Neal*, No. 1 CA-CV 14-0636 FC, 2015 WL 3502255, at *4 (Ariz. Ct. App. May 14, 2015) (holding that under AFLRP Rule 35(c), oral argument is not necessary even when a movant requests it, and when a Court denies the requested oral argument, this does not violate the requestor's due process rights). While the Court recognizes the case law is persuasive at best, there is no clear published case on point.

The Court received and considered Petitioner's Notice of Non-availability and Notice of Errata filed on May 13, 2024.

Orders

IT IS ORDERED the *Amended Motion for Relief from Judgment Based on Fraud* filed April 26, 2024, is granted in part, denied in part. The Court will join the OOP with the current trial on the outstanding issues. The parties previously granted the Court permission to observe the Order Against Harassment ("OAH") hearing in CV20230053952 for purposes of ascertaining any award of attorney fees or sanctionable actions. The Court will also review Commissioner Doody's OOP hearing and will rule on the validity of the OOP and any award of attorney's fees at the trial on June 10, 2024, to determine if the OOP should be affirmed or invalidated.

IT IS FURTHER ORDERED the *Emergency Motion to Strike and Request for Immediate Telephonic Scheduling Conference* filed April 30, 2024, is denied.

IT IS FURTHER ORDERED the *Motion in Limine* filed April 30, 2024, is denied.

IT IS FURTHER ORDERED the request for Oral Argument is denied.

LET THE RECORD REFLECT the Court notes but takes no further action on the Notice of Non-availability and Notice of Errata filed on May 13, 2024.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court.

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Julie Mata
/s/ HONORABLE
HONORABLE Julie Mata
JUDICIAL OFFICER OF THE SUPERIOR COURT

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/