Clerk of the Superior Court
*** Electronically Filed ***
M. Cain, Deputy
5/15/2024 12:33:52 PM
Filing ID 17825406

WOODNICK LAW, PLLC
1747 E. Morten Avenue, Suite 205
Phoenix, Arizona 85020
[redacted]
Gregg R. Woodnick [redacted]
Isabel Ranney
Attorney for Respondent/Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In Re the Matter of:

LAURA OWENS,

Petitioner,

And

CLAYTON ECHARD,

Respondent.

Case No.: FC2023-052114

RESPONSE/OBJECTION TO PETITIONER'S MOTION FOR JUDGMENT ON THE PLEADINGS AND RENEWED MOTION TO DISMISS

(Assigned to the Honorable Julie Mata)

Defendant/Respondent, **CLAYTON ECHARD**, by and through counsel undersigned, hereby files his Response and objects to Plaintiff/Petitioner, **LAURA OWENS**, *Motion for Judgment on the Pleadings and Renewed Motion to Dismiss,* filed May 10, 2024.

I. **General availability of attorney fees and sanctions.**

Before addressing the balance of the Motion on its face, the Court must be aware that Laura's entire argument presents a *false choice fallacy* in an attempt to artificially limit both the scope of the pleadings and the Court's authority. Rule 26 is not, and has never been, the exclusive source of the Court's authority to award attorney fees and it does not govern

Clayton's substantive claims for relief raised in the pleadings. Therefore, the question before the Court is *not* whether it can award sanctions under Rule 26 or no sanctions at all (as Laura falsely frames her argument). Rather, the question is whether Clayton is entitled to adjudication on his claims for fees and sanctions under any authority invoked in the pleadings or inherent to the Court by virtue of its statutorily mandated duties. The answer to that question is **clearly yes**. Laura knows—or at least should know based on the plethora of written communications and filings about this issue—that her proffered "Rule 26 or dismiss the action" dichotomy is *both* frivolous and misleading.

Title 25 contains at least three (3) statutes that expressly instruct the Court to award attorney fees and sanction a party in response to unreasonable conduct in the litigation: A.R.S. § 25-324 (attorney fees in actions under §§ 25-401 through 25-417 for unreasonable conduct); A.R.S. § 25-415 (sanctions for presenting false claims or violating orders compelling discovery in family law actions); and A.R.S. § 25-809(G) (attorney fees for unreasonable positions in paternity proceedings). Clayton has already articulated in several filings—including in his Motion for Leave to Amend, Amended Response, Response/Objection to Petitioner's Motion to Dismiss, and Motion to Withdraw the Motion for Sanctions Pursuant to Rule 26—the statutory basis for his claims for relief. Moreover, those provisions apply to **all proceedings** brought under the relevant chapters of Title 25 (of which this paternity action is one example).

Every litigant has notice of the Court's duty and authority to sanction unreasonable conduct in family court actions. Rule 26 is a procedural mechanism for sanctioning a party for the contents of their filings at any time—even before final resolution and notwithstanding

the prevailing party in the action—and does not replace, supersede, or otherwise affect the statutory claims for relief whatsoever.[1] Arizona courts have repeatedly recognized that when a substantive statute conflicts with a procedural rule, the statute prevails. *Albano v. Shea Hoes Ltd. Partnership*, 227 Ariz. 121, 127, ¶ 26 (2011); *see also In re Marriage of Waldren*, 217 Ariz. 173, 177, ¶ 20 (2007) ("Court rules may not 'abridge, enlarge, or modify substantive rights of a litigant.' A.R.S. § 12-109(A) (2003)").

Rule 26 governs relief *pursuant to Rule 26* and nothing more. Even if Laura's arguments interpreting Rule 26 were correct—a conclusion Clayton certainly opposes—the net result on the posture of the case would be *absolutely no change at all* from the existing trial scheduled on the merits of the pleadings. Accordingly, her prayer for relief, improperly styled as a "Motion for Judgment on the Pleadings and Renewed Motion to Dismiss," was already moot before it was even filed because Rule 26 is not at issue. The motion has no bearing on the resolution of this case. As detailed in prior filings, by withdrawing his Rule 26 motion, Clayton hoped to avoid Laura's noxious agenda of papering the court with dozens of pages of meaningless debate on this topic, but Laura appears determined to have this purely theoretical argument regardless.

II. Response to Motion for Judgment on the Pleadings.

As and for his Response/Objection, Clayton states as follows:

//

[1] To crystallize this point even further, Rule 26 is not even the exclusive source of sanctions in the procedural rules themselves. The Court can sanction a party for service violations (Rule 43.1), discovery violations (Rules 51 and 65), and failure to participate in various aspects of the proceeding (Rules 66, 67, 71, 76.2), to name a few.

1. **Clayton provided written notice as required by Rule 26, *Arizona Rules of Family Law Procedure* through emails and filings.**[2] As addressed in depth in his *Motion to Withdraw*, Clayton's *Motion for Leave to Amend* (filed December 12, 2023) (**Exhibit 1**), provided notice of his intent to seek sanctions against Laura and cited Rule 26. The Court granted leave to amend and accepted the Amended Response (also citing Rule 26 and indicating an intent to seek sanctions against Laura) on January 25, 2024. On December 28, 2023—more than 10 days *after* being notified of Clayton's intent to seek Rule 26 sanctions via the Motion for Leave to Amend—Laura moved to Dismiss her Petition because she was (*cryptically*) "*no longer pregnant.*" Clayton timely objected.

On January 25, 2024, the Court deliberately indicated it was not dismissing the action because Clayton is entitled to resolution of his claims for a finding of non-paternity, attorney fees and sanctions. *See* Minute Entry dated 1/25/2024; *See* Minute Entry dated 2/14/2024 (**IT IS ORDERED** denying Petitioner's Motion to Dismiss). *See also* Rule 46(a)(1)(B), (prohibiting voluntary dismissal without court approval after an answer is filed and permitting the court to dismiss a petition on such terms and conditions the court deems proper, including the resolution of any claims by the responding party); *Holgate v. Baldwin,* 325 F. 3d 671, 678 (9th Cir. 2005) (The Court upheld an award of sanctions despite the **parties not sending a separate notice of their intent** to seek Rule 11 sanctions, finding that the "safe harbor" period commenced when the parties' **filed their initial joinder motion evidencing an intent to seek sanctions**) (emphasis added).

[2] This is all addressed *ad nauseam* in Clayton's *Motion to Withdraw*, which is provided as an Exhibit for the Court's convenience, as a litany of unnecessary filings designed with the overt goal of delaying or otherwise avoiding trial (as here, with the Motion for Judgment on the Pleadings) have followed.

2. **Even if this Court finds Clayton did not provide proper notice, Rule 26 is just one avenue for sanctions.** If the Court treats Clayton's *Response to Petition for Paternity* as true and correct (as Laura now requests), there are independent statutory claims for attorney's fees and sanctions that have *nothing* to do with Rule 26 sanctions and have no "safe harbor provision" (e.g., A.R.S. § 25-324(A)). Statutes are superior when it comes to *substantive* claims and rules are superior when it comes to *procedural* matters, and the statutes (A.R.S. §§ 25-325, -415, -809) provide substantive claims for relief separate and apart from Rule 26. Rule 26 is a carryover from the Rules of Civil Procedure as a remedial measure for frivolous claims and filings during the pendency of the proceedings, not a mechanism for defeating substantive statutory claims for relief as Laura suggests.

As a broader legal point, case law interpreting the limitations of the court's authority to sanction improper filings in a civil matter is not directly analogous to Rule 26, insofar as Rule 26 exists in a completely different environment of statutory claims under Title 25, allowing different relief such as sanctions and attorney fees by statute. Interpreting Rule 26 as an analogue to Rule 11, *Arizona Rules of Civil Procedure* makes sense in the context of the language of the rule itself, but once the analysis moves beyond that and onto the question of whether there are alternative grounds for the same relief, Title 25 is tremendously broader and more remedial than the legal authorities relevant to the various cases interpreting Rule 11.

3. **Regarding the "safe harbor notice" provision, that portion of Rule 26 permits a party to correct or withdraw a filing within the notice period, but it is not an absolute right to withdraw the entire action.** As previously addressed in his *Motion to Withdraw*, if Laura's theory that she was denied an absolute right to withdraw her entire action

were true, no party would ever move for Rule 26 sanctions. Under Laura's view, that would hand the other side a Monopoly style "Get Out of Jail Free" card to avoid consequences regardless of the extent of the frivolous, inflammatory, and impermissible claims in their filings, or the outrageousness of their conduct after filing[3] (which is an independent basis for statutory relief entirely independent of Rule 26, e.g., A.R.S. §§ 25-324, 25-415, 25-809(G)). Laura's *Motion for Judgment on the Pleadings* seeks the legally extraordinary and practically inexplicable relief of *dismissing the entire action that she improperly brought.*

4. **Even assuming, *in arguendo*, that Laura was entitled to a 10-day "miracle cure" period to undo her past bad acts, she has already been given those opportunities and did not accept them.** Yes, she moved to dismiss her petition *eventually*, but it was well *after* 10 days from Clayton's *Motion for Leave to Amend* and was denied because Clayton has material statutory claims entitled to resolution on the merits. There is simply no reason to believe there was ever a time that Laura would have voluntarily withdrawn her claims even if she was given that opportunity with no strings attached. Instead, her antics continued, including alleging that a prior victim fabricated *her* medical records (which she now appears to be claiming *she does not "remember"* creating the allegedly fabricated medical records).

---

[3] Here, Laura's conduct in this action (and the other two protective order proceedings) clearly fall within all of these categories as Laura (allegedly) frivolously brought the underlying action alleging she was pregnant after non-intercourse with Clayton's "twins" and continued to perpetuate alleged fraud upon the court by submitting knowingly fabricated medical records. Laura has behaved inflammatorily by continuing to present herself as "24 weeks pregnant" with "boy and girl twins" and repeatedly testifying to actively being seen by physicians (who have since disclaimed ever seeing Laura as a patient) and by engaging in toxic diatribe on Twitter and blog posts including attempting to intimidate witnesses. Nearly all of Laura's filings have contained legally impermissible claims, for limited example: Laura's Motion to Communicate and this Motion for Judgment on the Pleadings. Lastly, her conduct in this litigation has been extremely outrageous to wit: admittedly fabricating medical records, baselessly accusing others of fabricating the records she herself tampered with, and (allegedly) committing perjury in *multiple* filings and in statements before this Court (notably, Laura bizarrely appears to continue to allege the sonogram that she admitted to doctoring and that did not originate in *either* location she alleged is legitimate despite mountains of evidence to the contrary).

Moreover, Clayton even offered, *several times*, for Laura to walk away from this litigation if she apologized and admitted that she was never pregnant by him with "twins". Laura rejected every effort to resolve this matter and even engaged in overt efforts to intimidate witnesses into not participating in the process by threatening to have them arrested. As referenced in **Exhibit 2** she (through counsel) mentioned having Mr. Maraccini arrested for attending the hearing (his subpoena is attached). Then, she conveniently failed to mention in her recent *Reply in Support of Laura's Motion in Limine* that she *has* been in contact with Mr. Marraccini and his attorney, and he has clearly indicated his desire to have his voice heard at trial. **Exhibit 3.** Moreover, **on April 22, 2024**, Laura (via counsel) stated:

> *"I am happy to discuss settlement, but I also need to be honest – when Laura prevails in this case, she is going to sue Clayton and many other people for defamation and other torts. We can certainly avoid that if you want, but it's going to involve someone writing a very large check to Laura.* ***If you offered $1 million right now, I'd advise her to reject that offer*****"** (emphasis added). **Exhibit 4.**

It is tremendously convenient for Laura to announce, here at the proverbial eleventh hour, that she would have withdrawn the petition months ago if given the chance. The well-documented history of this case—and the companion order of protection cases where her conduct *under oath* was even more outrageous—necessitates a different conclusion.

5. **Again, even if Laura had attempted to withdraw from the action entirely, that was only subject to the Court's approval and Clayton's right to object consistent with Rule 46.** Rule 46 must be read harmoniously with Rule 26 and the Title 25 statutes. A harmonious reading of Rules 46 and 26 tells us that a pleading can be withdrawn voluntarily before a responsive pleading is filed, but after a responsive pleading is filed, it can *only* be

counterclaim for a finding of non-paternity and attorney fees and costs. As Laura has repeatedly indicated in her filings, emails, blog posts, and Tweets, she has no interest in conceding what Clayton has alleged since the beginning: that she was never pregnant by Clayton with "twins" after their non-intercourse. Had Clayton never mentioned Rule 26, Laura would have no "safe harbor" to withdraw her claims and the Court would proceed to trial under any of the half-dozen or more other sources of authority to adjudicate the claims before it and sanction misconduct. Interpreting Rule 26 and the "safe harbor" period as a necessary precedent condition for the Court to sanction a party under any other source of authority at law or in equity would be the most absurd result imaginable. The Court cannot read a rule as requiring an absurd result unless that is the only plausible reading, and that is clearly not the situation presented here.

8. **Oral argument is an unnecessary and expensive distraction on the eve of trial.** Efforts to delay and avoid this trial are over the top. This is a bench trial that is set to take place in less than a month. If Laura desires to use this Motion or her limited time at trial to argue about procedural rules that have no bearing on the substantive issues of this case, that is her prerogative and should count against her limited time. Clayton should not be forced to participate in such futility because his analysis of the "Rule 26 issue" has been thoroughly explained on the record—twice. This is the "Conor McGregor" litigation that was promised by Laura's counsel and is only exemplified by the personal tweets, blogs and what this court may see as efforts to intimidate for no reason other than to dissuade just resolution of claims. It needs to stop.

9. **Clayton is entitled to his reasonable attorney's fees and costs under A.R.S. §§ 25-324, 25-415, and 25-809 incurred in this entire proceeding, including in filing this *Response.*** Clayton exhaustively outlined in his *Motion to Withdraw* most, if not all, of the factual and legal bases outlined in this *Response*. Laura did not even reply to Clayton's Motion – instead, she *agreed with it* and filed a Notice of Non-Objection. The withdrawal was filed to avoid more of the toxic litigation, threats of appeals and personal sanctions and bullying efforts. It did not work. Still, Laura seeks yet *another* impossible form of relief in a motion designed to increase expenses and avoid trial. She requests Oral Argument on the matter despite already knowing—constructively if not actually—that her argument is not well-grounded in law. Clayton requests that he be permitted to submit a *China Doll Affidavit* that includes all of the prior unwarranted and legally inappropriate filings he has had to defend himself against in this litigation.

WHEREFORE, Clayton respectfully requests the Court:

A. Deny the Motion for Judgment on the Pleadings and Renewed Motion to Dismiss;

B. Grant Clayton leave to submit a *China Doll Affidavit*;

C. Grant other relief this Court deems just and proper.

RESPECTFULLY SUBMITTED this 15th day of May, 2024.

WOODNICK LAW, PLLC

Gregg R. Woodnick
Isabel Ranney
Attorneys for Defendant

ORIGINAL of the foregoing e-filed this 15th day of May, 2024 with:

Clerk of the Court
Maricopa County Superior Court

COPY of the foregoing document delivered this same day to:

The Honorable Julie Mata
Maricopa County Superior Court

COPY of the foregoing document emailed this same day to:

David Gringas
Gringas Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85004
[redacted]

By: */s/ MB*

VERIFICATION

I, **CLAYTON ECHARD**, declare under penalty of perjury that I am the Respondent in the above-captioned matter; that I have read the foregoing *Response/Objection To Petitioner's Motion For Judgment On The Pleadings And Renewed Motion To Dismiss* and I know of the contents thereof; that the foregoing is true and correct according to the best of my own knowledge, information and belief; and as to those things stated upon information and belief, I believe them to be true.

Clayton Echard (May 15, 2024 11:49 PDT)

CLAYTON ECHARD

05/15/2024

Date

EXHIBIT "1"

WOODNICK LAW, PLLC
1747 E. Morten Avenue, Suite 205
Phoenix, Arizona 85020
[redacted]
Gregg R. Woodnick
Isabel Ranney,
Attorney for Respondent

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In Re the Matter of: **LAURA OWENS,** Petitioner, And **CLAYTON ECHARD,** Respondent.	Case No.: FC2023-052114 **MOTION TO WITHDRAW MOTION FOR SANCTIONS PURSUANT TO RULE 26** (Assigned to the Honorable Julie Mata)

Respondent, Clayton Echard, moves to withdraw only his *Motion for Sanctions Pursuant to Rule 26* dated January 3, 2024 based on the following:

Although Clayton believes he more than complied with Rule 26, ARFLP, and that the Court already overruled Laura's objection, it is clear she intends to pursue more toxic litigation predicated on threats as a rouse to avoid this Court reaching the heart of this matter (the overwhelming fraud). Clayton's claims for fees and sanctions exist independently of the Rule 26 Motion and have *already* been set for trial. Clayton would rather avoid the "$35,*000*" sideshow repeatedly threatened by Laura's new counsel and overt efforts to delay adjudication on the facts. Because the Rule 26 Motion is not the substantive pleading basis for his claims

against Laura, there is no reason to participate in the pointless litigation over this issue (and threats to appeal to further delay justice) notwithstanding Clayton's disagreement with Laura's legal positions on Rule 26. Moreover, Laura's threat to seek personal sanctions against Clayton's counsel based on her proffered Rule 26 violation, while frivolous, will only draw more attention and animus to this case. Subjecting the Court to this collateral circus, which is intended only to increase legal fees and prevent resolution on the merits, would be a waste of judicial (and other) resources.

Accordingly, Clayton hereby moves to withdraw the Rule 26 *Motion for Sanctions* filed January 3, 2024. He does not withdraw his counterclaims and other relief afforded and any other relief appropriate and available to him under A.R.S. §§ 25-324, 25-415, 25-809, etc.

He also, for completeness of record, provides the following:

Background and Procedural History

1. This matter is before the Court on Petitioner Laura Owens's *Petition to Establish* filed August 1, 2023 and Clayton's *Amended Response to Petition to Establish Paternity* filed December 12, 2023 (relating back to original filing date of August 21, 2023 under ARFLP 28(c)).

2. On December 12, 2023, Clayton moved for leave to amend his Response. In the Amended Response, Clayton cited Rule 26 and provided notice of intent to seek sanctions for statements made in Laura's Petition. *See* Amended Response, pp. 5-6, §§ 25-26. The Court granted leave to amend and accepted the Amended Response on January 25, 2024.

3. On December 28—more than 10 days after notice of Clayton's intent to seek Rule 26 sanctions via the motion for leave to amend—Laura moved to dismiss her Petition based on her assertion she was "no longer" pregnant. Her motion to dismiss sought to dismiss the entire action with prejudice. Clayton objected because, inter alia, he had alleged counterclaims seeking an affirmative finding of non-paternity, attorney fees, and sanctions for Laura bringing the action in bad faith, for improper purpose, etc. On January 25, the Court granted Laura's motion, in part, by dismissing her Petition, but the Court did not dismiss the action because Clayton is entitled to resolution of his claims for a finding of non-paternity, attorney fees, and sanctions. *See* Minute Entries dated January 25, 2024 ("While the Court will grant the *Motion* [to Dismiss], the issue of sanctions and attorney's fees remain. [...] The Court will set an evidentiary hearing on the issues of sanctions and attorney fees by separate minute entry."); *see also* ARFLP 46(a)(1)(B) (prohibiting voluntary dismissal without court approval after an answer is filed and permitting the court to dismiss a petition on such terms and conditions the court deems proper, including the resolution of any claims by the responding party).

4. On January 3, 2024, Clayton filed a Motion for Sanctions Pursuant to Rule 26 (hereafter the "Motion for Sanctions"). The Motion for Sanctions came more than 10 days after the Motion for Leave to Amend—in which Clayton gave written notice of intent to seek Rule 26 sanctions from Laura's complaint—and after Laura moved to dismiss her Petition.

5. Laura responded to the Motion for Sanctions on January 23, 2024. In her response, she argued, inter alia, that the Motion was deficient because of lack of notice

required by Rule 26(c)(2)(B). The Court did not expressly rule on the Motion for Sanctions but set the matter for trial on attorney fees and sanctions.

Changes of Counsel and Rule 26 Dispute

6. At the time she filed her motion to dismiss, Laura was represented by Alexis Lindvall. At the time she responded to the Motion for Sanctions, she was represented by Cory Keith. Again, Laura brought this same argument relating to Rule 26's 10-day notice requirement in her response to the Motion for Sanctions, albeit with less force, and the Court still set the case for trial (ostensibly because even if she is correct and Clayton's Rule 26 Motion is denied, there remain other claims that must be resolved before the case concludes).

7. Her current attorney (as of the time of this filing), David S. Gingras, began aggressively asserting various claims, positions, and legal threats in emails to Clayton's counsel after entering appearance on or about March 25.

8. Several of these unpleasant emails pertain to the Motion for Sanctions under Rule 26. Laura asserts that the Motion was improperly brought because of lack of written notice required by Rule 26(c)(2)(B) (hereafter referenced as the "safe harbor" notice). This argument is partly articulated beginning on page 14 of her *Motion for Extension of Time to Respond to Respondent's Motion to Compel* filed April 1, 2024. (Properly denied by the Court on April 2, 2024).

9. According to her argument, Clayton did not provide sufficient written notice to comply with the rule. Laura interprets Rule 26(c)(2)(B) as providing the party against whom sanctions are sought a 10-day grace period in which to withdraw or appropriately correct the alleged violation. She interprets "withdraw or appropriately correct" as giving her an