Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2023-052114 06/17/2024

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

DEANDRA ARENA
JUDGE MATA
MARICOPA COUNTY ATTORNEY'S OFFICE
225 W MADISON ST
PHOENIX AZ 85003

UNDER ADVISEMENT RULING

An in-person Evidentiary Hearing was held on June 10, 2024, regarding the issues of sanctions, paternity, attorney's fees, and costs.

JURISDICTIONAL FINDINGS

THE COURT FINDS at the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to filing the Petition. There are no minor children common to the parties.

PROCEDURAL HISTORY

- Laura Owens ("Petitioner") filed a pro per Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support on May 20, 2023.
- Petitioner filed a pro per Motion to Communicate on August 23, 2023, a Motion to Compel on August 29, 2023, and Expedited Consideration Requested! Motion to Communicate filed September 14, 2023, and Expedited (!) Motion to Seal Court Record on September 14, 2023. All motions were denied.
- Clayton Echard ("Respondent") filed a pro per Answer on August 21, 2023. The Court granted Respondent's Motion for Leave to Amend Response filed by counsel on December 12, 2023, and Amended Response to Petition to Establish filed on January 26, 2024.
- The parties attended an Early Resolution Conference on September 28, 2023, wherein the parties entered into a Rule 69 agreement to comply with a Ravgen DNA test on October 2, 2023.
- On October 6, 2023, Petitioner filed for an ex parte Order of Protection ("OOP") in FC2023-052771. After a hearing, the OOP was affirmed. The same day the Ravgen results indicated "little to no fetal DNA."
- On October 18, 2023, Petitioner filed a Request for Pre-Decree Mediation citing Respondent's unwillingness to communicate with Petitioner and citing "he even acts as if the unborn children don't exist despite a pro ponderous of the evidence [sic]". (Dkt. No. 23, p. 2).
- On October 24, 2023, the parties appeared before Commissioner Gialketsis (retired) in CV2023-053952 in response to the Injunction Against Harassment ("IAH") filed by Respondent. On the parties' stipulation, the Court previously reviewed both days of the hearing and identified that the Petitioner, appearing virtually, frequently stood up and rubbed what appeared to be a swollen abdomen. November 2, 2023, testimony resumed, and Petitioner testified that she was "100%" and "24 weeks" pregnant with Respondent's children. She further testified that the twins were due on February 14, 2024. She further testified that due to epilepsy she was experiencing a high-risk pregnancy and was being cared for by two specialists, namely Dr. Makhoul and Dr. Higley. She testified she last saw Dr. Higley "last Friday" prior to the November 2, 2023, hearing.
- October 25, 2023, the parties appeared before Commissioner Doody to determine the validity of the contested OOP in FC2023-052771. Petitioner's abdomen again appeared swollen. During this hearing, she testified to the validity of the sonogram sent to Respondent, the media, and a Dropbox on Reddit, and further testified the parties were having a son. She later testified she believed she was having fraternal twins, one boy and one girl.

- December 6, 2023, a second Ravgen test confirmed "little to no fetal DNA."
- A third test was done; however, the test results were lost in transit.
- December 12, 2023, Respondent filed a Notice of Filing Affidavit of Non-Paternity.
- December 28, 2023, Petitioner filed a Motion to Dismiss Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support with Prejudice in conjunction with a Notice Requiring Strict Compliance with Arizona Rules of Evidence, thereby invoking A.R.F.L.P. Rule 2(a). Petitioner cited the basis for the dismissal that she "is not now pregnant with Respondent's children." (Dkt. No. 32 at 1). The motion was denied as the issue of attorney's fees, costs, and sanctions remained.
- January 2, 2024, Petitioner filed an Expedited Motion to Quash Deposition of Petitioner. January 3, 2024, Respondent filed a Response/Objection to Petitioner's Motion to Dismiss. The Court denied Petitioner's Motion to Quash.
- Respondent withdrew his Motion for Sanctions Pursuant to Rule 26, on January 3, 2024.
- Petitioner filed a Motion for Confidentiality and Preliminary Protective Order on January 18, 2024.
- Respondent participated in a deposition on February 2, 2024.
- At a Status Conference on February 21, 2024, Petitioner was ordered by this Court to comply with Rule 49 disclosure requirements. During the hearing, Petitioner's counsel advised that the Petitioner had miscarried sometime in September or October 2023.
- Petitioner was deposed on March 1, 2024.
- On June 3, 2024, Petitioner's prior counsel, filed Ethical Rule 3.3 Notice of Candor, wherein counsel advises the Court that statements made by counsel at the February 21, 2024, Status Conference were factually incorrect. Specifically, counsel stated "Ms. Owens has not lied in this case. She has not intentionally lied to the Court." (Dkt. No. 108 at 1). While counsel believed the statements to be accurate at the time, counsel later determined those statements were not true based on the Petitioner's deposition taken March 1, 2024. (*Id.* at 2-4).
- Voluminous additional pre-trial pleadings were filed by both parties. Those motions were ruled on separately, by minute entry, and the rulings are not relevant for purposes of this hearing.

FINDINGS OF FACT

Petitioner, Laura Owens

- Petitioner contacted Respondent through Linkedin.
- Petitioner and Respondent met on May 17, 2023, to locate potential investment properties in Scottsdale.
- Petitioner has a podcast, a real estate investing company, and buys and sells horses. (Ex. B. 49, p. 13, line 24-25).
- Between May 18-20, the parties viewed some properties in Scottsdale.
- On the evening of May 20, 2023, Respondent invited Petitioner over to his home, which she accepted.
- After Petitioner arrived, Respondent told her he was "high" on cannabis "gummies" and he offered one to her, which she accepted.
- During the late evening of May 20, 2023, and early morning of May 21, both parties agree that Petitioner performed oral sex on Respondent "to completion" twice.
- Petitioner testified she did not want to have sexual intercourse, but that Respondent "stuck it in" briefly.
- Petitioner's implication that Respondent initiated sexual intercourse without consent was not alleged initially in the court filings. It was not alleged until 2024. (Ex. B. 49, p. 67).
- At trial, Petitioner testified that the parties had sexual intercourse, and that it was rape.
- Petitioner testified Respondent was too high to remember sexual intercourse, due to his voluntary intoxication.
- Petitioner believes she became pregnant on May 20, 2023. She testified that after May 20, 2023, her menstrual period stopped and did not resume until November 2023.
- Petitioner has had PCOS since the age of seventeen and does not have regular periods. (Ex. A. 11).
- Petitioner has a history of epilepsy. (*Id.*).
- Petitioner testified she has been pregnant four times. Each time, the alleged father believed she fabricated the pregnancy, and doctored medical records.
- On May 24, 2023, Petitioner asked Respondent to prepare written purchase offers for two properties Petitioner wanted to purchase in Scottsdale – one was located at 19777 North 67th Street in Scottsdale (offer amount was $425,000) and the other was located at 7609 N. Lynn Oaks Drive in Scottsdale (offer amount was $699,000).

- Petitioner asked Respondent, as her realtor, to prepare these purchase offers and to submit them to the seller or the seller's agent.
- Respondent prepared the purchase offers, which Petitioner signed on or around May 24, 2023, but Respondent never submitted them to the seller or the seller's agent.
- Petitioner later asked Respondent if he had heard anything from the seller in response to Laura's offers.
- Respondent advised he had not heard back from the seller.
- Petitioner testified that she advised the Real Estate Board and action was taken.
- On May 31, 2023, Petitioner took a home pregnancy test which showed a faint positive result.
- Petitioner testified that after multiple positive pregnancy tests, she told the Respondent she was pregnant.
- Petitioner denies using hormones, someone else's urine, or altering the test at all.
- Petitioner found Respondent's reaction to be hostile and dismissive.
- On June 1, 2023, Petitioner went to Banner Urgent Care at Greenway and 64th Street, she informed the nurse that she believed she may be pregnant, and she asked for a test to determine whether she was, in fact, pregnant. (Ex. A. 2).
- The test result from Banner Urgent Care was positive for pregnancy. (*Id.*).
- Petitioner testified that for more than six months prior to May 2023, she was not sexually active with any other men. Based on this, Petitioner testified that she believed she was pregnant, and Respondent was the only potential father.
- June 19, 2023, Petitioner went to Respondent's home at his request.
- Respondent provided a pregnancy test for Petitioner to take. Conflicting testimony makes it difficult to ascertain whether the test was taken in front of the Respondent or with the bathroom door closed due to a shy bladder. Both parties agree the test was positive.
- In the "Something to Consider" email the Court finds the language to imply Respondent was attempting to buy into the idea that rubbing or grinding their genitals together might have led to a pregnancy. (Ex. A. 2). The Court, however, does not find the email conclusive that Respondent believed her to be pregnant with his children, but rather an attempt to consider her ascertains.
- In the "Something to Consider" email Respondent maintains that the lack of sexual intercourse would preclude him from being the father of the fetuses. The email does not deny the pregnancy test was positive. (Ex. A. 2).
- In the email, Respondent suggested that the positive test was the result of Petitioner's epilepsy medication.

- Petitioner emailed Dr. Glynnis Zieman, MD from Barrow Concussion & Brain Injury Center on June 28, 2023. (Ex. A. 3). The subject of the email is "Pregnancy and Seizure Med?" (*Id.*).
- Petitioner denies sending Respondent an ultrasound video, citing instead that Greg Gillespie hacked into her email and sent the video to Respondent. (Ex. A. 5) (Ex. B. 49, p. 64).
- Petitioner testified that July 2, 2023, she anonymously sought care at a Planned Parenthood in Los Angeles. While she failed to provide records of any Planned Parenthood appointment, anonymous or under an alias, Respondent presumably sought records from all Mission Viejo Planned Parenthoods as that is where, up until today, Petitioner disclosed she sought care. (Ex. B. 49, p. 81, line 4). Petitioner testified that she had the sonogram at a Planned Parenthood in California either anonymously or under a pseudonym and changed the location to prevent Respondent from tracking down the records. The Court was not provided with those records at trial.
- Petitioner testified that on July 23, 2023, she experienced bleeding and passed two small fleshy objects smaller in size than her hand. She took pictures of the tissue and sought telehealth assistance.
- Petitioner testified that she texted a miscarriage hotline and sought telehealth assistance.
- The telehealth provider told Petitioner it was hard to tell if she miscarried and she should monitor the situation and seek further care as needed. Petitioner chose not to seek in person care that would have confirmed if she had been, still was, or had miscarried. The Court finds the "hard to tell" component of the telehealth visit was due to the nature of telehealth and the inability to provide care in the form of an exam, hCG test, blood test, ultrasound, or sonogram.
- Instead of seeking in-person care, Petitioner chose to take another hCG home pregnancy test on July 25, 2023, which was positive.
- Petitioner again took an at home test instead of seeking care on August 1, 2023.
- Petitioner testified that she made multiple appointments to see Dr. Makhoul. Three of the four appointments were rescheduled and then cancelled when the Petitioner tested positive for COVID. Dr. Makhoul's records indicate forty-four pages of records confirming making and cancelling appointments.
- The Court was not provided with evidence of the positive COVID test but maintains that the nature of her high-risk pregnancy would warrant a visit to the emergency room who would be equipped to care for a high-risk pregnancy wherein the Mother was COVID positive.

- In August 2023, the parties agreed to a DNA test through Ravgen.
- Petitioner paid $725 to Ravgen for the test, but Respondent failed to provide a sample and Petitioner canceled the test on August 18, 2023. (Ex. A. 5).
- The Court does not find the sexual contact between Petitioner and Respondent resulted in a pregnancy.
- The Court finds that if the Petitioner was pregnant, it is profoundly unlikely that conception occurred because of rubbing, grinding, or oral sex.
- During this litigation, if Petitioner had maintained consistently an allegation of sexual assault, coupled with a police report, or physical exam, the Court may find differently. Evidence and testimony, however, do not support this inconsistent contention.
- Petitioner admitted to changing an hCG test result to reflect 31,000. (Ex. B. 17). She further testified she altered the document using Adobe, but not Adobe Acrobat.
- In late September or early October, both parties submitted samples to Ravgen for DNA testing.
- October 16, 2023, the Petitioner's blood was drawn, and the results were hCG levels of 102. (Ex. A. 9). Petitioner changed the results to reflect 102,000.
- Petitioner testified that on October 18, 2023, she was aware the alleged pregnancies were not viable and filed the Request for Pre-Decree Mediation in the hopes that at mediation she could tell the Respondent that the pregnancy was no longer viable.
- Upon denial of her Request, however, she did not file a Motion to Dismiss or make other arrangements to advise Respondent of the development.
- The Court finds this testimony uncredible and a misuse of judicial resources.
- Petitioner was not treated by Dr. Makhoul, or Dr. Higley as testified to in her November 2, 2023, hearing on the IAH.
- Petitioner's alleged pregnancy was not treated by Dr. Makhoul, Dr. Higley, or any other in-person obstetrician or gynecologist.
- The Court finds failure to seek in person care for a high-risk pregnancy to be both unreasonable and uncreditable.
- The Court further finds that going to Banner for a pregnancy test, but not the passage of fetal tissue to be unreasonable and uncredible. A reasonable person, if seeking emergency room care to confirm a pregnancy, would not rely on telehealth to confirm the non-viability of the pregnancies.
- Petitioner testified that on November 14, 2023, she sought OB/GYN services from a facility, MomDoc, to determine whether she was allegedly still pregnant.

(Ex. A. 11). At that appointment, Petitioner took two pregnancy tests that were both negative.

- Petitioner testified that she currently weighs 91 pounds but weighed 133 in November 2023, during her MomDoc appointment. She experienced significant swelling in her abdomen and felt pregnant.
- The Court was presented with videos dated September 19, 2023, and October 9, 2023, Petitioner sent Respondent of her abdomen as evidence of pregnancy. (Ex. A. 6, 7). Dr. Medchill testified that while she appeared pregnant, that alone was not conclusive of pregnancy.
- Petitioner denies tampering with hCG tests but does admit to altering and fabricating ultrasounds and sonograms. She further testified that she changed the hCG numbers on two of the results. The Court finds little, if any difference, in altering the test itself for which she denies, and altering the results which she did tamper with by her own admission.
- During Petitioner's cross-examination, it became profoundly obvious that counsel for the Petitioner was attempting to coach her answers.
- Respondent's counsel, identifying the issue, moved between counsel and the Petitioner.
- From that point forward, the Petitioner began to exhibit extreme anxiety and unwillingness to answer questions.
- The Court had to remind the Petitioner twice that counsel would ask a question and she needed to answer it.
- At this time, Petitioner pushed back her chair and advised the Court she did not believe she was being treated fairly. The Court attempted to redirect Petitioner to no avail.
- At this time, Petitioner became emotional and asked for a brief recess, which the Court granted.
- The Court finds this interaction between counsel and Petitioner, diminishes the creditability and veracity of the Petitioner's responses during cross-examination.
- The Court finds it is impossible to determine the date of any alleged miscarriage, not because it is impossible, but rather because she failed to seek even a minimal level of care for her high-risk condition. Failure to demonstrate confirmation of ongoing pregnancy is a purposeful way to ensure Respondent would not be able to determine if she was pregnant and if so, for how long the pregnancy lasted.

Michael T. Medchill, MD

- Dr. Michael T. Medchill, MD, a retired OB/GYN and prior Chair at St. Joseph's Hospital, testified that pregnancy is possible without sexual intercourse. Dr. Medchill testified that he delivered 30,000 babies during his practice and saw many patients for miscarriages.
- Dr. Medchill testified that he reviewed approximately 200 pages of Petitioner's medical records from Barrow Neurological Institute in Phoenix that included summaries of Petitioner's medications. He did not, however, review primary care or historical OB/GYN records.
- Dr. Medchill testified that none of the medication records he reviewed would cause a false positive home pregnancy test.
- Dr. Medchill testified that a false positive hCG test could be the result of epilepsy medication, anxiety medication, Clozapine, horse urine, or IVF prescribed injections ("trigger shots").
- When asked by the Court, Dr. Medchill testified he did not review any Planned Parenthood records from Mission Veijo or Los Angeles facilities.
- Dr. Medchill testified that a home pregnancy can detect pregnancy eleven days after conception.
- Dr. Medchill testified that he is 99.9% sure that the Petitioner was pregnant based on the hCG tests. He did not change his perspective after Petitioner's admissions on the stand that she altered more than one test to reflect higher, viable hCG numbers.
- The Court finds Dr. Medchill's testimony that .1% chance that Petitioner received a false positive due to several medications she is in fact taking, possible trigger shot for hCG, and a prior history of ovarian cancer to dimmish his creditability. Especially given that records that the Petitioner testified existed were not presented to her own expert for review and consideration.
- Dr. Medchill testified that a blood hCG level of 102 is proof of a non-viable pregnancy. While Dr. Medchill testified that a non-viable pregnancy is still a pregnancy, the Court finds that altering the number to reflect 102,000 which would be a viable pregnancy to indicate that she intended for the Respondent to believe that she was still pregnant with viable fetuses.
- Dr. Medchill concluded that the Petitioner became pregnant on May 20, 2023, and ended with a "spontaneous abortion" late October, early November, or possibly sooner in 2023. Given the alterations of the only records to indicate pregnancy the Court does not accept this conclusion.
- Dr. Medchill testified that woman may expel tissue during a spontaneous abortion, or the pregnancy might remain in her body, ultimately being reabsorbed.

Given that the Petitioner testified under oath at a prior hearing that she was absolutely twenty-four weeks pregnant and had seen her doctor (presumably in-person) the Court does not accept that twenty-four-week-old twin fetuses would be reabsorbed into a mother's body. The Court further finds a miscarriage at that stage of pregnancy would result in emergency medical care and corresponding death certificates of the twins. If what Dr. Medchill testified to is true, and she miscarried much sooner, negating the need for the death certificates, then Petitioner perjured herself at a prior hearing.

Samantha Deans, MD, MPH

- Dr. Samantha Deans, MD, MPH, reviewed Petitioner's records and provided her analysis of the hCG results. (Ex. B. 39, 41). Additionally, she was the prior Associate Medical Director of Planned Parenthood in Florida, and Pennsylvania.
- She testified that Planned Parenthood does not accept anonymous patients. They do not accept patients using an alias. Patients are required to provide a government issued form of identification. She further testified that Planned Parenthood is not open on Sundays, when Petitioner testified, she sought care July 2, 2023.
- Dr. Deans testified that hCG does not confirm pregnancy. There must be serial hCG or an ultrasound and examination, which were never done, or never disclosed to the Court, the Respondent, Dr. Medchill or Dr. Deans.
- Dr. Deans reviewed the July 23, 2023, telehealth instructions that Petitioner "proceed to an emergency room for additional evaluation and care." (Ex. B. 41, p. CE0527). The instructions were not followed but Petitioner called the Abortion and Miscarriage Hotline which also recommended and encouraged the Petitioner to seek in-person medical care. (*Id.*).
- Dr. Deans testified that there is no data to indicate a conception date.
- After reviewing the records, Dr. Deans determined that the hCG tests were never dispositive of pregnancy and that the related miscarriage timeline, which included detailed analysis of the likely origin of hCG in Petitioner's blood and urine was not indicative of human gestational norms.
- Dr. Deans testified that heterophilic autoimmune responses due to exposure to animals could produce a positive hCG test, but the confirmation blood test would be negative.
- A prior history of cancer could also produce a positive hCG result. Petitioner has a prior history of ovarian cancer that prompted the surgical removal of her right ovary.

- Familial hCG Syndrome can also produce a false positive hCG test. Dr. Deans testified that syndrome is very rare with only ten known cases in the world.
- Horse tranquilizers can create a positive hCG result.

Respondent, Clayton Echard

- Respondent denies all allegations of sexual intercourse.
- Respondent confirms both parties were under the influence of marijuana but denies being "high" and further denies memory loss because of the marijuana ingestion.
- Respondent testified that around May 22, 2023, he realized his behavior with Petitioner was unprofessional and he intended to discontinue a sexual relationship with the Petitioner. He testified that upon hearing this, the Petitioner became very emotional.
- Respondent testified that he told Petitioner he had submitted the offers to the seller. Respondent testified he did not believe the Petitioner was really interested in the properties.
- When asked if he had received any response, Respondent told Petitioner that he had not, but he never told Petitioner the reason why no response had been received – i.e., because the offers had never been submitted.
- Respondent made knowingly false statements to Laura about the real estate purchase offers.
- Respondent testified that Petitioner sent him approximately 500 texts message using thirteen different phone numbers threatening to leak information to the media. (Ex. B. 3).
- Respondent testified that Petitioner reached out to "The Sun," called his family, co-workers, and prior girlfriends accusing him of being a deadbeat for not supporting her and the twins.
- Respondent testified that he received the video from Petitioner and continued to correspond with her over that email string which would reasonably prompt Petitioner to advise she did not send the video, but she did not advise of that at the time. (Ex. B. 11).
- Petitioner emailed Respondent "[y]ou can't say you haven't been given a voice when I have told you that I will have an abortion if we try things out for a few weeks and have a good reason for aborting the child…[t]hese words feel menacing because you know I like you and want to try things out with you." (Ex. B. 7). The email continues "[y]ou would be 'obliging' to make the decision to date exclusively before deciding whether or not we have an abortion." (*Id.*).

- Petitioner encouraged Respondent to have sexual intercourse with her, citing she was "tight" and already pregnant.
- Petitioner further emailed Respondent that he had control of the outcome of the pregnancy "if we date exclusively and care for each other." (Ex. B. 6). On June 28, 2023, she said "[i]f you think about it, having sex with me is the safest thing you can do at this point. I'm already pregnant and if we choose to go this route (and trust each other enough to have sex), then we are at the point where I would be taking abortion pills…so there's no risk." (*Id.*).
- Petitioner told Respondent the twins were a boy and a girl.
- Petitioner provided Respondent with a sonogram that was posted on YouTube seven years ago. Petitioner admitted to this during her deposition (Ex. A. 28).
- Petitioner sent a threatening letter to Respondent indicating her intention to sue him for 1.4 million dollars in collateral allegations unless he agreed to dismiss this action that she initiated. (Ex. B. 55).
- Petitioner signed a release of records for Dr. Jeffrey Blake Higley, MD at Women's Care. In a letter dated March 18, 2024, the provider advised "[w]e have no record of treatment for the date(s) of service you request." (Ex. B. 59, p. OWENS 2).

VALIDITY OF PETITIONER'S ORDER OF PROTECTION

In this case, the gravamen of Respondent's position is that Petitioner has fabricated her pregnancy, a condition which cannot have resulted from the parties' interactions, because according to Respondent they never had sexual intercourse. But he does admit that the pair engaged in oral sex. Respondent seeks to have the protective order invalidated based on the alleged fabrication, while Petitioner essentially argues that even if she was never pregnant, the sexual activity between the two, and Respondent's subsequent harassing online conduct, are sufficient to sustain the order regardless.

There is a predicate issue that should be addressed which goes to the Court's authority to reconsider the protective order at all. Put simply, extant appellate authority, namely *Vera v. Rogers*, 246 Ariz. 30 (Ct. App. 2018) and like cases, precludes reconsideration here.

In *Vera*, Mother applied for a protective order in Phoenix Municipal Court, but it was eventually transferred to the superior court after Father petitioned to establish legal decision-making authority, parenting time, and child support here. After a contested hearing, the commissioner handling the order of protection affirmed it in its entirety. Father then filed a

special action, asking the court of appeals to order the family court to amend the order of protection to align it with the temporary parenting-time orders it had made in the separate case. The court of appeals accepted the special action, finding it raised a "purely legal issue of first impression that is of statewide importance," to wit, "the interplay between the procedural rules and statutes governing protective orders and family law proceedings." (*Id*. at 33).

The court of appeals first recognized that the superior court, pursuant to ARFLP 5(A), has the authority to hold a joint hearing to concurrently consider both actions so that it may harmonize the orders. But having said that, the court noted that the superior court's "authority to modify an order of protection only exists pursuant to the statutes and rules controlling protective orders." (*Id*. at 34). And those statutes and rules prevented the relief Father sought in *Vera*, because another superior court officer had already affirmed the contested order of protection. Indeed, the court stated that "[o]nce [a contested] hearing has been held, an affirmed order of protection may be amended or dismissed only in two ways: (1) by a request of the party protected by the order, Ariz. R. Protect. Ord. P. 40(a),6 41(a); or (2) by appeal, Ariz. R. Protect. Ord. P. 42(a)(2), (b)." (*Id*. at 35). Because Mother had not requested amendment, and Father did not appeal from what amounted to a final judgment, he could not obtain relief, and the family court had no power to amend the protective order. Put another way, "a superior court judicial officer is not to engage in horizontal appellate review of another judicial officer's decision to affirm an order of protection." (*Id*. at 36; *see also Davis v. Davis*, 195 Ariz. 158, 161, ¶ 11) (App. 1999) (holding that "a superior court judge has no jurisdiction to review or change the judgment of another superior court judge when the judgment has become final").

Just like in *Vera*, absent a move by Petitioner to modify or dismiss the protective order, Respondent's "sole remedy was to appeal" the final ruling affirming it after the contested hearing. (*Id*. at 36). Although *Vera* did not involve fraud, this Court was unable to identify any cases collaterally challenging a final protective order judgment on Rule 85 grounds in a separate family court proceeding, nor any authority suggesting that *Vera*'s exclusive roadmap (which is rooted in ARPOP 40 & 41) for amending or dismissing a final order of protection judgment is subject to an exception based on Rule 85 review. This Court's power to invalidate the order is foreclosed by *Vera*.

Even if *Vera* did not foreclose this Court's review, Respondent cannot prevail here (despite what appears to be a case of serial fabrications here and elsewhere by Petitioner). Under A.R.S. § 13-3601(A)(6), the parties admittedly had a relationship that was "previously . . . romantic or sexual," however fleeting it might have been. Petitioner thus had a statutory avenue to seek a protective order, regardless of whether she fabricated her pregnancy. Moreover, Commissioner Doody did not issue the order based solely, or even primarily, on the "fact" of

Petitioner's pregnancy. Indeed, his initial order required that Respondent not contact Petitioner or "communicate or post untrue or harassing comments regarding Plaintiff online, including but not limited to social media, and shall not cause others to" do the same. (Dkt. No. 3, Case No. 2023-052771 filed October 6, 2023). Moreover, Petitioner's initial Petition referenced a myriad of communications Respondent made to her that could be deemed threatening per the statutory guidelines and appears to have prompted Commissioner Doody to confirm the order after the hearing. Thus, even if Petitioner's broader pregnancy allegations are proven untrue, one aspect of the court's order indicated that it found Respondent had engaged in harassing conduct, so even on the merits there is no cause to invalidate the final judgment.

Vera v. Rogers forecloses not only reviewing the orders in principle but also prevents tinkering at the margins as well. If the superior court cannot "engage in horizontal appellate review of another judicial officer's decision to affirm an order of protection," 246 Ariz. at 36, there is no way that the Court can otherwise review portions of those decisions piecemeal either. The parties' remedies as to both decisions were to appeal and have the appellate court review the entirety of those decisions. Both had hearings as to their respective orders, and under ARPOP 42(a)(2), "[a]n Order of Protection, an Injunction Against Harassment, or an Injunction Against Workplace Harassment that is entered, affirmed, modified, or quashed after a hearing at which both parties had an opportunity to appear" is appealable.

SANCTIONS

ARFLP 26(b) provides that "by signing a pleading, motion or other document, the attorney or party certifies to the best of the person's knowledge, information, and belief formed after reasonable inquiry: (1) it is not being presented for any improper purposes, such as to harass . . . (2) the claims, defenses, and other legal contentions are warranted by existing law . . . (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery . . . ." Meanwhile, Rule 26(c) provides that "if a pleading, motion, or other document is signed in violation of this rule, the court—on motion *or on its own*—may impose on the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney fee." (emphasis added).

In this case, Respondent filed a Motion for Sanctions Pursuant to Rule 26 on January 3, 2024, arguing that "Petitioner filed the underlying action for an improper purpose without medical evidence to support her claim that she was pregnant and/or that she was pregnant by Respondent." (Dkt. No. 40 at 1). However, after significant motion practice between the parties'

attorneys, Respondent filed a Motion to Withdraw Motions for Sanctions Pursuant to Rule 26 on April 3, 2024, while retaining his other claims under A.R.S. §§ 25-324, 25-415, 25-809. (Dkt. No. 76). The question thus becomes, can the court still award Rule 26 sanctions, considering Respondent's withdrawal of his motion.

As already noted above, ARFLP 26(c) expressly provides that the court can sanction a party for a violation "on its own." The Court was unable to locate any decisions pertaining to whether the withdrawal of a party's Rule 26 sanctions motion precludes a *sua sponte* court award. But, as a matter of plain meaning and strict interpretation, it would seem not to matter whether a party ever files a motion or even whether that party does file a motion and then withdraws it—a court may still award the sanctions it deems appropriate, based on the conduct it deems to violate the rule. Indeed, if per Rule 26(c) the court can at any time award sanctions of its own accord and on its own findings, absent invitation, the withdrawal of a party's motion to do so would not seem to vitiate or in any way affect that power, as a matter of plain logic. So, for instance, if the Court were to here find that Petitioner fabricated her pregnancy to provide leverage against Respondent in order to secure a long-term relationship with him and all its attendant benefits, Rule 26(c) would appear without doubt to provide it the authority to "order [her] to pay [Respondent his] reasonable expenses . . . including a reasonable attorney fee," regardless of any prior filings by the parties. That is because that fabrication, if adjudicated as such, would have been the predicate for her initial petition and many, indeed all, of the motions that came after it.

Although there is a dearth of case law on this issue, other rules confirm that the family court has the authority to award sanctions on its own. Rule ARFLP 76.2(a)(1), for instance, provides that "[i]n a pre-judgment or post-judgment proceeding, the court upon motion *or its own initiative* may impose sanctions if a party or attorney: (1) fails to obey a scheduling or pretrial order; (2) fails to appear at a Resolution Management Conference, a scheduling conference, an evidentiary hearing, a trial, or other scheduled hearing; (3) is substantially unprepared to participate in a conference, hearing or trial; (4) fails to participate in good faith in a conference, hearing, or trial, or in preparing a resolution statement, scheduling statement, or pretrial statement." (emphasis added). And the remedies available include, in addition to substantive sanctions, ordering the party at fault "to pay reasonable expenses--including attorney fees, an assessment to the clerk, or both--caused by any noncompliance with a court order." ARFLP 76.2(c); *see also Hamby v. Hamby*, No. 1 CA-CV 19-0498 FC, 2020 WL 4717115, at *2 (Ariz. Ct. App. Aug. 13, 2020) (confirming power of court to award sanctions on its own initiative under ARFLP 76). Rule 71 provides for a similar power in the settlement and ADR context.

Additionally, as is evident from their near textual identicality, and per the *Arizona Family Law Rules Handbook*, "ARFLP 26 is based on [Arizona Rule of Civil Procedure] 11." 3 Comparison with Civil Rules, 13 Ariz. Prac., *Family Law Rules Handbook* Rule 26. And Rule 11 also expressly provides that in the event of a violation "the court—on motion or on its own—may impose on the person who signed it, a represented party, or both, an appropriate sanction." And in the Rule 11 context, the Court of Appeals has concluded that a trial court may impose sanctions even after a complaint has been dismissed for lack of prosecution. *See Britt v. Steffen*, 220 Ariz. 265 (App. Div.1 2008). This lends credence to the idea that the family court's inherent authority to award sanctions under ARFLP 26 should not be read to be limited by the course of the case or by the litigation strategy pursued by the parties. The power is there by rule and can be used by the court when necessary and appropriate.

NON-PATERNITY

A.R.S. § 25-814(A)(2) provides a man is presumed to be the father of a child if "[g]enetic testing affirms at least a ninety-five percent probability of paternity." A.R.S. § 25-814 (C) provides a man is presumed to be the father based on DNA testing, that may only be rebutted by clear and convincing evidence. Based on a lack of confirmed pregnancy and repetitive Ravgen results of "little to no fetal DNA" the Court cannot establish that Petitioner was pregnant. The Court cannot establish paternity of a nonconfirmed pregnancy lacking DNA evidence despite testing twice. Here, two test results of "little to no fetal DNA" fall woefully short of the 95% required to meet the burden of clear and convincing evidence that Respondent was the father of Petitioner's alleged pregnancy.

ATTORNEY FEES AND COSTS

Clayton Echard has requested an award of attorney fees and costs. An award of attorney fees and costs is governed by A.R.S. § 25-324. A.R.S. § 25-324 provides as follows:

> A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during

> or after the issuance of a fee award.
> B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:
>
> 1. The petition was not filed in good faith.
> 2. The petition was not grounded in fact or based on law.
> 3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.
>
> C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.
> D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

THE COURT FINDS there is no substantial disparity of financial resources between the parties. Petitioner did not provide an AFI but testified she and her mother collectively earn $200,000 a year. Respondent filed an AFI on May 15, 2024, citing monthly income of $12,000, and annual income of $144,000.

THE COURT FURTHER FINDS that Petitioner acted unreasonably in the litigation. Specifically, Petitioner acted unreasonably when she initiated litigation without basis or merit. Without an authentic ultrasound, sonogram, physical examination, and in conjunction with a belief she passed tissue in July 2023, the Court finds the underlying Petition premature at best. At worst, however, fraudulent and made to incite communication, a relationship, or both, with the Respondent. The Court further finds that filing a motion seeking mediation for the purpose of telling the Respondent that the pregnancies were not viable disingenuous at best but certainly misleading to the Court. If the purpose of the motion was in fact to attend mediation, then the Petitioner perjured herself today when she said the purpose of the mediation was to tell the Respondent about the miscarriage. Either way, Respondent likely incurred costs associated with this litigation prior to retaining counsel and he is entitled to reimbursement for those costs.

THE COURT FURTHER FINDS that Petitioner repetitively failed to comply with Rule 49, even on Order of this Court. Further compounded by the fact that on the day of trial, she testified that she anonymously sought care at a Planned Parenthood in Los Angeles. While she failed to provide records of any Planned Parenthood appointment, anonymous or under an alias, Respondent presumably sought records from all Mission Viejo Planned Parenthoods as that

is where, up until today, Petitioner disclosed she sought care. This undoubtably, caused Respondent to incur substantial legal fees attempting to locate records that may, or may not exist in Los Angeles but now appear to have never existed in Mission Viejo. Additionally, Petitioner acknowledged she altered hCG test results, an ultrasound and sonogram.

THE COURT FURTHER FINDS that the provisions of A.R.S. § 25-324(B) do apply because the petition was not filed in good faith, the petition was not grounded in fact or based on law, the petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party. Here, the Court finds Petitioner provided false testimony as to the viability of the pregnancy in all three cases addressed in the procedural history. Additionally, prior to her deposition, Petitioner sent a threatening letter to Respondent indicating her intention to sue him for 1.4 million dollars in collateral allegations unless he agreed to dismiss this action that she initiated.

THE COURT FURTHER FINDS that Laura Owens knowingly presented a false claim, knowingly violated a court order compelling disclosure or discovery such that an award of attorney fees and costs is appropriate under A.R.S. § 25-415.

IT IS THEREFORE ORDERED granting Clayton Echard's request for attorney fees and costs associated with FC2023-052114.

IT IS FURTHER ORDERED denying Clayton Echard's request for attorney fees and costs associated with the OOP and IAH hearings referencing the analysis above.

IT IS FURTHER ORDERED that Laura Owens shall pay Clayton Echard's reasonable attorney fees and costs. Not later than July 8, 2024, Respondent and counsel for Clayton Echard shall submit all necessary and appropriate documentation to support an application for an award of attorney fees and costs, including a *China Doll* Affidavit and a form of proposed order. By no later than July 29, 2024, Laura Owens shall file any written objection and a form of proposed order. If Clayton Echard's counsel fails to submit the documentation by July 8, 2024, no fees or costs will be awarded. The Court shall determine the award and enter judgment upon review of the Affidavit as well as any objections.

ADDITIONAL ORDERS

IT IS FURTHER ORDERED granting the Respondent's Petition for Non-Paternity.

IT IS FURTHER ORDERED, the Court having determined that Laura Owens has a pattern of similar, if not identical behavior, and court involvement, referring this matter to the Maricopa County Attorney's Office for review of Laura Owen's actions pursuant to A.R.S § 13-

2702 and A.R.S § 13-2809. Accordingly, the Maricopa County Attorney's Office will be endorsed on this Order.

The Court must decide the amount of attorney's fees and costs to be awarded but finds there is no just reason to delay making a final order.

IT IS THEREFORE ORDERED pursuant to Rule 78(b), Arizona Rules of Family Law Procedure, that this is a final judgment, and it shall be entered by the Clerk. The time for appeal begins upon entry of this judgment by the Clerk. For more information on appeals, see Rule 8 and other Arizona Rules of Civil Appellate Procedure.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

Done in open Court on: 06/17/2024

Julie Mata

HONORABLE Julie Mata

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/