Clerk of the Superior Court
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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In Re the Matter of:

[redacted]

Petitioner,

and

CLAYTON ECHARD,

Respondent.

Case No.: FC2023-052114

PETITIONER'S MOTION TO DISMISS PETITION TO ESTABLISH PATERNITY, LEGAL DECISION-MAKING, PARENTING TIME, AND CHILD SUPPORT WITH PREJUDICE

(The Honorable Julie Mata)

Petitioner, [redacted] moves this Court to dismiss her Petition to Establish Paternity, Legal Decision-Making Authority, Parenting Time, and Child Support, filed August 1, 2023. Petitioner is not now pregnant with Respondent's children. Under A.R.S. § 25-801, this Court has "jurisdiction…to establish maternity or paternity." Here, there is no paternity or maternity to establish, as Petitioner is no longer pregnant. Accordingly, this case must be dismissed.

I. FACTUAL BACKGROUND

The underlying Petition was filed on August 1, 2023. Respondent filed a Response on August 21, 2023. On December 27, 2023, Petitioner's counsel sent Respondent's counsel a draft Stipulated Motion to Dismiss with Prejudice. Respondent does not agree to the dismissal and instead seeks to utilize family court resources for a case that does not

involve a family.

II. LEGAL ARGUMENT

Because Respondent has filed a Response to the Petition, this case may be dismissed only by party agreement or by a court order. *See* Ariz. R. Fam. L. P. 36(a)(1)(B)–(C). And because Respondent does not consent to a stipulated dismissal, Petitioner requests that the Court order dismissal pursuant to Rule 36(a).

a. The family court does not have jurisdiction to hear a case involving unmarried parties without a minor child.

A.R.S. § 25-801 grants this court "original jurisdiction in proceedings to establish maternity or paternity." Here, there is no maternity or paternity to establish, as Petitioner is no longer pregnant. Accordingly, this Court no longer has jurisdiction, and the underlying Petition must be dismissed.

Additionally, it is well-established that courts cannot decide moot cases. *Contempo-Tempe Mobile Home Owners Ass'n v. Steinert*, 144 Ariz. 227, 229 (App. 1985). "A case is moot when it seeks to determine an abstract question which does not arise upon [the] existing facts…" *Id.* Because Petitioner is no longer pregnant, this case is now moot and there is no need for this case to proceed.

b. Respondent's only potentially viable claim is for attorney's fees, which he did not personally incur.

On December 12th, Respondent filed a Motion for Leave to Amend his Response. The proposed Amended Response requests the following relief: (1) an order of non-paternity; (2) an order compelling Ravgen Inc., a non-party, to produce fetal DNA records; (3) Rule 26 sanctions against Petitioner; and (4) attorney's fees from Petitioner.

Items 1 and 2 are now moot because Petitioner is not now pregnant. Regarding item 2, the Request for Relief of a Response is not the appropriate place to request a Court to order discovery from a non-party. As to item 3, Respondent failed to comply with any of Rule 26(c)'s prerequisite requirements. Specifically, Respondent did not "attempt to

resolve the matter by good faith consultation as provided by Rule 9(c)." Ariz. R. Fam. L. P. 26(c)(2)(A). Even if he had tried to resolve this dispute, Respondent did not "provide the opposing party with written notice of the specific conduct that allegedly violates section (b)." Ariz. R. Fam. L. P. 26(c)(2)(B).

Additionally, sanctions cannot be requested as part of a Response (or of any other pleading for that matter). Pursuant to Rule 26(c)(3)(A), a motion for sanctions must be made separately from any other motion. Respondent also failed to attach a Rule 9(c) good faith consultation certificate and/or "attach a copy of the written notice provided to the opposing party under subpart (c)(2)(B)." Ariz. R. Fam. L. P. 9(c)(3).

Accordingly, the *only* remaining viable claim in this entire case is Respondent's claim for attorney's fees from Petitioner. Respondent, however, crowd-sourced his attorney's fees through GoFundMe. Exhibit A, *Mr. Echard's GoFundMe*. Respondent did not personally incur attorney's fees and it is doubtful that he intends to reimburse all 331 people[1] who donated to his "cause." Respondent could easily have *no* attorney's fees moving forward if he agrees to the requested dismissal. Any fees incurred moving forward are a result of Respondent attempting to inappropriately utilize the family court's resources for a non-familial dispute.

WHEREFORE, Petitioner respectfully requests this Court dismiss her Petition to Establish Paternity with Prejudice because the family court does not have jurisdiction over any perceived remaining issues.

RESPECTFULLY SUBMITTED this 28th day of December 2023.

MODERN LAW

By: /s/ Alexis Lindvall
Alexis Lindvall
Attorney for Petitioner

[1] Number of donors at the time of filing.

ORIGINAL of the foregoing eFiled this 28th day of December 2023 with:

Clerk of the Superior Court
Maricopa County Superior Court

COPIES of the foregoing delivered this 28th day of December 2023 to:

Honorable Julie Mata
Maricopa County Superior Court

Gregg Woodnick, Esq.
WOODNICK LAW, PLLC
[redacted]
Attorney for Respondent

By: /s/ Sarah Saxon
Sarah Saxon

EXHIBIT A

MODERN LAW

DIVORCE AND FAMILY LAW ATTORNEYS

chard Legal Fund

$8,080 raised of $10,(

331 donations

Shar

Donate

Anonymous
$25 • 3 d

Anonymous
$20 • 7 d

[redacted]
$20 • 7 d

Anonymous
$50 • 8 d

Anonymous

anizing this fundraiser on behalf of Clayton Echard.

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several legal battles within the Arizona court system and could use