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8 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 In Re the Matter of:

11 [REDACTED]

12 Petitioner,

13 and

14 **CLAYTON ECHARD,**

15 Respondent.

Case No.: FC2023-052114

**PETITIONER'S REPLY IN SUPPORT
OF MOTION TO DISMISS WITH
PREJUDICE**

(The Honorable Julie Mata)

16
17 Petitioner asks this Court to grant her Motion to Dismiss and to dismiss the
18 underlying case against Respondent with prejudice. The main argument from Petitioner's
19 Motion to Dismiss is worth repeating. This is a paternity establishment case. Petitioner
20 is no longer pregnant with Respondent's child. There is nothing left to adjudicate. In
21 asking this Court to deny Petitioner's Motion to Dismiss, Respondent makes three main
22 arguments: (1) there are "evidentiary issues that must be resolved by this Court;" (2) that
23 this Court *does* have jurisdiction to hear a paternity establishment case that does not
24 involve minor children; and (3) the family court should keep the case open to allow
25 Respondent to seek sanctions and attorney's fees from Petitioner. As further explained
26 below, these three arguments are insufficient to deny Petitioner's Motion to Dismiss her
27 own establishment petition now that she is no longer pregnant with Respondent's children.





1 **I. LEGAL ARGUMENT**

2 **a. There are no evidentiary issues remaining in this case.**

3 This is a paternity establishment case. Petitioner is no longer pregnant with
4 Respondent’s children. This crucial fact is undisputed by both parties. In his August 21,
5 2023 Response to the Petition to Establish, Respondent clearly stated that he believed the
6 “entire petition is made up by [Petitioner],” and that he denied paternity. *Response* at 3-
7 4. He requested that the Court issue an order declaring that he is not the natural father of
8 the alleged minor children. *Id.* at 7. Similarly, in his proposed Amended Response, filed
9 as Exhibit A to his December 12, 2023 Motion for Leave to Amend his Response,
10 Respondent asks this Court to “[i]ssue an order declaring that Respondent is not the natural
11 father of any children born to Petitioner.” *Proposed Amended Response* at 7. Respondent
12 has already obtained his requested relief; Petitioner is no longer pregnant. There are no
13 children for this Court to establish—or disestablish—paternity for. Both parties are in
14 complete agreement regarding the nonpaternity of any alleged minor children, as it is
15 undisputed that such children no longer exist. There are no evidentiary issues remaining
16 for this Court to resolve, Respondent has already obtained his requested relief, and this
17 case must be dismissed.

18 **b. This Court does not have jurisdiction to resolve a paternity
19 establishment matter that does not involve minor children.**

20 Respondent argues that the Court has jurisdiction to hear this case because it *had*
21 jurisdiction at the time Petitioner filed her Petition. In making this assertion, Respondent
22 relies on *Fry v. Garcia*, 213 Ariz. 70 (Ariz. App. 2006). *Fry* was a grandparent’s rights
23 case. The issue in *Fry* was “whether the superior court loses authority to rule on
24 grandparent visitation petitions when such authority is based on the child being born out
25 of wedlock.” *Id.* In *Fry*, the grandparents filed a Petition for Visitation before the parents
26 were married. Mother and Father then married. After the parents married, the parties
27 attended mediation and reached an agreement regarding the grandparent visitation





1 schedule. Mother then filed to set aside the Court's visitation order arguing, in part, that
2 the parents' marriage divested the court of jurisdiction in a grandparent's rights matter.

3 *Fry* differs from this case in a few important ways. First, there was a minor child
4 in *Fry*. Here, it is undisputed by both parties that there is no minor child between them.
5 While the family court has a duty to address disputes regarding minor children, this is not
6 one of those disputes. Second, there was already a final visitation order in *Fry* when
7 Mother argued the Court should be divested of jurisdiction. The issue was whether that
8 final order should be set aside. Not only was there already an order, but the order was
9 agreed upon by the parties in mediation. Here, there is no final order or agreement
10 between the parties. Petitioner is not asking the Court to set aside a judgment but asking
11 that the Court not to utilize its resources to enter one. Again, this is not a matter of undoing
12 what was already done but putting a stop to the litigation entirely. Lastly, the requested
13 relief in *Fry* was substantive (i.e., a grandparent visitation schedule for a minor child).
14 Here, the only potentially viable claims for relief are Respondent's claims for attorney's
15 fees and sanctions against Petitioner. Respondent did not even file for sanctions until after
16 Petitioner requested dismissal. These claims are not stand-alone claims but are based on
17 a parties' actions/positions regarding substantive claims. Such substantive claim (i.e., the
18 paternity, legal decision-making, parenting time, etc.) relating to Petitioner's unborn
19 children no longer exists. The resultant monetary claims cannot survive on their own.

20 Even if this Court agrees with Respondent that it cannot be divested of jurisdiction,
21 Respondent failed to sufficiently address Petitioner's mootness argument. Respondent
22 argues that his remaining potential claims for attorney's fees and sanctions are not "an
23 abstract question that renders the matter moot." *Respondent's Response* at 11 (internal
24 quotations omitted). As noted above, Respondent's claims for attorney's fees and costs
25 were born out of Petitioner's pregnancy. Such pregnancy no longer exists, and the
26 resultant claims cannot survive on their own. The case is moot and must be dismissed.

27





1 **c. Respondent’s potential claim for attorney’s fees is a self-fulfilling**
2 **prophecy because he would not have had any more attorney’s fees had**
3 **he allowed this case to be dismissed.**

4 Petitioner last took affirmative action in this case on October 18, 2023. On
5 December 4, 2023, this Court placed the case on the inactive calendar until February 2,
6 2024. Petitioner believed that the case would be dismissed on that date if she did not take
7 any action, so she did nothing. On December 12th, two months after Petitioner’s last filing,
8 Respondent’s counsel filed their Notice of Appearance, Expedited Motion to Extend
9 Dismissal Date on Inactive Calendar and Schedule an Evidentiary Hearing,¹ and Motion
10 for Leave to Amend Respondent’s Response to Petitioner to Establish Paternity.

11 On December 27, 2023, Petitioner’s counsel sent Respondent’s counsel a draft
12 Stipulated Motion to Dismiss and corresponding proposed order. Even though both
13 parties agree that they do not share minor children, Respondent refuses to dismiss the case
14 and instead has incurred substantial attorney’s fees since the requested dismissal. In fact,
15 since Petitioner asked to dismiss her own case against Respondent, Respondent has filed:

- 16 • January 3, 2024 Reply to Petitioner’s Response to Expedited Motion to
17 Extend Dismissal Date on Inactive Calendar and Schedule an Evidentiary
18 Hearing.
- 19 • January 3, 2024 Motion for Sanctions Pursuant to Rule 26.
- 20 • January 3, 2024 Response/Objection to Petitioner’s Motion to Dismiss
21 Petition to Establish Paternity, Legal Decision-Making, Parenting Time, and
22 Child Support with Prejudice.
- 23 • January 4, 2024 Response/Objection to Petitioner’s Expedited Motion to
24 Quash Deposition of Petitioner.

25
26
27 ¹ It is unclear why Respondent felt this Motion needed to be heard on an expedited basis,
when it was filed almost two months before the applicable dismissal deadline.





1 On December 28th, Respondent noticed Petitioner’s deposition. Petitioner was
2 forced to file an Expedited Motion to Quash the deposition, presently scheduled for
3 January 17, 2024, after Respondent refused to postpone the deposition until after the
4 Motion to Dismiss was adjudicated. Since being notified of the requested dismissal,
5 Respondent’s counsel has also sent multiple lengthy emails to Petitioner’s counsel.

6 Respondent claims he is entitled to attorney’s fees because “Petitioner has acted
7 unreasonably if not diabolically by bringing this baseless Petition to Establish despite
8 knowing she was not, and could not, be pregnant by Respondent and Respondent has
9 incurred attorney’s fees as a result.” *Response* at 12. Petitioner, however, *was* pregnant
10 with Respondent’s children at the time she filed her Petition. The fact that there were no
11 children born of the pregnancy does not mean that Petitioner was never pregnant to begin
12 with. Petitioner took no affirmative steps to litigate this action once she learned the
13 pregnancy had terminated. The action would have been dismissed without either party
14 incurring attorney’s fees but for Respondent’s December request to continue the case on
15 the inactive calendar and various other filings. Petitioner brought and now seeks to
16 dismiss this action in good faith.

17 Any attorney’s fees incurred by Respondent are a result of his unreasonable refusal
18 to allow this case to be dismissed. Respondent further insists on proceeding with an
19 unnecessary deposition while a Motion to Dismiss is pending and without an evidentiary
20 hearing on the horizon, further racking up unnecessary fees. At this point, it appears
21 Respondent is doing everything he can to blackboard more attorney’s fees so that he can
22 turn to the Court and claim he has an exorbitant amount of attorney’s fees. This litigation
23 for the sake of litigating should not be rewarded.

24 **WHEREFORE**, Petitioner respectfully requests that this Court dismiss her
25 Petition to Establish with prejudice and deny all Respondent’s requested relief in
26 connection with this matter.

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RESPECTFULLY SUBMITTED this 10th day of January 2024.

MODERN LAW

By: /s/ Alexis Lindvall
Attorney for Petitioner

ORIGINAL of the foregoing eFiled
this 10th day of January 2024 with:

Clerk of the Superior Court
Maricopa County Superior Court

COPIES of the foregoing delivered
this 10th day of January 2024 to:

Honorable Julie Mata
Maricopa County Superior Court

Gregg Woodnick, Esq.
WOODNICK LAW, PLLC
office@woodnicklaw.com
Attorney for Respondent

[REDACTED]
[REDACTED]
Petitioner

**Motion to Withdraw with Consent Pending, filed January 2, 2024*

