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MARICOPA COUNTY SUPERIOR COURT

STATE OF ARIZONA

In Re Matter of:	Case No: FC2023-052114
LAURA OWENS,	**MOTION *IN LIMINE***
Petitioner,	**(Assigned to Hon. Julie Mata)**
And	**(ORAL ARGUMENT REQUESTED)**
CLAYTON ECHARD,	
Respondent.	

Pursuant to Rule 35(a)(a) and Rule 65(b), Ariz. R. Fam. L. P., and Rule 404(b) of the Rules of Evidence, Petitioner Laura Owens ("Ms. Owens" or "Petitioner") moves for an order excluding the testimony of three witnesses: 1.) Greg Gillespie; 2.) Michael Marraccini; and 3.) Matthew Mulvey. As explained below, these three witnesses should be precluded from testifying at trial in this case for two different reasons.

First, it appears Respondent intends to call these witnesses for the sole purpose of establishing they had *similar experiences* with Ms. Owens; i.e., each witness may claim Ms. Owens "faked" a pregnancy while in a relationship with them, thus "if she did that to me, she must have done the same thing to Mr. Echard." Such "other wrongs" testimony is plainly inadmissible in this case pursuant to Rule 404(b) of the Arizona Rules of Evidence.

Second, each of these witnesses should be precluded from testifying pursuant to Rule 65(b)(1) because Mr. Echard has failed to comply with the disclosure requirements of Rule 49(a). In short, Mr. Echard has provided zero disclosure "fairly describing the substance of each witness's expected testimony", leaving Ms. Owens and undersigned counsel to guess as to what, if anything, each witness intends to say. For that reason, separate and apart from the issue of Rule 404(b), none of these witnesses should be allowed to testify at trial.

I. DISCUSSION

a. Respondent Has Failed To Timely Disclose Information Required By Rule 49(i)

Taking the easiest issue first, the Court should issue an order precluding Mr. Echard from calling Greg Gillespie, Michael Marraccini, or Matthew Mulvey on the basis that Mr. Echard has failed to timely disclose these witnesses as required by Rule 49(i). The text of that rule is clear: "Each party must disclose the names, addresses, and telephone numbers of any witness whom the disclosing party expects to call at trial, along with a statement fairly describing the substance of each witness's expected testimony."

The purpose of this rule is well-settled; the disclosure rules are intended to avoid unfair surprise at trial. *See Carlton v. Emhardt*, 138 Ariz. 353, 355, 674 P.2d 907, 909 (App. 1983) ("[T]rial by ambush is a tactic no longer countenanced in Arizona courts.") Adequate disclosure "should fairly expose the facts and issues to be litigated, as well as the witnesses and exhibits to be relied upon." *Jimenez v. Wal-Mart Stores, Inc.*, 206 Ariz. 424, 426 (App. Div. 2 2003).

Although this is a somewhat flexible standard, disclosures which only outline issues "summarily" are *per se* insufficient to satisfy the rule. *See Bryan v. Riddel*, 178 Ariz. 472, 477, 875 P.2d 131, 136 (1994) (finding disclosure statement did not contain sufficient detail to comply with the rule where it simply stated witnesses would testify about "all matters referred to in deposition" or "all matters in the complaint of which the witness has knowledge.")

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Here, the disclosures provided by Mr. Echard concerning the substance of anticipated testimony from Messrs. Gillespie, Marraccini and Mulvey fail to offer *any* insight into what, if anything, each witness will say. Specifically, as to Mr. Mulvey, the entirety of Mr. Echard's disclosure was as follows: "This witness is expected to testify about his prior interactions with Petitioner, including his personal knowledge about her alleged fabricated pregnancy back in 2014."

A single sentence identifying "prior interactions" with Ms. Owens and generally referring to an "alleged fabricated pregnancy" does nothing to identify the substance of what Mr. Mulvey plans to say about those topics. Based on the lack of any substance to this disclosure, it is entirely possible Mr. Mulvey may appear at trial and say that he initially believed Ms. Owens "faked" being pregnant when she was with him, but he later realized his suspicious was groundless and he is now 100% certain that Ms. Owens was pregnant at the time. Or maybe he will say the exact opposite. Who knows? Because Mr. Echard has failed to disclose *anything* in terms of the substance of Mr. Mulvey's testimony, Ms. Owens has no idea what to actually expect.

The same problem exists with respect to both Mr. Marraccini and Mr. Gillespie. Contrary to the mandatory duties imposed by Rule 49, Mr. Echard has disclosed literally nothing about the substance of what either of these witnesses intends to say. Given that trial is barely 40 days away, Mr. Echard's failure to comply with his disclosure obligations is inherently prejudicial and inexcusable, meaning the only appropriate remedy is exclusion. *See Zuern by & Through Zuern v. Ford Motor Co.*, 188 Ariz. 486, 489 (App. Div. 2 1996) (affirming exclusion of late-disclosed information on the basis untimely disclosure occurred less than 60 days before trial). *See* Family Law Rule 65(b)(1)(B) (where party fails to timely disclose information, the Court may issue order "prohibiting the disobedient party from supporting or opposing designated arguments, or from introducing designated matters in evidence ….")

Because Mr. Echard has failed to timely disclose information about the substance of these witnesses' testimony, he should be precluded from calling them at trial.

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b. Evidence Of "Other Wrongs" Is Inadmissible

Mr. Echard has made public statements claiming he believes Ms. Owens "faked" pregnancies with one or more prior boyfriends including the three individuals listed here 1.) Greg Gillespie; 2.) Michael Marraccini; and 3.) Matthew Mulvey. As noted above, Mr. Echard has *not* formally disclosed anything about the substance of each witnesses' expected testimony beyond an extremely general suggestion each witness will say *something* about a past experience with Ms. Owens involving an "alleged" fake pregnancy.

This type of "other wrongs" evidence is inadmissible under Rule 404(b) of the Arizona Rules of Evidence. That rule provides: "Except as provided in Rule 404(c) evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." (emphasis added).

Rule 404(b) is simple. It provides when a person is accused of a specific act of wrongdoing in Case #1, it is improper to prove guilt (or civil liability) by offering evidence the person did something similar in Cases #2, 3 or 4. *See, e.g., Elia v. Pifer*, 194 Ariz. 74, 79 (App. Div. 1 1998) (concluding under Rule 404(b), "Character evidence [of other wrongs] is barred because it has slight probative value and because admission of such evidence gives rise to a strong likelihood of prejudice. Such evidence subtly permits the trier of fact to reward the good man and to punish the bad man because of their respective characters despite what the evidence in the case shows actually happened.") (cleaned up) (quoting *Bell v. State*, 143 Ariz. 305, 308, 693 P.2d 960, 963 (App. 1984)); *see also State v. Jones*, 188 Ariz. 388, 395 (Ariz. 1997) (evidence one child was given a "hard spanking" by mother inadmissible under Rule 404(b) to prove mother injured different child on different occasion); *Hudgins v. Southwest Airlines, Co.*, 221 Ariz. 472, 483 (App. Div. 1 2009) (evidence showing party broke the law in past was "explicitly prohibited by Rule 404(b)" to show the same party broke the law on later occasion).

One of the clearest (and most analogous) examples of how Rule 404(b) applies in this situation occurred literally days ago, when the highest court in the State of New York

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(the Court of Appeals) reversed the rape conviction of infamous movie producer Harvey Weinstein. In that case, Weinstein was convicted of sexual assault and rape as to three specific victims (identified as Victims A, B & C), but at trial, the prosecution allowed three *other* women to testify that Weinstein had also raped them.

The Court of Appeals explained this testimony violated a New York common law rule which is functionally identical to Arizona's Rule 404(b): "The general rule is against receiving evidence of another offence. A person cannot be convicted of one offence upon proof that they committed another …." *People v. Weinstein*, 2024 N.Y. LEXIS 590 *22; 2024 NY Slip Op 02222 40, 49 (N.Y.App. April 25, 2024). The Court explained the rule exists to ensure basic fairness:

> Testimonies from three individuals about their own unwanted sexual encounters with defendant were therefore "unnecessary". Instead, the testimony served to persuade the jury that, *if he had attempted to coerce those three witnesses into nonconsensual sex, then he did the same to the victims on the dates and under the circumstances as charged*. That is pure propensity evidence and it is inadmissible ….
>
> Over a century later, we reaffirm that no person accused of illegality may be judged on proof of uncharged crimes that serve only to establish the accused's propensity for criminal behavior. At trial, a defendant stands to account for the crimes as charged. Proof of prior crimes and uncharged bad acts are the rare exception to this fundamental rule of criminal law.

Id. at 2024 N.Y. LEXIS 590 *37-38, *49–50 (emphasis added).

Of course, Mr. Echard will surely note evidence of other acts *MAY* be admitted for some other purpose such as establishing "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." But in the unique context of this case, none of those exceptions apply. Evidence showing Ms. Owens made a false allegation of pregnancy in the past does nothing to demonstrate her "motive, opportunity, intent, preparation, plan" in this case. This is so because the alleged *motive/plan* here is entirely self-explanatory—Mr. Echard believes Ms. Owens faked being pregnant as a way of trying to "trap" him and/or to force him into continuing a relationship with her.

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This theory is obvious on its face without the need for support from other witnesses. It is essentially a purely rhetorical argument that could be made in *any* similar situation (including in cases where the pregnancy results in the birth of a healthy child). Men who find themselves in Mr. Echard's position have *always* accused women in Ms. Owens' position of lying about being pregnant as a way of gaining leverage. That same classic theme forms the plotlines of countless films, including the 1987 thriller *Fatal Attraction* (in which Michael Douglas has an extra-marital affair with Glenn Close, who later claims she is pregnant, before she repeatedly stalks Douglas, kills his family's pet bunny by boiling it in a pot, and famously warns: "*I'm not gonna be ignored, Dan.*"[1]).

If Mr. Echard believes Ms. Owens wanted to trap him, he does not need to call any other witnesses as backup. He can offer that argument based entirely on his own personal beliefs, and the Court can either accept it or reject it.

Of course, it is undisputed this "plan" *did not work* in this case (assuming a plan even existed, which Ms. Owens completely denies). After their one night together, Mr. Echard flatly refused to have any further romantic relationship with Ms. Owens. If Ms. Owens' intent was to "trap" Mr. Echard, that plan was a complete and total failure in every respect. In and of itself, this would strongly *negate* any suggestion Ms. Owens falsely claimed to be pregnant as part of some sinister plan.

Thus, even if Ms. Owens did somehow fake being pregnant in past prior cases (which she denies), that fact would have absolutely no bearing on the issue of whether she was actually pregnant in this case (a point which is supported by objective medical proof). These contested stories about past relationships do nothing (at least nothing meaningful) to support the idea Ms. Owens falsely claimed to be pregnant in order to trick or trap Mr. Owens into dating her.

Instead, Mr. Echard's intent here is obvious—he wants to offer testimony from one or more of Ms. Owens' past ex-boyfriends to show: "She lied about being pregnant with them, therefore she probably lied about being pregnant with me." As New York's highest

[1] *See* https://www.youtube.com/watch?v=KYKDX-egZjk

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court explained in *Weinstein*, "That is pure propensity evidence and it is inadmissible …." The same is true here.

II. CONCLUSION

For all the reasons stated above, Petitioner moves the Court for an order precluding Mr. Echard from calling Greg Gillespie, Michael Maraccini, and/or Matthew Mulvey as trial witnesses.

DATED April 30, 2024.

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GOOD FAITH CONSULTATION CERTIFICATE

Pursuant to Rule 9(c) Ariz. R. Fam. L. P., the undersigned certifies that he has made a good faith attempt to resolve the issues in this motion by consulting with opposing counsel, but those efforts were not successful.

EXECUTED ON April 30, 2024.

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Original e-filed
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