

1 David S. Gingras, #021097
2 **Gingras Law Office, PLLC**
3 4802 E Ray Road, #23-271
4 Phoenix, AZ 85044
5 Tel.: (480) 264-1400
6 Fax: (480) 248-3196
7 David@GingrasLaw.com

8 Attorney for Petitioner
9 Laura Owens

10 **MARICOPA COUNTY SUPERIOR COURT**
11 **STATE OF ARIZONA**

12 **In Re Matter of:**

Case No: FC2023-052114

13 **LAURA OWENS,**

NOTICE OF APPEAL

14 **Petitioner,**

15 **And**

16 **CLAYTON ECHARD,**

17 **Respondent.**

GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

18 Pursuant to Ariz. R. Civ. App. P. 8(a), Petitioner Laura Owens (“Laura” or
19 “Petitioner”) gives notice that she appeals to the Arizona Court of Appeals from the final
20 judgment entitled “Order Re: Application For Attorneys’ Fees and Costs” dated August
21 16, 2024 and filed in this matter on August 19, 2024 (the “Fee Judgment”). Laura further
22 seeks review of all prior non-appealable interlocutory decisions, orders and rulings by the
23 superior court prior to the entry of final judgment. *See Motley v. Simmons*, 537 P.3d 807,
24 810 (App. 2023) (explaining in a timely appeal from a final judgment, the appellate court
25 “shall review any intermediate orders involving the merits of the action and necessarily
26 affecting the judgment, and all orders and rulings assigned as error[.]”) (citing *Pepsi-Cola*
27 *Metro. Bottling Co. v. Romley*, 118 Ariz. 565, 568, 578 P.2d 994 (App. 1978) (holding
28 timely appeal from a final judgment allows the appellate court to consider all prior non-
appealable orders)).

1 For the Appellate Court’s benefit, Laura notes an obvious issue—the Fee Judgment
2 *does not* contain the finality certification required by Family Law Rule 78(c) and thus
3 that judgment would ordinarily not be appealable standing alone. Nevertheless, in light of
4 the unfortunately complicated procedural history of this matter, it is clear the Fee
5 Judgment is final and properly appealable as a matter of right.

6 This is so because this action involved a single paternity establishment claim which
7 was tried to the court on June 10, 2024. On June 18, 2024, the superior court issued a
8 signed, written decision (dated June 17, 2024) which fully resolved that claim. The under
9 advisement ruling contained a finality certification as follows:

10 **IT IS THEREFORE ORDERED** pursuant to Rule 78(b), Arizona Rules of
11 Family Law Procedure, that this is a final judgment, and it shall be entered
12 by the Clerk. The time for appeal begins upon entry of this judgment by the
13 Clerk. (emphasis added)

14 On July 12, 2024, Laura timely filed a pleading entitled: “MOTION TO
15 VACATE JUDGMENT; MOTION FOR NEW TRIAL ... MOTION TO
16 ALTER/AMEND JUDGMENT ...” This motion sought relief pursuant to Family Law
17 Rules 83(a) and 85. Accordingly, this post-trial motion automatically extended Laura’s
18 time to appeal from the June 18th post trial decision (which *was* certified as final and
19 appealable) until “the entry by the superior court clerk of a signed written order disposing
20 of the last such remaining motion.” Ariz. R. Civ. App. P. 9(e)(1).

21 Although the Fee Judgment entered in this matter on August 19, 2024 does not
22 contain a finality certification, and while it does not expressly mention Laura’s post-trial
23 motion, that filing nevertheless fully and finally resolved all issues, leaving nothing
24 further for the trial court to decide. Therefore, the Fee Judgment constitutes “a signed
25 written order disposing of the last such remaining motion”. This means the Fee Judgment
26 is appealable pursuant to Ariz. R. Civ. App. P. 9(e)(1) because that rule only requires the
27 entry of a *signed written order* (which the Fee Judgment clearly is), not an order
28 certifying the matter as final per Family Law Rule 78(c) (as the June 18th decision was).

1 Again, because the procedural history of this matter is confusingly complicated,
2 some additional information is helpful to understand why the Fee Judgment necessarily
3 resolved Laura’s post-trial motion even though it does not specifically mention it.

4 In addition to her post trial motion seeking relief under Rules 83(a) and 85, on
5 July 8, 2024, Laura also filed a Notice of Change of Judge For Cause. The filing of that
6 motion prevented the named trial judge (Julie Mata) from ruling on Laura’ other pending
7 motion. *See* Ariz. R. Fam. L. P. 6.1(d)(3) (explaining after a Notice of Change of Judge is
8 filed, “the named judge should proceed no further in the action except to make such
9 temporary orders as are necessary to prevent immediate and irreparable harm from
10 occurring before the request is decided”)

11 On July 18, 2024, while the Notice of Change of Judge remained pending, the
12 noticed judge (Julie Mata) issued a one-line minute order purporting to *deny* all of
13 Laura’s post-trial motions. Judge Mata issued this decision despite the fact she was
14 prohibited from doing so by Family Law Rule 6.1(d)(3). Several days later, on July 23,
15 2024, Judge Mata admitted this error, claiming she was “unaware” of the Notice of
16 Change of Judge at the time she denied Laura’s post-trial motion:

17 It has been brought to the Court’s attention that a Notice of Change of Judge
18 for Cause: Memorandum & Affidavit in Support filed on July 8, 2024,
19 before the presiding family court judge, Honorable Ronda Fisk.

20 This Court prematurely ruled on Petitioner’s Motion to Vacate Judgment;
21 Motion for New Trial; Alternatively, Motion to Alter/Amend Judgment;
22 Motion for Leave to Exceed Page Limits filed on July 12, 2024, unaware of
23 the Notice that would suspend the Court’s authority.

24 LET THE RECORD REFLECT the ruling on the Motion is hereby
25 withdrawn pending further action from the presiding Family Court Judge.

26 After Judge Mata withdrew her prior order denying Laura’s post-trial motion, on
27 August 14, 2024, the presiding Family Court judge issued an order denying Laura’s
28 Notice of Change of Judge. This order authorized Judge Mata to rule on all remaining
pending matters, including Laura’s post-trial motion.

1 Five days later, on August 19, 2024, the court issued the Fee Judgment awarding
2 nearly \$150,000 in attorney’s fees and costs to Respondent/Appellee Clayton Echard.
3 While the Fee Judgment does not expressly mention any arguments raised in Laura’s
4 post-trial motion, the Fee Judgment nevertheless implicitly and summarily denied
5 Laura’s request for relief (i.e., Laura’s post-trial motion raised numerous arguments
6 which would necessarily preclude an award of fees to Mr. Echard if those arguments
7 were sustained). Accordingly, by awarding fees to Respondent, the trial judge necessarily
8 denied Laura’s post-trial motion for relief. Therefore, pursuant to Ariz. R. Civ. App. P.
9 9(e)(1), the Fee Judgment is appealable because it constitutes a signed, written order
10 resolving Laura’s post-trial motion which sought relief from a prior certified final order.

11 In the alternative, even assuming the Fee Judgment was not otherwise appealable,
12 this case fits squarely within the Arizona Supreme Court’s rule explained in *Barassi v.*
13 *Matison*, 130 Ariz. 418, 636 P.2d 1200 (Ariz. 1981) (allowing “premature” appeal
14 brought before entry of final judgment, and explaining, “To avoid these judicial
15 gymnastics and yet arrive at the same result, we hold that a premature appeal from a
16 minute entry order in which no appellee was prejudiced and in which a subsequent final
17 judgment was entered over which jurisdiction may be exercised need not be dismissed.”)

18 To be sure, the Court of Appeals has also recognized the *Barassi* rule is limited in
19 scope; “More recently, our supreme court reaffirmed *Barassi*, explaining that appellate
20 courts should dismiss a case for lack of jurisdiction while a time-extending motion was
21 still pending in the trial court.” *Craig v. Craig*, 225 Ariz. 508, 509 (App. 2010) (cleaned
22 up) (emphasis added) (quoting *Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz.
23 407, 415, P 38, 132 P.3d 1187, 1195 (2006)). Here, no time-extending motions remain
24 pending. Thus, despite the narrow scope of *Barassi*, the law remains clear; “*Barassi*
25 allows a notice of appeal to be filed after the [superior] court has made its final decision,
26 but before it has entered a formal judgment, if no decision of the court could change and
27 the only remaining task is merely ministerial.” *Maldonado v. Ashton Co.*, 2024 WL
28 1364107, *4 (App. March 29, 2024) (emphasis added) (quoting *Smith, supra*).

1 Viewed in full context, it is clear the Fee Judgment necessarily and finally
2 resolved Laura’s post-trial motion by denying all relief Laura requested. Put simply, if
3 Laura’s post-trial motion had been granted, the superior court could not and would not
4 have awarded fees to Respondent. On the contrary, it would have ordered a new trial
5 before a different judge, and it would have declined to award any fees to Respondent at
6 that stage.

7 By doing what it did, the superior court made its final decision clear. For that
8 reason, there is no reason for any additional “judicial gymnastics” in the trial court, nor is
9 there any reason to allow any further time or “opportunity to persuade the [superior] court
10 of its error so that the . . . court’s ruling on a pending motion may cure any error and
11 obviate the necessity for an appeal.” *Baumann v. Tuton*, 180 Ariz. 370, 372, 884 P.2d 256
12 (App. 1994). The trial court has already denied Laura’s post-trial motion in its entirety,
13 then it withdrew that ruling, then it issued a fee award which implicitly denied all relief
14 sought in the post-trial motion. Any further proceedings in the trial court to alter this
15 outcome are plainly futile.

16 Accordingly, the Court of Appeals has jurisdiction over this appeal.

17
18 DATED September 5, 2024.

GINGRAS LAW OFFICE, PLLC



David S. Gingras
Attorney for Petitioner
Laura Owens

GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044

1 **Original** e-filed
2 and **COPIES** e-delivered September 5, 2024 to:

3 Gregg R. Woodnick, Esq.
4 Isabel Ranney, Esq.
5 Woodnick Law, PLLC
6 1747 E. Morten Avenue, Suite 505
7 Phoenix, AZ 85020
8 Attorneys for Respondent

9 

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
GINGRAS LAW OFFICE, PLLC
4802 E RAY ROAD, #23-271
PHOENIX, ARIZONA 85044