No. 2 CA-CV 2024-0315 FC

IN THE COURT OF APPEALS
OF THE STATE OF ARIZONA
DIVISION TWO

LAURA OWENS,
Petitioner/Appellant

v.

CLAYTON ECHARD,
Respondent/Appellee

Maricopa County Superior Court Case No.: **FC2023-052114**

APPELLEE'S ANSWERING BRIEF

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STATEMENT OF THE CASE

This somewhat unusual case comes before the Court of Appeals following paternity litigation without a proven pregnancy (or even credible evidence of intercourse that could have produced one). Although the Opening Brief makes sweeping claims of jurisdictional deficiency and judicial misconduct, the core issue is whether a person may: (1) file a petition alleging paternity; (2) fail to provide objectively sufficient proof of pregnancy; (3) tamper with evidence and lie under oath; and (4) opt out of the litigation consequence-free. The trial court determined that Laura Owens could not do those things without making Clayton Echard whole for the fees he incurred to defend himself. This appeal followed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Because this Court generally defers to the findings of fact of the trial court (and most of the factual findings are not challenged), Clayton will provide a non-comprehensive summary of the facts and history.[1] Additionally, although there were two companion actions (an Order of Protection and an Injunction Against

[1] Laura filed various Motions at the beginning of the action that were dismissed by the Court (Motion to Communicate, Expedited Motion to Seal, etc). For the sake of conciseness, these filings are not part of the summary but are present in the Under Advisement Ruling issued June 17, 2024. [ROA 126 ep 2].

Harassment) that occurred during the underlying paternity action,[2] they are only discussed to the extent relevant to the judgment in this case. *See* [ROA 126 ep 2-3].

On May 20th, 2023, Laura "performed 'oral sex'" on Clayton. [ROA 126 ep 4].[3] On August 1, 2023, Laura filed a Petition to Establish Paternity, Legal Decision-Making, Parenting Time, and Child Support, alleging she was pregnant with Clayton's twins after the May 20th sexual encounter. [ROA 1]. The trial court found the sexual conduct did not result in pregnancy. [ROA 126 ep 7].

hCG tests

Laura has a medical history of diagnosed conditions that affect the likelihood of pregnancy, including epilepsy, polycystic ovarian syndrome (PCOS), and ovarian cancer. [ROA 126 ep 9]. Laura "has had PCOS since the age of seventeen and does not have a regular menstrual cycle." [ROA 126 ep 4].

On May 31, 2023, Laura allegedly took an at-home pregnancy test, which apparently showed the presence of human chorionic gonadotropin ("hCG") in her urine. [ROA 126 ep 5]. This was the fourth (4th) time she had tested positive for

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[2] Namely, a protective order action brought by Laura against Clayton, which was heard before Judge Doody (FC2023-052771) and an injunction against harassment brought by Clayton against Laura, which was heard in two (2) settings before Judge Gialketsis (CV2023-05392). Both actions were made part of the record for the paternity action by the trial judge.

[3] Laura alleged there was nonconsensual sexual intercourse but this was "not alleged initially in the court filings. It was not alleged until 2024." [ROA 126 ep 4]; Trial Ex. B49.

pregnancy in her lifetime. *Id.*, ep 4. All prior alleged fathers "believed she fabricated the pregnancy and doctored medical records." *Id.*

On June 1 and June 19, 2023, additional urine tests showed the presence of hCG, one at Banner Urgent Care and another completed at Clayton's home *Id.*, ep 5. On its own, the presence of hCG is not determinative of pregnancy, which requires confirmation from a medical provider through an ultrasound or other verifiable objective evidence (e.g., giving birth). Trial Ex. B49; [ROA 126 ep 10]. Alternative reasons for the presence of hCG in blood and urine include epilepsy medications, anxiety medication, Clozapine, horse urine, fertility treatments (e.g., IVF "trigger shots"), and cancer. [ROA 126 ep 9-10]; Trial Ex. B41 ep 10.

On October 16, 2023, Laura allegedly obtained a blood draw, which indicated her hCG levels were 102. [ROA 126 ep 7]; Trial Ex. A9. Laura "changed the results to reflect levels of 102,000." *Id.* Both medical experts, Dr. Deans and Dr. Medchill, confirmed that an hCG level of 102 indicates a non-viable pregnancy. [ROA 126 ep 9]; Trial Ex. B41 ep 1]. Even with this information, on October 18, 2023, Laura requested Pre-Decree Mediation claiming that Clayton "acts as if the unborn children don't exist despite a pro ponderous [*sic*] of the evidence. [ROA 27]. Additionally, on October 24th and November 2nd, 2024, Laura testified before Judge Gialketsis that she had a "high-risk pregnancy," was "100%" "24 weeks" pregnant, was due on "February 14, 2024," and was being actively

seen by "Dr. Makhoul" and "Dr. Higley," who she saw "last Friday." [ROA 126 ep 2]. On October 25, 2023, Laura testified before Judge Doody regarding the "validity of the sonogram sent to" Clayton and that she "believed she was having fraternal twins, one boy and one girl." *Id.*[4]

Sonograms, Miscarriage and Medical Providers

On March 1, 2024, Laura testified that she obtained a sonogram at Planned Parenthood that confirmed the presence of twins in July of 2023, and that she modified the image to falsely attribute it to Southwest Medical Imaging (SMIL) by altering the heading, name, and date of the sonogram. [ROA 129 ep 115]; Trial Ex. B49. Laura alleged she obtained the original sonogram "anonymously" at Planned Parenthood Mission Viejo on July 7, 2023. [ROA 126 ep 6]; Trial Ex. B49]. Planned Parenthood does not accept patients using an alias; patients are required to provide a government-issued form of identification. [ROA 126 ep 10].

On April 15, 2024, Laura claimed the original sonogram was from a visit to Planned Parenthood Costa Mesa on July 2, 2023. Trial Ex. B29. On March 18 and April 17, 2024, Clayton sent HIPAA record requests to Planned Parenthood in Orange and San Bernardino Counties, which denied having any sonogram records

[4] By agreement of both parties, the trial court took notice of the proceedings in FC2023-052771 (Laura's order of protection against Clayton) and CV2023-053952 (Clayton's injunction against harassment against Laura) and reviewed the FTR recordings of the evidentiary hearings. [ROA 126 ep 2]; [ROA 73 ep 7].

for Laura and noted the alleged sonogram was not "consistent with ultrasound images generated by" their practice. [ROA 126 ep 6]; Trial Ex. B29. Then, for the first time at trial on June 10, 2024, Laura testified that the sonogram was from a visit to Planned Parenthood Los Angeles on July 2, 2023 [ROA 126 ep 6]; [ROA 129 ep 118-119]. Laura claimed this was the reason Clayton was unable to obtain any records from the Planned Parenthood visits she previously disclosed—they were false statements. [ROA 129 ep 118-119].

On February 21, 2024, during a Status Conference, Laura stated she has "miscarried sometime in September or October 2023" [ROA 126 ep 3]. On March 1, 2024 Laura alleged she passed "two sacs, which appeared to have a membrane" in "September or October" of 2023. Trial Ex. B49; *see also* ROA 129 ep 119-120]. Laura later claimed she passed the tissue on July 23, 2023 [ROA 129 ep 119-120]. Laura alleges did not experience heavy bleeding and spoke with an online telehealth provider, who found it "hard to tell" whether Laura had a miscarriage and advised her to seek in-person care, which she did not do. [ROA 126 ep 6]. Laura alleges she took additional hcG tests on July 25, 2023 and August 1, 2023, which were positive. [ROA 126 ep 6].

Laura made four (4) appointments with Dr. Makhoul, a Maternal-Fetal Medicine Specialist in the month of August 2023. [ROA 126 ep 6]. Laura rescheduled three of the appointments and cancelled the fourth. [ROA 126 ep 6];

Trial Ex. B37). In the Injunction action before Judge Gialketsis on October 24, 2023 and November 2, 2023, Laura testified she actively had a "high-risk pregnancy," was "24 weeks" pregnant and due on "February 14, 2024," and was being seen by "Dr. Makhoul" and "Dr. Higley," who she saw "last Friday." [ROA 126 ep 2]; [ROA 129 ep 127-128, 130-131]. On October 24, 2023, October 25, 2023 and November 2, 2023 Laura was seen standing and rubbing what appeared to be a swollen abdomen in the OOP and IAH hearings. [ROA 126 ep 2]. Laura's records show she was never treated by "Dr. Makhoul, Dr. Higley, or any other in-person obstetrician or gynecologist" [ROA 126 ep 7]; Trial Ex. B59]. On November 14, 2023, Laura took two pregnancy tests at MomDoc, which confirmed she was not pregnant (disclosed to Clayton on 2/23/24). [ROA 126 ep 7-8].

Paternity Testing, "Boy and Girl" Twins, and Procedural History

On August 1, 2023, Laura filed her Petition to Establish, alleging she was pregnant with twins. [ROA 1]. On August 21, 2023, Clayton filed a *pro per* Answer denying that Laura was pregnant with his children, denying intercourse, denying paternity, and requesting an award of attorney's fees pursuant to A.R.S. § 25-809(G) and A.R.S. § 12-349. [ROA 9]. Clayton moved to Amend his Response on December 12, 2023 and filed the Amended Response on January 26, 2024. [ROA 61].

On October 2, 2023, Clayton and Laura participated in paternity testing with Ravgen. [ROA 126 ep 2]. On October 6, 2023, the results indicated "little to no fetal DNA. *Id.* On October 18, 2023, after Laura learned she had no viable pregnancy via blood test on October 16, 2023, Laura requested Pre-Decree Mediation claiming that Clayton "acts as if the unborn children don't exist despite a pro ponderous [*sic*] of the evidence." [ROA 27]. Recall that on November 2, 2023 Laura testified to being "twenty-four weeks" pregnant with twins and due on "February 14, 2024" (i.e., weeks after she already knew she was not pregnant according to her narrative). [ROA 126 ep 2]. On December 6, 2023, the results of another Ravgen paternity test indicated "little to no fetal DNA." [ROA 126 ep 3]. The results for a third test were lost in transit. *Id.*

On December 12, 2023, Clayton filed a Notice of Filing Affidavit of Non-Paternity. [ROA 32]. On December 28, 2023, Laura filed a Motion to Dismiss Petition to Establish Paternity, Legal Decision Making, Parenting Time and Child Support with Prejudice ("Motion to Dismiss") alleging she was "not now pregnant with Respondent's children. [ROA 37]. The court denied the Motion to Dismiss on February 14, 2024 because the issues of attorney fees, costs, and sanctions remained. [ROA 71]; [ROA 126 ep 3].

On January 2, 2024, Laura filed an Expedited Motion to Quash Deposition, which the court denied after briefing. [ROA 126 ep 3]. On January 3, 2024,

Clayton filed a Response/Objection to Laura's Motion to Dismiss and a Motion for Sanctions Pursuant to Rule 26. [ROA 126 ep 3]. Laura did not appear for her first scheduled deposition. [ROA 50]. On January 17, 2024, Laura filed a Motion for Confidentiality and Preliminary Protective Order referencing a miscarriage for the first time. [ROA 51].

On February 2, 2024, Laura deposed Clayton. [ROA 126 ep 3]. During the Status Conference on February 21, 2024: Laura claimed she miscarried in "September or October," and with consent of the parties, the court advised it would review the IAH and OOP hearings, treat the "Motion to Dismiss as a request for attorney's fees equally" and hear "evidence and testimony as it applies to sanctions and attorney's fees & costs dating back to the filing of the petition; all pleadings filed within the Maricopa County Superior Court." [ROA 73 ep 7]. On February 27, 2024, a few days before her rescheduled deposition, Laura sent a letter to Clayton indicating she would sue him for approximately $1.4 million dollars unless he agreed to unconditionally dismiss the paternity action. [ROA 126 ep 12]; Trial Ex. B55.

Clayton deposed Laura on March 1, 2024. [ROA 126 ep 3]. For the first time, Laura stated she passed "two sacs, which appeared to have a membrane" in "September or October" of 2023 and took a picture of them. Trial Ex. B49. Laura later claimed she passed the tissue on July 23, 2023. [ROA 126 ep 6]. On March

11, 2024, Clayton filed a motion to compel Laura to disclose the alleged Planned Parenthood records, the image of the "two sacs," the name of the telehealth provider she spoke to on the day of the alleged miscarriage, and a file from a 2014 paternity case (granted 4/9/24). [ROA 74]. On March 25, 2024, Clayton filed a Motion for Joint Hearing (granted 4/25/24)—[ROA 79]—and an Amended Motion for Relief from Judgment Based on Fraud, requesting the Court take additional evidence against the OOP Laura filed against him on October 6, 2023. [ROA 94]. The latter Motion was granted on May 21, 2024, with the Court reiterating it would view the recordings from both the IAH/OOP hearings to "rule on the validity of the OOP and any award of attorney's fees at trial." [ROA 114].

On April 3, 2024, Clayton withdrew his prior motion for Rule 26 sanctions. [ROA 83]. On April 4, 2024, Laura filed a Notice of Non-Objection. [ROA 84]. The court accepted the withdrawal on April 4, 2024 but did not distribute the order until May 16, 2024 due to a clerical error. [ROA 112].

On April 8, 2024, Laura filed a Motion to Compel Lunch and For Alternative Relief (denied 4/30/24). [ROA 86]. On April 12, 2024, Laura moved the Court to take judicial notice of Laura's prior lawsuit against another person, G.G., whom she also alleged impregnated her (granted 4/26/24). [ROA 90].

On April 30, 2024, Laura filed a Motion in Limine seeking to preclude the testimony of three other men whom Laura alleged impregnated her in the past.

[ROA 99; ROA 114 ep 5] (motion denied). On May 10, 2024, Laura filed a Motion for Judgment on the Pleadings and Renewed Motion to Dismiss, which the court deemed moot and therefore denied on May 28, 2024. [ROA 108; ROA 117].

On June 3, 2024, Laura's prior counsel filed an Ethical Rule 3.3 Notice of Candor, indicating that their statement at the Status Conference that "Ms. Owens has not lied in this case," was no longer true considering Ms. Owens' deposition on March 1, 2024. [ROA 119].

Trial, Final Judgment, and Post-Trial Filings

From May to June 2024, the parties filed various other motions, requests, and statements in preparation for trial. *See* [ROA 109 through ROA 124]. The court held an evidentiary hearing on June 10, 2024 and issued its final judgment in the form of an Under Advisement Ruling (the "UAR") on June 18, 2024 [ROA 126].

The UAR summarizes the history, the court's findings, the legal analysis of various issues presented, and the relief awarded with substantial detail. As to paternity, the court found it could not establish Laura was pregnant as a threshold matter, then further elaborated that Laura failed to meet the burden of proving Clayton was the father of the alleged pregnancy. [ROA 126 ep 16]. The court granted Clayton's request for a finding of non-paternity. *Id*.

The court also awarded Clayton attorney fees and costs based upon A.R.S. § 25-324(B) and § 25-415 with a two-page explanation of the findings supporting the award. *Id.* at ep 16-18. The court found Laura initiated the litigation without basis or merit, that her petition was "premature at best" and "fraudulent" at worst, and that Laura's explanation for requesting mediation after she already knew there was no viable pregnancy was disingenuous, misleading to the court, and perjurious. *Id.* The court also found Laura repetitively failed to comply with Rule 49 by (1) altering hCG test results, an ultrasound, and a sonogram; and (2) falsely reporting facts about her alleged Planned Parenthood visits, including a brand-new disclosure at trial that she sought care at Planned Parenthood in Los Angeles (despite prior assertions and discovery being directed to other Planned Parenthood locations and entities). *Id.* The court found Laura filed her petition in bad faith, that it was not grounded in fact or based on law, and that it was for an improper purpose. *Id.* The court found Laura provided false testimony in all three cases against Clayton and unreasonably threatened to sue him for $1.4 million in collateral allegations unless he agreed to dismiss the action Laura initiated. *Id.* Lastly, the court found Laura knowingly presented a false claim and knowingly violated a court order compelling disclosure or discovery. *Id.*[5]

[5] To be clear, Laura does not challenge these findings on appeal. Instead, she asserts the court should have dismissed the case before she engaged in most of these behaviors, so they can simply be ignored.

After the ruling, on July 8, 2024, Laura filed a Notice of Change of Judge For Cause; Memorandum and Affidavit in Support, alleging the trial judge conducted an independent investigation into the facts via social media. [ROA 128] & [ROA 129]. After briefing, Presiding Family Court Judge Hon. Ronda Fisk denied the Notice, finding Laura did not present a prima facie case for bias or prejudice and, if such error occurred, it was harmless given the overall weight of evidence supporting the judgment. [ROA 136]. The same day, Clayton filed his Application for Attorney's Fees and Costs, which was granted on August 16, 2024 after a timely Response and Reply. [ROA 137] & [ROA 138]. On July 12, 2024, Laura filed a Motion to Vacate Judgment; Motion for New Trial; Altnerntively [*sic*], Motion to Alter/Amend Judgment; Motion for Leave to Exceed Page Limits—[ROA 132]—which the court denied on September 9, 2024. [ROA 140].

On September 5, 2024, Laura appealed from the Order Re: Application for Attorney's Fees and Costs seeking review of "all prior non-appealable interlocutory decisions, orders and rulings" made by the trial court, and she filed an amended Notice to include the trial court's denial of Laura's motion to alter/amend (filed 9/9/24) [ROA 141]; [ROA 142]. Laura cites A.R.S. § 12-2101(A)(1) (appeal from final judgment), (A)(3) (appeal from an order affecting a substantial right that prevents final judgment from being entered), and (A)(5)(a) (order refusing a new trial) for appellate jurisdiction. *Id.*

STATEMENT OF THE ISSUES

Laura's Opening Brief argues five issues. [OB, 11/14/2024 ep 21]. Further references to the issues presented in the Opening Brief will be to the issue numbers.

JURISDICTION

This Court has an independent duty to determine whether it has jurisdiction to consider the issues raised in an appeal. *State v. Limon*, 229 Ariz. 22, 23, ¶ 3 (App. 2011). The appellate court's jurisdiction is purely by statute. Ariz. Const., art. VI, § 9 (intermediate appellate jurisdiction is only as provided by law); A.R.S. § 12-2101 (listing instances in which an appeal may be taken to the court of appeals from superior court). The Opening Brief cites A.R.S. § 12-2101(A)(1) (appeal from final judgment), (A)(3) (appeal from an order affecting a substantial right that prevents final judgment), and (A)(5)(a) (order refusing a new trial). Most of the issues Laura presents for review do not arise from the final judgment. Issues 1, 3, 4, and 5 all arise from her argument that the trial court should have granted one of Laura's pretrial motions to dismiss. Denial of a motion to dismiss cannot be directly appealed, but it can be reviewed on appeal from a final judgment only if it is an "intermediate order involving the merits of the action and necessarily affecting the judgment." A.R.S. § 12-2102(A); *State v. Meza*, 203 Ariz. 50, ¶ 18 (App. 2002).

ARGUMENT

The Opening Brief does not prove error or establish grounds for reversal. The court awarded Clayton attorney fees as a statutory remedy—not a Rule 26 sanction—making most of Laura's arguments categorically inapposite. There is no "safe harbor" provision to avail a party whose conduct falls short of their duties under ARFLP 49, who knowingly presents a false claim or violates a court order compelling disclosure or discovery under A.R.S. § 25-415, or acts unreasonably under A.R.S. § 25-324 and § 25-809(G). The Opening Brief freely admits that Rule 26's safe harbor applies only to the conduct that allegedly violated that rule. [OB 11/14/2027 ep 42-45]: "For that reason, Rule 26's safe harbor must be construed as not only shielding litigants from punishment under Rule 26, but also from punishment under *any* authority (to the extent the punishment is based on the same conduct that allegedly violated Rule 26.)" Issues 1, 3, 4, and 5 all rest on the same mistaken assignment of error, and they all must fail for the same reason: the court did not err by denying Laura's motions to dismiss and acted within its authority to award Clayton attorney fees under Title 25 statutes.

Moreover, Laura has not proven reversible error in the form of misconduct by the trial judge as alleged under Issue 2. Clayton contests the sufficiency of the evidence Laura presents to establish such error occurred. Even if those facts are accepted as both true and sufficient, the standard in Title 25 cases is harmless error,

not structural error. An erroneous finding regarding a collateral fact (used only for impeachment) is harmless given the overall weight of the evidence in this case. For these reasons, the Court should affirm.

I. Issue 1 – The court did not sanction Laura under Rule 26 and did not err by awarding Clayton attorney fees under other authorities

A. Standard of review

Generally, an award of sanctions is reviewed for abuse of discretion. *Lund v. Donahoe*, 227 Ariz. 572, 576, ¶ 19 (App. 2011).

B. The court did not sanction Laura under Rule 26

The first threshold of this argument is whether the trial court sanctioned Laura under Rule 26 at all. To even consider Laura's argument—which she repeatedly asserts disposes of the entire case on appeal—this Court must first entertain a most meaningless hypothetical: *What if the trial court sanctioned Laura under Rule 26 and no other authority?* Although Clayton moved for Rule 26 sanctions based on Laura's court filings relatively early in the case, he withdrew that motion on April 3 with no objection by Laura and proceeded with other claims for relief under A.R.S. §§ 25-324, 25-415, and 25-809(G). [ROA 45]; [ROA 83]. By the time of trial in June, there had not been a pending Rule 26 motion for over two months.

After Clayton withdrew the motion, Laura argued—in multiple filings and at trial—that the court could not award sanctions under Rule 26. *See* [OB 11/14/2024

ep 26]. Laura filed her first motion to dismiss. [ROA 37] after Clayton answered the suit but before the motion for Rule 26 sanctions. [ROA 45]. By the time of her second motion to dismiss—[ROA 108]—Clayton had already withdrawn the motion a month earlier (largely to avoid unnecessary satellite litigation Laura threatened to bring over the safe harbor issue) [ROA 83]. She raised her arguments over Rule 26 again in her pretrial statement and at trial. [ROA 120 ep 5-6]; [ROA 129 ep 69].

The court included detailed findings about the Rule 26 issue in the UAR, but the court ultimately only awarded attorney fees and costs under Title 25 statutes based on relative financial positions, unreasonable positions, and discovery and disclosure violations. [ROA 126 ep 14-18]. The trial court did not rely on Rule 26 at all despite Laura making it the centerpiece of her position in the proceedings. Therefore, to the extent Laura argues Rule 26 controls the outcome, the issue is simply moot. *Contempo-Tempe Mobile Home Owners Ass'n v. Steinert*, 144 Ariz. 227, 229 (App. 1085).

The parties can debate various sub-issues—e.g., whether ARFLP 26, ARCP 11, and FRCP 11 have identical requirements/are governed by the same law, whether Clayton complied with Rule 26, whether Rule 26 requires strict compliance, whether non-compliance precludes an award *sua sponte*, whether a remedial award of attorney fees and costs even qualifies as a sanction, and so on—

but the inconvenient truth is that none of these questions are actually before this Court.

Laura's reliance on her interpretation of Rule 26 is misplaced. Laura, like every other Title 25 litigant, knew she may be ordered to pay Clayton's attorney fees when she filed the petition, received notice again when he requested fees in his Response under A.R.S. § 25-809(G), and was reminded in nearly every subsequent filing and hearing thereafter. Even if Clayton never mentioned Rule 26 whatsoever, statutory remedies were always available. Laura asks this Court to award her *carte blanche* because of a Rule 26 motion having once been filed. Her reading of Rule 26 would turn the "safe harbor" into a formalistic sinkhole and do damage to the statutory attorney fees scheme that has nothing to do with signing of filings.

C. Rule 26 does not apply to awards given under A.R.S. §§ 25-324, 25-415, or 25-809.

Laura argues that failure to strictly comply with Rule 26 precludes sanctions under any other authority. [OB 11/14/2024 ep 29]. On its face, nothing in Rule 26 references any of the statutes permitting the court to award attorney fees and costs in Title 25, e.g., A.R.S. § 25-324(A) (award of attorney fees after considering financial positions and reasonableness); A.R.S. § 25-415 (award for false claims or disclosure/discovery violation); A.R.S. § 25-809(G) (functionally identical to § 25-324 in paternity proceedings not involving legal decision-making/parenting

time/child support statutes). Laura relies mostly on case law interpreting the federal civil rules for the idea that sanctions are not available without invoking Rule 26, but this reading would expand the rule's scope far beyond its language, purpose, and common-sense interpretation.

To be clear, Rule 26 (and its civil corollary ARCP 11) applies only to the signing of documents filed with the court. *See* ARFLP 26(a)(1). By signing a document and filing it with the court, the signer certifies that they have conducted a reasonable inquiry and believe the filing is for a proper purpose, warranted by law, and supported by facts. ARFLP 26(b)(1)-(4). If the document is signed in violation of those requirements, the court may impose a sanction. ARFLP 26(c)(1). The remainder of the rule describes the procedure for requesting sanctions under this rule. ARFLP 26(c)(2)-(3) ("Before filing a motion for sanctions under this rule, the moving party must: […]") (emphasis added). Rule 26 says nothing about the myriad factors courts consider in whether to award fees in family law actions, including financial resources of the parties, reasonableness of positions, discovery and disclosure misconduct, or any other substantive basis for fees awards outside the signing of a document.

Laura's argument seems to assume that Rule 26 is the *exclusive* vehicle to request an award of attorney fees and costs, but there is no authority supporting this interminably broad limitation on the family court's remedial authority. The

court's authority to award fees in other *civil* actions is far narrower, mostly relying on A.R.S. § 12-349 (except in certain actions with specific fees statutes, e.g., contract disputes). Of relevance here, ARCP 11's "safe harbor" provision is also codified in statute. *See* A.R.S. § 12-349(C) (attorney fees shall not be assessed if offending party voluntarily dismisses within a reasonable time after learning a claim is unjustified). There is no counterpart to this provision in Title 25.

The Court must also consider the practical implications of Laura's argument. *See Hustrulid v. Stakebake*, 253 Ariz. 569, 574, ¶ 12 (App. 2022) (when language is ambiguous, consider effects and consequences of differing interpretations). Laura's argument declares that Rule 26, once invoked, affords a party an absolute right to withdraw from litigation with no consequences. [OB 11/14/2024 ep 32], *citing Barber v. Miller*, 146 F.3d 707, 710 (9th Cir. 1998). It must logically follow, then, that the "safe harbor" opportunity only comes into existence if a party or the court notifies the offender of their intent to seek Rule 26 sanctions. [OB 11/14/2024 ep 38] (arguing *sua sponte* sanctions cannot be imposed without a show-cause order triggering safe harbor). She further asserts that other laws allowing sanctions no longer apply after a party claims a specific act violated Rule 26 (i.e., the act of invoking Rule 26 or alleging a Rule 26 violation makes the rule the exclusive remedy for that conduct). [OB 11/14/2024 ep 43].

Assuming arguendo that these assertions are true *as to sanctions under Rule 26*, Laura asks this Court to craft a safe harbor as to all forms of attorney fees awards notwithstanding their basis in law. Even the federal courts relying squarely on FRCP 11 do not go this far. *See Caranchini v. Nationstar Mortgage, LLC*, 97 F.4th 1099, 1103 (8th Cir. 2024) (even if safe harbor not given, court could still have imposed sanctions under Rule 11(c)(3), statute, or inherent powers); *Matsumaru v. Sato*, 521 F.Supp.2d 1013, 1016 (D. Ariz. 2007) (plaintiff will have opportunity to persuade the court that sanctions should not be imposed under other authorities). This argument, if accepted, would assign a *talismanic* quality to Rule 26. Under Laura's interpretation, the offending filer would have an unconditional right to opt out of the litigation no matter how egregious their conduct or unreasonable their positions *if the opponent invokes the rule*. However, if a party never invokes Rule 26, instead pleading a request for attorney fees under A.R.S. § 25-324 (or other applicable statutes), then the "safe harbor" opportunity would never materialize.

In the surpassing majority of Title 25 cases, that is exactly what happens: a party reserves the right to request fees under A.R.S. § 25-324/A.R.S. § 25-809(G) in their responsive pleading and never mentions Rule 26. Rule 26 demands are comparatively rare—as they should be given the narrow scope of the rule—and the court has never interpreted that rule as a necessary or exclusive mechanism for seeking fees in Title 25 cases. If the Court adopts this interpretation, then the

phrase "Rule 26" will become the family law equivalent of "*Beetlejuice*" or "*Voldemort*" or "*Ni!*" (i.e., words with *magical and counterintuitive effects triggered by their mere utterance*). Invoking Rule 26 would have so little value, and so much risk, that aggrieved parties would never use it again.

Arizona law has long disfavored "magic words" and exalting form over function, particularly when prioritizing formality would undercut the court's jurisdiction in a family law matter. *Duckstein v. Wolf*, 230 Ariz. 227, 232-33, ¶¶ 10-16 (App. 2012) (interpreting Rule 31 - former version of Rule 26 - verification requirement as merely procedural, not jurisdictional, when a party violated the rule in a custody case); *see also* ARFLP 31 ("Former Rule 31, relating to signing of pleadings, was abrogated Aug. 30, 2018, effective Jan. 1, 2019. See, now, ARFLP 26") (historical note); ARFLP 24(d) (pleadings must be construed to do substantial justice); ARFLP 86 (harmless error standard in Title 25 cases). *Duckstein*'s importance is twofold in this case: (1) it is the only known published case interpreting Rule 26 (albeit addressing the verification requirement since moved to another rule); and (2) it interpreted the verification requirement as procedural rather than jurisdictional. In other family law contexts, errors in preliminary procedures must be addressed prior to a resolution on the merits. *Sundstrom v. Flatt*, 244 Ariz. 136, 138, ¶¶ 7-8 (App. 2017); *In re Marriage of Dorman*, 198 Ariz. 298, 303, ¶ 12 (App. 2000) ("[A]n appellant will have great difficulty showing

prejudice from an error in the preliminary verification or screening procedures under § 25-411 after a hearing has occurred"). Granted, Laura's position demands strict compliance with Rule 26—not A.R.S. § 25-411—but the family divisions have historically conducted their business informally, with greater interest in just outcomes than formality for formality's sake.

Laura had notice and an opportunity to be heard, but she wanted notice and an opportunity to *unconditionally withdraw* after she initiated the litigation and publicly alleged paternity. [ROA 126 ep 11]; [ROA 129 ep 182-83] (Clayton testified that Laura contacted his family, acquaintances, employers, national media, and tabloids like *The Sun*, calling him a deadbeat). The trial court has broad discretion to deny a motion to withdraw a pleading and must award reasonable costs and attorney fees if it determines a party filed a petition not grounded in fact. *Sundstrom v. Flatt*, 244 Ariz. 136, 137, ¶ 4, fn.2 (App. 2017) (finding no error in trial court's refusal to dismiss upon petitioner's motion to withdraw pleading under ARFLP 46); *Grow v. Grow*, 1 CA-CV 16-0625 FC (slip op.), 2018 WL 283148 (App. 2018).[6] In *Grow*, Father petitioned to enforce and clarify a child support

[6] Cited for persuasive value under Ariz. R. Supr. Ct. 111(c)(1)(C) because no other opinion adequately addresses an award of sanctions under ARFLP 26 (previously ARFLP 31) after petitioner attempted to withdraw their pleading. A publicly available copy of the decision may be found here: https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2018/1%20CA-CV%2016-0625%20FC.pdf

order. *Id.*, ¶ 4. Mother moved to dismiss the petition and requested sanctions. *Id.* Father responded and subsequently "*filed a motion to withdraw his petition with prejudice, stating he did not wish to proceed with his petition*." *Id.* (emphasis added). The court granted Mother's motion to dismiss without awarding sanctions. *Id.*, ¶ 5. Mother argued that ARFLP 31 (now ARFLP 26), ARCP 11, and A.R.S. § 25-324 *required* the court to sanction Father. The Court of Appeals agreed. *Id.*, ¶¶ 6-7. Citing both A.R.S. § 25-324(B) and ARFLP 31, the appellate court modified the trial court's order to impose a sanction against Father. *Id.*, ¶ 8. The decision makes no indication that Father received a "safe harbor" notice, but the court still awarded sanctions. Admittedly, *Grow v. Grow* is not binding precedent and is not procedurally identical to this case, but the appellate court's insistence that Grow be sanctioned, despite *trying to withdraw his petition*, illuminates the starkly different legal environment in family law cases since separation from the civil rules in 2006. The court was certainly aware of the concept of safe harbor when it decided *Grow* in 2018, and the idea that a party has an unequivocal right to withdraw their pleading without consequences is nowhere to be found in that decision.

D. Rule 11 case law does not foreclose the court's ability to sanction on its own motion.

Even if the trial court had sanctioned Laura only through Rule 26—a counterfactual hypothetical—it still would not have erred. Laura relies primarily on

Federal Rule 11 case law.[7] It is true that Arizona's civil rules are modeled on the Federal Rules of Civil Procedure ("FRCP"), and the family law rules were modeled on the state civil rules, but there are numerous important differences in the present language. Accordingly, the ARCPs only apply when expressly incorporated into the family law rules, and case law interpreting the civil rules applies *only when the language of the rule is substantially the same*. ARFLP 1(c) (emphasis added). In making this argument, Laura completely ignores the material differences in the language and argues the rules are all functionally equal. In fact, the federal civil rule's procedural requirements are much more stringent than the state civil rule, and the family law rule is even more permissive.

Turning to the question of whether the court may sanction a party on its own motion under Rule 26, Laura relies on the 1993 Advisory Committee notes to FRCP 11. She admits that the court *can* sanction a party on its own, but she asserts that requires a show-cause order issued before voluntary dismissal or agreement to settle. [OB 11/14/2024 ep 37-39]. This is where the differences in language

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[7] Laura cites *Westerkamp v. Mueller* but provides no foundation for citing an unpublished order from the federal district court. Regardless, *Westerkamp* merely applies the holdings in other cases (*Barber* and *Holgate*), the limitations of which are explained herein. Laura also cites Ariz. Supr. Ct. R. 111(c)(1)(C) in support of *Gallagher v. Surrano Law Offices, P.C.*, but Supr. Ct. Rule 111 applies to decisions and orders from the Arizona Supreme Court and Arizona Court of Appeals. Appellee is unaware of any authority permitting citation to trial court orders. Like *Westerkamp*, *Gallagher* merely summarizes other cases.

between the federal and state rules are most critical. Federal Rule 11 expressly requires a show-cause order and does not permit a *sua sponte* award without one. *See* FRCP 11(c)(3) and (c)(5)(B) (court must issue show-cause order and cannot impose a monetary sanction unless it issued the show-cause order before voluntary dismissal or settlement). Arizona's Rule 11 does away with this requirement, instead stating that the court must simply "take into account" the opportunities provided to the offender to withdraw or correct the violation. ARCP 11(c)(1). There is no show-cause requirement at all. Family Law Rule 26 dilutes the requirements even further, eliminating both the show-cause requirement and the sentence requiring the court to account for the party's opportunity to withdraw or correct the violation. *Compare* ARFLP 26(c)(1) *with* ARCP 11(c)(1); *see also Hmielewski v. Maricopa County*, 192 Ariz. 1, 4, ¶ 14 (App. 1997) (trial court has inherent power to sanction bad faith conduct during litigation independent of Rule 11). To suggest that *sua sponte* sanctions under Rule 26 require a show-cause order like Federal Rule 11 ignores the differences in the rule text entirely. More importantly, Laura received ample notice that the court was considering sanctioning her and a full evidentiary hearing to explain her position. If anything, Laura received *more* process than even the federal rule requires for a *sua sponte* sanction.

As to whether the court can sanction under *other* authority after finding non-compliance with Rule 11, the case law is similarly unavailing. In *Holgate v. Baldwin*, for example, the court said it could not sanction using its inherent or statutory power because that would require a finding of bad faith that was not made below, not because it lacked authority. *Holgate*, 425 F.3d 671, 679-80 (9th Cir. 2005) (emphasis added). The district court expressly found the offending party did not act in bad faith, so the infirmity was not with its *ability* to sanction under other law, but that the required elements were not met in the case before it. *Id.* ("Therefore, the district court did not err when it found that Levinson failed to show that Community Bank acted in bad faith to multiply this litigation"). To suggest that the court lacked authority to sanction under other law when it simply found no factual basis to do so is patently misleading. The *Barber* case has the same outcome: the trial court expressly declined to make a bad faith finding necessary to sanction under other authority because of insufficient evidence, not because it lacked the power to sanction. *Barber v. Miller*, 146 F.3d 707, 711 (9th Cir. 1998) (accord with district court ruling that party acted ignorantly or negligently but not recklessly or in bad faith). *Barber* also discusses the show-cause requirement and whether a sanction can be made payable to a party if imposed *sua sponte*, but it does so in the context of FRCP 11's express provisions

controlling these questions. *Id.* (interpreting FRCP 11, Adv. Comm. Notes, 1993 Amend. to require show-cause order and limiting penalty to payment to court).

In the instant case, the trial court *did* make the findings necessary to award attorney fees under statute, so the assertion that these cases categorically prohibit the court from sanctioning under other authorities after Rule 26 was invoked is just not an accurate reading.

Laura's arguments from *Radcliffe* arise from the same incorrect premise that the federal, state, civil, and family rules are substantively identical. *Radcliffe* says the service requirement in FRCP 11 is mandatory to trigger the safe harbor period. *Radcliffe v. Rainbow Const. Co.*, 254 F.3d 772, 788-89 (9th Cir. 2001). But Rule 26 requires neither service nor a copy of the motion.

Compare:

- FRCP 11(c)(2) (copy of motion for sanctions must be served under FRCP 5 at least 21 days before filing the motion), *with*
- ARCP 11(c)(2)(B) (written notice of offending conduct must be served 10 days before filing motion for sanctions), *and*
- ARFLP 26(c)(2)(B) (movant must provide written notice of the offending conduct 10 days before filing motion for sanctions) (all emphasis added).

To support her assertion that ARFLP 26 and FRCP 11 have identical requirements, *Laura even goes so far as to replace the terminology used in that opinion where the different requirements of the rules are not helpful to her*. *Compare Radcliffe* at 789 *with* [OB 11/14/2024 ep 28] (replacing "strict requirement that a motion be served" with "strict requirement that a [written notice] be served"). Plus, even if the court had sanctioned Laura under Rule 26, and even if Laura was entitled to written notice of the offending conduct 10 days before the motion, she received both on December 12, 2023 (more than 10 days before her motion to dismiss) and in Clayton's initial Response. [ROA 33 ep 9-10] (non-exhaustive list of alleged Rule 26 violations in Clayton's Motion to Amend); [ROA 9 ep 10]. The state rules also make no distinction—despite Laura's arguments otherwise—between the remedies available for sanctions *imposed by motion* versus those *imposed by the court on its own initiative*. *See* ARCP 11(c)(1); ARFLP 26(c)(1).

Next, to the extent Laura argues more good faith consultation was required, she once again ignores the case history and the language of the rule itself. *See* ARFLP 9(c)(2)(A)-(B) (parties not required to personally meet or contact each other if there is a current order prohibiting contact and the alleged victim is self-represented). Laura had an Order of Protection against Clayton, she was self-represented in this case at the time of the notice, and the motion for sanctions still

attached a certificate explaining the efforts to resolve the offending conduct up to that point. [ROA 45 ep 10]. Moreover, good faith consultation is a procedural requirement, not a jurisdictional one, and therefore may not be the basis for reversal after final judgment. *See In re Marriage of Dorman*, 198 Ariz. 298, 303, ¶ 12 (App. 2000) (discussing limitations on procedural challenges after trial has occurred).

Laura's remaining argument is that the *purpose* of the rules is the same, so their interpretations must be the same. If the Arizona Supreme Court intended to make the federal, state, civil, and family rules perfectly identical, it certainly knew how to do that. This Court must begin from the presumption that the drafters of the rules meant to change their terminology, and the words used in the rules mean what they say. *See, e.g., City of Surprise v. Arizona Corp. Comm'n*, 246 Ariz. 206, 211 (2019) (applying *expressio unius* to find legislature intentionally included and excluded terms in a statute). Even so, Laura *did* have opportunities to withdraw her Petition before and after Clayton's response. She could have withdrawn the petition any time before the Response under Rule 46, and even after the court denied her first motion to dismiss, Laura declined to sign an affidavit that she was never pregnant by Clayton in exchange for dismissal with prejudice. *See* Issue 4, infra.

In summary, the trial court did not sanction Laura under Rule 26, so there is no issue here for the Court to properly consider. Even so, Laura misstates the federal interpretation of Rule 11 and ignores substantial differences in the Arizona rules. She also fails to account for the opportunities she had to avoid the outcome she now challenges. There is simply no error here.

II. Issue 2 – Laura has not shown prejudicial error by judicial misconduct

A. Standard of review

The controlling standard for alleged mistakes in family law proceedings is harmless error. *Aksamit v. Krahn*, 224 Ariz. 68, 74, ¶ 21 (App. 2010) (citing Ariz. Const. art. 6, § 27: "[n]o cause shall be reserved for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done"); ARFLP 86 ("At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights"). Generally, the appellate court affirms "absent a clear abuse or legal error and resulting prejudice." *Davis v. Davis*, 246 Ariz. 63, 65, ¶ 6 (App. 2018) (emphasis added and citation omitted).

Counsel cannot find any example of Arizona courts applying structural error analysis in a family law case. The structural error doctrine is a creature of constitutional criminal law jurisprudence. A few cases support the use of a *fundamental* error standard in civil cases, which differs from structural error in that the complainant must still demonstrate prejudice. *See, e.g., Ortega v. State ex rel.*

Herman, 432 P.2d 904, 910 (App. 1967) (insofar as it is applied to civil cases, fundamental error should be used sparingly); *Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, 93-96 (App. 2005) (In Title 8 severance proceedings, fundamental error applies only if objection not made at trial court and requires proof of prejudice). Laura cites unpublished cases from Kansas—*A.W. v. L.M.Y.*, 457 P.3d 216 (Table), 2020 WL 741607 (Kan.App. 2020) and *Marriage of DePriest*, 422 P.3d 687 (Table), 2018 WL 3485722 (Kan.App. 2018) [8]—but they, too, espouse *harmless error* review that is nearly identical to Arizona's approach. In summary, if a judgment can be sustained by substantial evidence apart from the challenged finding, it must be affirmed. *Black v. Black*, 114 Ariz. 282, 284 (1977) (affirming judgment despite trial court basing its findings, in part, on undisclosed interview of children in custody case); *c.f. Maricopa County Juvenile Action No. JD-561*, 131 Ariz. 25, 29 (1981) (unlike in *Black*, record insufficient to consider error harmless after ex parte judicial interview of child in dependency action).

B. Laura has not proven judicial misconduct

Laura uses structural error analysis for one obvious reason: it is the only standard that could result in reversal without demonstrating prejudicial effect.

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[8] Following a Kansas criminal law precedent—*State v. Walker*, 421 P.3d 700, 709 (2018)—the court will only reverse if the complainant shows judicial misconduct prejudiced their substantial rights. Mere possibility of prejudice is not sufficient to overturn a verdict or judgment. *A.W. v. L.M.Y.*, 2020 WL 741607 at *2. (Cleaned up).

Because she cannot show prejudice, Laura asks this Court to announce an extraordinary deviation from the harmless error standard in civil cases.

The Opening Brief alleges the trial judge performed "a secret, independent investigation into the facts which included reviewing (and adopting as fact) statements posted on social media." [OB 11/14/2024 ep 55-56]. Laura draws this conclusion from the erroneous finding that Dr. Deans testified that Planned Parenthood is not open on Sundays. [ROA 126 ep 10]. There is no dispute that Dr. Deans did not make this statement during her testimony, although she discussed other aspects of Planned Parenthood procedures learned during her time as a medical director with the organization (e.g., that patients must be identified and cannot be seen anonymously). *See generally* [ROA 129 ep 170-71].

To be clear, Laura's statements and use of fabricated evidence made issue of the location and date of her purported Planned Parenthood visit long before trial. At her deposition on March 1, she said the visit was July 7 in Mission Viejo, but she later changed the date to July 2 and the location to Costa Mesa (or somewhere else vaguely in Southern California per her April affidavit). S*ee* [ROA 97 ep 28-29]. This prompted follow-up with Planned Parenthood and was discussed in pretrial disclosure filings. *See, e.g.,* Trial Ex. B29; [ROA 118 ep 11-12]; [ROA 114 ep 2] (acknowledging Planned Parenthood had no record of a July 7 or July 2 visit); [ROA 97 ep 28-29] (Laura's affidavit stating she went to Planned

Parenthood while traveling in Southern California on July 2, 2023); [ROA 119] (referencing false statements to court revealed by Laura's deposition testimony); [ROA 98 ep 2 & 12-21]. Ultimately, however, it was Laura's unfulfilled burden to disclose the details of the visit, including the date, location, outcome, and associated records. To explain the fact that none of the locations she previously disclosed had any record of a visit, she testified at trial that she went to Los Angeles Planned Parenthood on July 2, 2023 using a pseudonym [ROA 129 ep 113-14]. Dr. Deans credibly testified that Planned Parenthood did not permit patients to use pseudonyms. [ROA 126 ep 10]. The court made several findings impeaching Laura's statement, including the "closed on Sunday" conclusion that—although apparently true—was not given in testimony.

Laura argues, as she did below, that this assertion must have come from an Internet search. [OB 11/14/2024 ep 56]. She alleges that the trial judge "went online and performed an undisclosed investigation into the facts, and *she then tried to conceal that misconduct by falsely attributing the testimony to Dr. Deans* (who said no such thing)." *Id*., ep 57 (emphasis added). Laura provides no support for the contention the trial judge had illicit intent to "conceal misconduct" aside from pure speculation. Logically, had the trial judge intended to conceal anything, there would be no reason to include the "closed on Sunday" finding at all—it was cumulative impeachment with no impact on the outcome of the case.

When Laura moved for change of judge, alleging bias under Rule 6.1, the Presiding Judge reviewed the record and summarized the harmlessness neatly. [ROA 136 ep 4-5]. Regardless of the source of the wrongly attributed statement about the operating hours, Laura repeatedly lied about the date and location of the visit. Even if the court accepted Laura's trial testimony as true—that she went to Planned Parenthood on July 2, 2023 and obtained an ultrasound—Laura had already admitted to altering that image and to providing Clayton a seven-year-old sonogram video of twins she obtained online months earlier. [ROA 126 ep 12]. The UAR discusses innumerable problems in Laura's presentation that have nothing to do with the July 2 visit, including her tampering with evidence and that it was "profoundly obvious that counsel for the Petitioner was attempting to coach her answers" on cross-examination. [ROA 126 ep 8]. Therefore, the truth or falsehood of Laura's ever-changing account of the Planned Parenthood visit was cumulative impeachment, not a critical element of the case.

It is nowhere evident how this error materially affected the outcome unless the court presumes the entire proceedings were somehow compromised (a la structural error). On the contrary, the record is so inundated with Laura's false assertions, many of which she conceded at trial, that the "Planned Parenthood Los Angeles is closed on Sundays" finding changes nothing at all. This Court need not

speculate about the reason or source of the finding to determine it was harmless in view of the overall record.

C. If the trial court conducted extrinsic investigation, the facts determined were subject to judicial notice and substantively harmless.

Assuming arguendo that the trial judge looked up the operating hours of Planned Parenthood Los Angeles, Laura has not proven prejudice. Arizona's Evidence Rule 201(b)(2) permits the court to take notice of any fact that is not subject to reasonable dispute and can be readily determined from sources whose accuracy cannot reasonably be questioned. The court may take notice on its own, at any stage of the proceeding, and give a party the opportunity to be heard.[9] Ariz. R. Evid. 201(c)-(e).

Laura does not contest that July 2, 2023 was a Sunday. [OB 11/14/2024 ep 54] ("… as the calendar shows – that day was, in fact, a Sunday"). She also does not appear to contest the truth of the conclusion that Planned Parenthood Los Angeles ("PPLA") closes on Sundays, although she contends the truth of the statement is irrelevant because it was not in evidence. The question, then, is whether the trial court could ascertain the fact via judicial notice.

[9] Laura raised her objections to the finding in a Notice of Change of Judge for Cause and a Motion for New Trial, both of which were denied. *See* [ROA 136]; [ROA 140].

State v. Rojers illustrates the broad scope of judicial notice in Arizona precedent. *Rojers* concerned the inevitable discovery of evidence in a suppression hearing. The trial court found a piece of evidence would have been discovered in the defendant's car based on the police department's standard inventory search procedures. The problem was that those standard procedures were not in evidence. *Rojers*, 216 Ariz. 555, 561, ¶¶ 20-21 (App. 2007) (emphasis added). On review, the Court of Appeals took judicial notice of the Phoenix Police Department's Operations Order on the Department's website to cure the deficiency in the trial record. *Id.*, ¶¶ 25-26. The court used the procedural manual and affirmed based on the provisions therein. *Id.*, ¶ 33. The Court of Appeals determined Rojers was not prejudiced because, even though the procedures were not in evidence, the trial court correctly interpreted them.

Rojers represents a few key points: (1) judicial notice may be taken of standard operating procedures not otherwise in evidence; (2) judicial notice may be taken at any stage of the proceeding, including for the first time on appeal; (3) even in a criminal case, where constitutional protections are at their most robust, an argument for fundamental error stating the trial court relied on facts not in evidence must still establish prejudice; and (4) the appellate court can use judicial notice to cure a deficiency in the trial record if the underlying error did not cause prejudice.

The facts of the instant case are not so different from *Rojers*. Even if the trial court searched PPLA's website—and misattributed the operating hours to Dr. Deans because of her *other* testimony about Planned Parenthood's procedures—that information would be just as "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned" as the police procedural order. *Rojers* at 560, ¶ 26; Ariz. R. Evid. 201(b). Moreover, the PPLA finding is nowhere near as central to the dispute as the orders in *Rojers* (where the police department's policies were outcome-determinative of the suppression issue).

Next, Laura contends that a business's operating hours are categorically ineligible for judicial notice based on ABA Formal Opinion 478. Ignoring that the Opinion is not precedential, its footnote 9 and hypothetical #1 distinguish between essential and "background" facts (the latter being properly subject to judicial notice from publicly available and reliable sources). *See also Rowe v. Gibson*, 798 F.3d 622, 628-29 (7th Cir. 2015) (discussing boundaries of judicial notice, including approval of web searches for judicially noticeable facts from reputable sources). The "restaurant hours" hypothetical sets out a scenario in which a plaintiff sues for unpaid overtime hours, and the judge independently researches the restaurant's location because he believes it would only be open during limited hours. ABA Formal Opinion 478 (Dec. 2017), pp. 6-7. The Opinion stipulates that the noticed facts are "key to whether the plaintiff could prevail on a claim of unpaid overtime"

and therefore should have been the subject of adversarial inquiry. *Id*. at 7. Resolving an essential element of a claim with ex parte investigation—particularly basing the decision on the restaurant's "industrial area" location instead of its posted hours—is a far cry from what Laura alleges occurred in this case. Again, the challenged finding in the instant case is not critical to the outcome and does not establish an essential element of any claim; rather, it is just one piece of impeachment material among countless others. Moreover, there is Arizona precedent supporting courts taking judicial notice of information on websites (albeit government websites in these examples). *See, e.g., Pedersen v. Bennett*, 230 Ariz. 556 (2012) (court may take judicial notice of Secretary of State website); *Ariz. Pub. Integrity Alliance v. Fontes*, 250 Ariz. 58, 65, ¶ 28, fn. 2 (2020) (taking judicial notice of deadlines posted on County Recorder website in accord with *Pedersen*).

D. Harmless error applies even if the trial court independently investigated and did not notify the parties.

Even if the trial court investigated without notice to the parties, the standard of review is still harmless error. *Black v. Black* is extremely instructive here. In *Black*, the trial judge conducted an off-the-record interview with the parties' children without notice or agreement of the parties. *Black v. Black*, 114 Ariz. 282, 284 (1977) (emphasis added). The court found, based on the undisclosed interview, that both children wanted to live with their father and only visit their mother. *Id.*

On appeal, Mother argued the trial court erred by conducting the interview, and that the judgment could not be sustained absent the interview finding. *Id*. Critically, the Supreme Court said: "Although we find no record of an interview and agree that it should only have been conducted pursuant to a stipulation between the parties, we believe that such error was harmless in this instance." *Id.* (emphasis added). The Court acknowledged that the parties should have been notified of the court's actions, but because there was substantial evidence supporting the judgment apart from any consideration of the interview, the judgment must be affirmed. *Id.* (emphasis added).

The relevance of this precedent is difficult to overstate. In *Black*, just as Laura alleges occurred below, the trial judge independently investigated material facts without notice to the parties. The parties only learned about the interview via one finding in the final judgment, and there was no record of the interview for the Supreme Court to review on appeal. Despite these errors—which Laura would argue are structural and require automatic reversal—the Supreme Court affirmed the judgment using harmless error review. *See also Hubert v. Carmony*, 251 Ariz. 531, 535, ¶ 16 (App. 2021) (applying *Black v. Black* and finding error not harmless if nothing in the record supports the judgment).

Laura also cites to *State v. Anderson*, stating that this alleged error is one so severe as to "create 'defects … in the trial mechanism' itself [and] affect the 'entire

conduct of the trial from beginning to end,' damag[ing] 'the framework within which the trial proceeds.'" [OB 11/14/2024 ep 62]. But she also explains that the error could only have been made *after* trial because the issue of whether PPLA was open on July 2 did not arise until Laura's thrice-changed testimony that day. If Laura is correct that the trial judge read her attorney's blog and made the finding based on what she saw there, then there was no defect *at trial* at all; that is, unless the Court believes Laura's vacuous claim that the judge "manifested clear prejudice and/or bias early in the proceedings in the form of multiple, unexplained adverse rulings" against her. *See* [ROA 136 ep 3], *quoting* Laura's Notice of Change of Judge For Cause at [ROA 128 ep 13]. And again, the impact of the finding is meaningless within the broader context of the judgment.

If there was ever a time for Arizona's highest court to deviate from the harmless error standard in a family court case, it would have had every reason to do so in *Black* (to protect the fundamental liberty interest at stake). *Santosky v. Kramer*, 455 U.S. 745 (1982) (parents have fundamental liberty interest in the case, custody, and management of their child). Yet, the Supreme Court declined, and so should this Court.

E. Invited error is not reversible on appeal

Perhaps lost in all this discussion is the underlying reason for the "error" Laura alleges. Even a fundamental and prejudicial error does not win reversal if the

complaining party was the source of the error. *See State v. Escalante*, 245 Ariz. 135, 145, ¶ 38 (2018) (party urging the error cannot obtain appellate relief when they are the source). There is no dispute whatsoever that Laura's misrepresentations are the reason this issue arose. [OB 11/14/2024 ep 54]. The Opening Brief acknowledges—and the record proves—that Laura gave several different versions of her account of the Planned Parenthood visit before trial. She also admitted to altering the ultrasound image she initially claimed to have obtained at the July 7 visit (July 2?) at the Mission Viejo (Costa Mesa? Los Angeles?) location. She claimed to have been using a pseudonym but refused to disclose it. She never disclosed information accurate enough to obtain any original records, resulting in substantial discovery efforts that were entirely wasted. Had Laura been honest, complied with her disclosure obligations, and not changed her testimony *yet again* at trial, there would be no reason for any of this inquiry. Moreover, Laura alleges one source for the errant finding: comments left on her attorney's blog about the case.

Lastly, this is not a case in which hardship to the appellee can be ignored. In structural error (criminal) cases, the state is obligated to avoid errors and will not be prejudiced by reversal—it will simply conduct a new trial using its vast resources. In civil cases, however, reversal in the face of harmless error would force the appellee back into litigation *without good cause*. In the instant case,

Clayton did not ask the trial court to find PPLA is closed on Sundays. He did not ask the court to conduct an independent investigation (if that occurred). There is no plausible argument that the outcome would have been different but for the challenged finding. Preventing unnecessary retrial is both the essence and purpose of harmless error: the reviewing court should not waste judicial or party resources over an irregularity when substantial justice has been done. Absent a finding that the record could not support the judgment—a finding that is impossible here—this Court may simply affirm.

III. Issue 3 – The trial court correctly awarded attorney fees under A.R.S. §§ 25-324, 25-415, and 25-809

For Issue 3, Laura argues the court erred by relying on A.R.S. § 25-324 and A.R.S. § 25-415 as bases for the attorney fees and costs award.[10] These arguments are frivolous.

A.R.S. § 25-324

First, Laura argues A.R.S. § 25-324 only applies to proceedings under Title 25, chapters 3 and 4, whereas paternity proceedings arise exclusively from chapter 6. She cites no authority supporting this limited interpretation, and counsel can find no example of a paternity opinion declining to consider A.R.S. § 25-324. Paternity

[10] She also relies on the Rule 26/safe harbor argument raised in Issue 1, the response to which will not be repeated here. Clayton's responses in this section concern only the arguments relating to the applicability of A.R.S. §§ 25-324, 25-415, and 25-809.

proceedings nearly always involve determining legal decision-making and parenting time, which places them within the ambit of chapter 4. A.R.S. § 25-803(C) (any party other than the state may request determination of legal decision-making and parenting time as part of paternity proceeding). Paternity proceedings *always* require determination of child support, which places them within the ambit of chapter 3. *See* A.R.S. § 25-809(A)-(F) (requiring past and future support pursuant to A.R.S. § 25-320). Moreover, courts routinely apply A.R.S. § 25-324 in published paternity cases. *See, e.g., In re McQuillen v. Hufford*, 249 Ariz. 69, 74, ¶ 20 (App. 2020); *Gelin v. Murray*, 251 Ariz. 544, 549, ¶ 22 (App. 2021); *Johnson v. Edelstein*, 252 Ariz. 230, 236, ¶ 27 (App. 2021).

The instant case is no different: Laura petitioned for findings of paternity and determination of legal decision-making, parenting time, and child support. [ROA 1]; [ROA 4]; [ROA 6]. Laura herself requested attorney fees under A.R.S. § 25-324 during the proceedings, including by motion and in her pretrial statement. [ROA 95 ep 14]; [ROA 120 ep 14]. To raise this argument for the first time now, particularly after Laura tried to avail herself of the same remedy, is both nonsensical and impermissible. *State v. Gendron*, 168 Ariz. 153, 155 (1991) ("Our adversarial system properly and necessarily precludes injection of new issues on appeal").

A.R.S. § 25-415

Next, Laura argues the trial court could not use A.R.S. § 25-415 as the basis for sanctions because the "false claims" provision of that statute does not apply in a "simple paternity case" that did not result in the birth of a child. Clayton disputes the "no false claims" assertion for the reasons described herein, but it is also irrelevant because Laura *definitely* violated a court order compelling disclosure or discovery. A.R.S. § 25-415(A)(3); [ROA 126 ep 18]; A.R.S. § 25-415(A)(3). The Opening Brief asserts there was "literally no basis for the court to hold that Laura violated any order compelling discovery," but the court found Laura repeatedly violated Rule 49 even after being ordered to comply. [ROA 126 ep 3, 17-18; ROA 73 ep 2-3, 7-8]. The Opening Brief concedes there was also an order compelling disclosure [ROA 87] but asserts that Laura somehow "fully complied with that order by disclosing all required information." [OB 11/14/2024 ep 67] (original emphasis). Yet, everyone acknowledges her non-compliance. For example, Laura changed her story about the "Planned Parenthood Mission Viejo visit on or about July 7, 2023" numerous times. [ROA 87 ep 1, § 2; OB 11/14/2024 ep 54]. Even if there were no other examples (e.g., Laura admitting she deliberately altered evidence), the court may treat evasive or incomplete disclosure as failure to disclose. ARFLP 65(a)(3). That is exactly what occurred here:

> "While she failed to provide records of any Planned Parenthood appointment … [Clayton] presumably sought records from all

> Mission Viejo Planned Parenthoods as that is where, up until today, [Laura] disclosed she sought care. This undoubtably, caused [Clayton] 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, [Laura] acknowledged she altered hCG test results, an ultrasound and sonogram.") [ROA 126 ep 17-18].

Laura's assertion that she fully complied with the disclosure order [ROA 87] is simply not accurate. The trial court acted fully within the authority given under A.R.S. § 25-415.

A.R.S. § 25-809(G) and "separate motion" requirement

Next, she argues the court could not award attorney fees because "no motion was ever filed seeking sanctions under A.R.S. § 25-415 (or any of the other authority cited in the trial court's June 17th ruling." [OB 11/14/2024 ep 67]. In fact, the parties cited these authorities in filings throughout the matter. *See, e.g.,* [ROA 9 ep 10 (Clayton's initial Response); ROA 73 ep 7-8 (acknowledging both sides seek award and treating Laura's Motion to Dismiss as a request for attorney fees); ROA 95 ep 14; ROA 120 ep 14]. Laura asks this Court to declare fees can *never* be awarded unless a party files a separate motion requesting them [OB 11/14/2024 ep 45, fn.3], but the statutes do not even require a *formal request* from a party, let alone a separate motion. She frames the argument this way because a separate motion would be necessary to support her ubiquitous "safe harbor" interpretation, but there is no such requirement to be found in the statutes.

Lastly, Laura concedes that A.R.S. § 25-809(G) applies to this class of proceedings, saying: "… [t]he correct statute (A.R.S. § 25-809(g)) does permit fees to be awarded where a party has engaged in unreasonable litigation conduct and such conduct necessarily caused the other party to incur fees/costs […]." [OB 11/14/2024 ep 64]. She argues the court could not give this award, however, because Laura attempted to invoke safe harbor before most of the fees were incurred. In doing so, she imputes limitations on the statute that cannot be found in its text. The court may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any paternity proceeding. A.R.S. § 25-809(G) (emphasis added). Nothing in the statute declares those fees must be incurred before a given date or case event, nor does it contain any "safe harbor" or other provision allowing a party to withdraw from the litigation at their pleasure. Had the legislature intended to include a safe harbor provision—like it did in A.R.S. § 12-349—it would have. *City of Surprise v. Arizona Corp. Comm'n*, 246 Ariz. 206, 211 (2019) (applying *expressio unius* to find legislature intentionally included and excluded terms in a statute).

In a paternity action such as this one, the statute must necessarily account for defending a paternity action that is falsely premised from its inception, even if more fees are incurred toward the end of the proceedings than at the beginning. Clayton invoked § 25-809(G) in his responsive pleading—[ROA 9]—and has since

maintained the case was groundless. Clayton sought an order from the court determining he did not impregnate Laura. *See* A.R.S. § 25-806(D) ("If other relevant issues are raised in the petition or response … the court shall proceed to resolve all relevant issues in the case pursuant to the rules of procedure applicable to family law cases"). Clayton was absolutely within his right to request that relief, and Laura cannot claim surprise or prejudice that she lost control of the proceedings once a responsive pleading was filed. *Sundstrom v. Flatt*, 244 Ariz. 136, 137, ¶ 4, fn.2 (App. 2017) (finding no error in trial court's refusal to dismiss upon petitioner's motion to withdraw pleading because ARFLP 46 gives court broad discretion); *see also State v. Hansen*, 156 Ariz. 291, 294 (1988) ("[W]hether to grant a … motion for dismissal is within the sound discretion of the trial court"). Once a party invokes the court's subject matter jurisdiction, the court has discretion to rule in accordance with the evidence presented. "The petitioning party must be prepared for the possibility that the court will not view the evidence favorably to the petitioner." *Sundstrom* at 138, ¶ 7 (approving award of sole legal decision-making to respondent without requiring counterpetition). Put another way, an action *for* paternity is also an action *against* paternity. Whether Laura's positions were unreasonable at the beginning, middle, end, or all throughout the case, the court has broad discretion to award fees it deems reasonable.

IV. Issue 4 – The trial court did not abuse its discretion in awarding fees for unreasonableness and other litigation misconduct after denying Laura's motion to dismiss

A. Standard of review

A discretionary award of attorney fees will be affirmed if there is any reasonable basis for it. *Villa De Jardines Ass'n v. Flagstar Bank, FSB*, 227 Ariz. 91, 99, ¶ 25 (App. 2011).

B. The trial court did not abuse its discretion by awarding Clayton attorney fees

The main thrust of this argument is that Laura attempted to dismiss the case before Clayton incurred attorney fees, and therefore any fees incurred after her attempt to dismiss are per se unreasonable. The Opening Brief states, in pertinent part:

> Had Clayton's counsel simply picked up the phone in mid-December and asked Laura about her intentions (as Family Law Rule 9(c) required him to do), she would have informed him that she was no longer pregnant, and there was nothing further to litigate. Again, at that point, Clayton's fees were literally $0. [OB 11/14/2024 ep 69].

This argument is particularly misleading considering the history of this case, both in terms of when fees were incurred and what Laura asserts Clayton should have done. First, both parties had already incurred attorney fees resulting from the alleged pregnancy dispute before December 2023. Clayton consulted with counsel in the early stages of the paternity action and paid associated fees. [ROA 130 ep 63]. Although Clayton attempted to represent himself for some of the OOP/IAH

proceedings, he ultimately retained counsel for the evidentiary hearing in CV2023-053952 on November 2, 2023. The court considered the OOP/IAH proceedings as part of the final evidentiary hearing in the paternity action on June 10, 2024. [ROA 126 ep 2, 12-13, 18] (discussing stipulation of parties for court to review OOP/IAH hearings, Clayton's challenges to the validity of the OOP, and ultimately declining to award fees associated with OOP/IAH proceedings). Clayton incurred more attorney fees and costs leading up to Laura's first motion to dismiss. [ROA 130 ep 20-21]. It is true that *most* of the attorney fees were incurred after December 2023—Laura's conduct being the primary reason [ROA 126 ep 17-18]—but flatly asserting the fees were "literally $0" when the case was scheduled for administrative dismissal is literally false. Clayton incurred fees in the IAH matter and for legal consultations and costs before December. [ROA 130 ep 62].

Laura's assertion that counsel could simply have called and talked to her is similarly anachronistic. Laura hired an attorney—Ms. Platter—prior to filing the paternity action. Although she did not formally appear in the case, this attorney was actively communicating with Clayton on Laura's behalf. [ROA 129 ep 90, 189]. Another attorney, Mr. Lopez, represented Laura in the OOP/IAH matters (through October and November 2023). Clayton's counsel first appeared in the IAH case and directed communications through Mr. Lopez. Clayton's counsel entered appearance in the paternity action on December 12—[ROA 31]—but

would not have communicated with Laura while she was ostensibly being represented by one of the prior lawyers. By December 22, Ms. Lindvall had appeared on Laura's behalf. On December 29, Laura hired another attorney, Mr. Keith. After Mr. Keith withdrew on March 12, Laura hired her current attorney, Mr. Gingras. Throughout this time, Clayton was not in any position speak to Laura directly (nor she him) because of the OOP/IAH orders. The point of this history is that Laura was nearly always represented by counsel in some capacity. There was never a meaningful time Clayton's attorney could just "pick up the phone" and talk with her about the case. More importantly, even in December, Laura was still discussing the pregnancy (despite now asserting she knew she miscarried on November 14, 2023). *Compare* [OB 11/14/2024 ep 11] *with* [ROA 33 ep 7, 73] (From Laura's December 8, 2023 article on Medium.com: "I won't be sharing updates regarding the status of my pregnancy with Clayton. *I kindly ask not to receive congratulations or engage in discussions about Clayton and my pregnancy*").

If Laura truly believed the trial court had a duty to end the case in December 2023, she could have filed a special action. *State v. Meza*, 203 Ariz. 50, ¶ 18 ("The proper vehicle to challenge the denial of a motion to dismiss is not an appeal but a petition for special action"). If she was correct, as she argues, this would have avoided the subsequent proceedings. Instead, she deposed Clayton (on February 2,

2024) and expanded the litigation through her disclosure and discovery antics, bizarre motion practice, and other conduct. *See, e.g.,* [ROA 86] (Motion to Compel Lunch). Meanwhile, despite Laura's current claim that she was involuntarily forced to remain in the litigation, Clayton repeatedly offered to dismiss the case and withdraw all claims if Laura admitted she was not pregnant by Clayton and apologized. *See, e.g.,* [ROA 43 ep 12-13, 54-59; ROA 54 ep 13-14; ROA 65 ep 4; ROA 111 ep 7, 53]. Even before filing her motion to dismiss on December 28, Clayton's counsel provided a simple affidavit Laura could have signed to end the case. [ROA 43 ep 59]. The affidavit said: "I was never pregnant with Clayton Echard's child or children" and assented to dismissal with prejudice. *Id*. Clayton's goal was not to torment Laura or run up attorney fees. He needed confirmation, either in the form of a sworn statement or a court order, that he did not impregnate Laura to undo the damage her allegations had done. *See, e.g.,* [ROA 43 ep 17-28]. Obviously, she did not accept these offers, but she *did* threaten to sue Clayton for $1.4 million in a collateral action unless he agreed to unconditional dismissal in the paternity case (that she initiated) and cancel her deposition. Trial Ex. B55; [ROA 126 ep 12].

Lastly, the Opening Brief asserts the amount of the fees is not reasonable because of the technical and procedural arguments being made, but it does not effectively explain any challenge to the amount of fees awarded beyond

referencing the objections made below. [OB 11/14/2024 ep 68]. Therefore, to the extent Laura asks this Court to review the substantive application for fees on such grounds as the reasonableness of the hourly rate, the time expended, etc., the Opening Brief does not articulate those arguments. They must be considered waived. *In re Marriage of Pownall*, 197 Ariz. 577, 583, fn. 5 (App. 2000).

V. Issue 5 – Laura should not be awarded attorney fees on appeal

This argument asserts Laura is entitled to fees on appeal because of Clayton's "*other* conduct" of "aggressively litigat[ing] this *paternity establishment* action despite knowing Laura was no longer pregnant." [OB 11/14/2024 ep 70]. Laura's argument that Clayton should not have continued litigating after the alleged miscarriage is anachronistic, at best, because no one other than Laura knew whether she was pregnant or when that pregnancy had ended.

By the time of the motion to dismiss in December, only Laura knew about the "two sacs" she passed in "September or October" (or July 2023, as she later alleged). Only Laura knew about the October 16, 2023 hCG test showing "Laura had either miscarried, or that a miscarriage was inevitable." [OB 11/14/2024 ep 11; ROA 129 ep 146]. On October 18, Laura filed a Request for Pre-Decree Mediation arguing, "[Clayton] even acts as if the unborn children don't exist despite a pro ponderous of the evidence." [ROA 27 ep 2]. On October 24 and November 2, Laura testified that she had a "high-risk pregnancy," was "100%" "24 weeks"

pregnant, due on "February 14, 2024," and was being actively seen by Drs. "Makhoul" and "Higley," who she saw "last Friday." [ROA 126 ep 2]. On October 25, 2023, Laura testified in support of the "validity of the sonogram sent to" Clayton, and that she "believed she was having fraternal twins, one boy and one girl." [*Id.*]. She also "frequently stood up and rubbed what appeared to be a swollen abdomen" while on video during one of these hearings. [ROA 126 ep 2]. At one point, she asked if she could show her belly (on camera) to prove she was pregnant. [ROA 43 ep 3] (including screenshot and timestamps of hearing recording).

In short, although Laura knew all these facts about the alleged miscarriage, she continued to assert she was pregnant in sworn testimony and court filings. Laura did not give any detail until the status conference on February 21, 2024.[11] [ROA 126 ep 3]. Even in her December 28 motion to dismiss, she asserted she was "not now pregnant" without any further details. Clayton was appropriately skeptical of the assertion and asked for documentation. For example, if Laura miscarried November 2—a reasonable assumption given her testimony that day—

[11] Laura's Motion for Confidentiality and Preliminary Protective Order, filed January 17, 2024, references "her miscarriage" in the context of information she did not want disclosed, which also included previous relations, previous pregnancies, etc. [ROA 51 ep 4]. It is not clear whether "her miscarriage" was meant to convey she experienced a miscarriage in this case or was referencing a past event.

the miscarriage would have resulted in the issuance of death certificates to the Department of Vital Records. A.R.S. § 36-329. By this time, Clayton was also aware of Laura's past litigation alleging a "coerced abortion" and intentional infliction of emotional distress against another person. (Laura later commanded the court to take judicial notice of that action, so its existence became part of the trial record). *See* [ROA 90]. Obtaining proof of how the pregnancy ended would certainly help to elucidate whether there was a pregnancy in the first place, and Clayton was entitled to that evidence.

When Laura moved to dismiss the action, Clayton had already filed his responsive pleading and made affirmative claims for relief. *See* [ROA 9]; [ROA 32]; [ROA 33]; [ROA 43]. Clayton objected to the dismissal because his claims, including a determination about whether Laura was ever pregnant by him in the first place, still needed to be adjudicated. The court followed proper procedure when finding voluntary dismissal was not appropriate and maintaining the action to resolve the remaining claims for non-paternity, attorney fees, and sanctions. *See* ARFLP 46(a)(1)(B). Under ARFLP 46, the petitioner loses the right to unconditional dismissal after a responsive pleading is filed. Voluntary dismissal after a responsive pleading requires a motion *and* the court's approval. *Id*. The court *may* dismiss a petition after a response is filed, but only on such terms and conditions as the court deems proper, including the resolution of any claims by the

responding party. *Id*. Here, the court determined dismissal was not proper because Clayton's claims needed to be resolved.

At that time, Laura's primary argument for dismissal was that the court lost jurisdiction once the pregnancy ended. [ROA 37 ep 2]. It did not. Subject matter jurisdiction is established at the time of filing and cannot be ousted by subsequent actions or events. *Fry v. Garcia*, 213 Ariz. 70 (App. 2006); *Resolution Trust Corp. v. Foust*, 177 Ariz. 507 (App. 1993); *State v. Howell*, 107 Ariz. 300, 301 (1971) ("Jurisdiction depends upon the state of affairs existing at the time it is invoked … and once having attached is not lost by subsequent events") (internal citation omitted). Arizona law favors retention of jurisdiction unless divestiture can be clearly and unambiguously found. *Fry*, 213 Ariz. at 73; *Pritchard v. State*, 163 Ariz. 427, 430 (1990). The only divestiture language Clayton's counsel can find in the statutory scheme for paternity actions is in A.R.S. § 25-805 (effect of death, absence or insanity of plaintiff). That statute permits the state to assume the petitioner's place in those circumstances but is silent as to the effect of death of the unborn fetus or child. Had the legislature intended to abate paternity proceedings automatically in the event of a miscarriage, it certainly could have done so. It is not difficult to imagine scenarios in which continuing the paternity action after miscarriage is necessary and appropriate, such as for insurance claims or establishing the family's standing to sue for wrongful death. Conversely, in cases

like this one, the putative father may have need to prove *non*-paternity even if the pregnancy does not end in live birth. To the extent Laura argues the trial court's jurisdiction automatically abated upon her allegation she was no longer pregnant, this argument must also fail.

ATTORNEY FEES ON APPEAL

Echard requests an award of attorney fees incurred on appeal pursuant to A.R.S. §§ 25-324 and 25-809(G). Owens has maintained unreasonable positions throughout the proceedings. Her appeal—particularly regarding Rule 26 and the fees statutes—does not make colorable claims for interpreting or expanding the law. Instead, her appeal mostly seeks to misdirect this Court with incomplete, inaccurate, and sometimes even substituted recitations of the record and precedents.

CONCLUSION

The trial court admirably resolved this difficult matter and wrote a detailed, comprehensive, and legally complete judgment. The appellant has shown no reversible error. Clayton requests this Court affirm the trial court's judgment in all respects, deny Petitioner's appeal, and award Respondent his reasonable attorney fees and costs on appeal, under A.R.S. § 25-324 and A.R.S. § 25-809(G), upon compliance with ARCAP 21.

CERTIFICATE OF COMPLIANCE

Pursuant to Ariz. R. Civ. App. Proc. 14, undersigned counsel certifies that the Answering Brief contains 13,792 words in the body text, including footnotes, as calculated using the word processing system used to prepare the brief. *See* ARCAP 14(b) and 4(b)(9). The brief uses 14-point Times New Roman font, is double-spaced except for permitted single-spaced quotations, and complies in all other respects with the formatting requirements outlined in the Arizona Rules of Civil Appellate Procedure.

DATED January 9, 2025.

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CERTIFICATE OF SERVICE

Pursuant to Ariz. R. Civ. App. Proc. 4(g), undersigned counsel certifies that the Answering Brief has been filed and delivered to the Court of Appeals using the e-filing system on January 9, 2025. A copy of the Answering Brief has been delivered contemporaneously to the following party by email:

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