IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

LAURA OWENS,
Petitioner/Appellant,

v.

CLAYTON ECHARD,
Respondent/Appellee.

No. 2 CA-CV 2024-0315
Filed March 28, 2025

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Maricopa County
No. FC2023052114
The Honorable Julie A. Mata, Judge

AFFIRMED

COUNSEL

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By David S. Gingras
Counsel for Petitioner/Appellant

Woodnick Law PLLC, Phoenix
By Markus Risinger
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Eckerstrom and Judge Sklar concurred.

V Á S Q U E Z, Judge:

¶1 In this paternity action, Laura Owens appeals the trial court's award of attorney fees and costs in favor of Clayton Echard. She argues that Echard's "failure to comply with the safe harbor requirements of Rule 26[, Ariz. R. Fam. Law P.], precluded sua sponte sanctions" under any authority and that the amount of fees awarded was unreasonable. She also argues the court committed structural error by conducting its own post-trial investigation into the facts of the case. For the following reasons, we affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to sustaining the trial court's findings and orders. *Hefner v. Hefner*, 248 Ariz. 54, n.2 (App. 2019). In May 2023, Owens and Echard had an intimate encounter. Shortly thereafter, Owens learned she was pregnant. In August 2023, she filed a paternity petition, alleging Echard was the father. Echard denied paternity.

¶3 In December 2023, the case was placed on the administrative dismissal calendar for lack of prosecution. Echard moved to extend the dismissal date, arguing that he was "entitled to an adjudication/finding of non-paternity." He also requested an evidentiary hearing on the paternity issue, attorney fees, and Rule 26 sanctions. In response, Owens informed the trial court she "[wa]s no longer pregnant" and, thus, "[t]here [was] nothing left . . . to adjudicate, and this case should be dismissed." She simultaneously moved to dismiss the case with prejudice; Echard opposed.

¶4 Echard then separately moved for Rule 26 sanctions, arguing Owens's petition was filed for an improper purpose, her motion to dismiss was "unsupported by existing law," and her "factual contentions [were] not supported by evidence and did not become supported by evidence after investigation and discovery." Owens responded that Echard had not complied with Rule 26's requirements because he did not provide her with "written notice of specific conduct alleged to have violated Rule 26" and that she was, therefore, not "afforded time to cure any alleged deficiencies." Echard eventually moved to withdraw his Rule 26 motion, arguing that

"there [was] no reason to participate in the pointless litigation over this issue . . . notwithstanding [his] disagreement with [Owens's] legal positions on Rule 26" because Rule 26 was "not the substantive pleading basis for his claims" for attorney fees and sanctions. The court extended the dismissal deadline, denied Owens's motion to dismiss, and set an evidentiary hearing on "the issue of sanctions and attorney fees."

¶5 After the evidentiary hearing in June 2024, the trial court granted Echard's request for attorney fees and costs. In July, Owens filed a notice of change of judge for cause under Rule 6.1, Ariz. R. Fam. Law P., arguing the judge was biased and had engaged in conduct that violated her right to due process. The presiding judge denied her motion, concluding Owens had failed to prove by a preponderance of the evidence that the judge was biased or prejudiced. Also in July, Owens moved for relief from the judgment or, alternatively, to alter or amend the judgment, which the court ultimately denied. In August, the court awarded Echard attorney fees and costs in the amount of $149,219.76. This appeal followed. We have jurisdiction under A.R.S. §§ 12-120.21 and 12-2101(A)(1).[1]

Discussion

I. Attorney Fees

¶6 Owens argues that because Echard did not comply with Rule 26's safe harbor requirements, she was "shield[ed] . . . from any punishment arising from her alleged violation of Rule 26."[2] As a

[1]The trial court's August 2024 judgment was not certified as final under the applicable rules, and the June 2024 ruling was improperly certified as appealable under Rule 78(b), Ariz. R. Fam. Law P. We therefore suspended the appeal and revested jurisdiction with the trial court to allow it to enter a final, appealable order. After that court amended the August 2024 judgment to include the requisite finality language under Rule 78(c), Ariz. R. Fam. Law P., we vacated the stay and revested jurisdiction in this court.

[2]Rule 26(b) provides that by signing a court filing, a party is, among other things, certifying that it is not being filed for an improper purpose, the claims are supported by existing law and are non-frivolous, and the factual contentions have evidentiary support. If a party violates the rule, the trial court may impose sanctions, including reasonable attorney fees. Ariz. R. Fam. Law P. 26(c). However, before seeking sanctions under the

preliminary matter, we note that a significant portion of Owens's appellate argument relies on her incorrect assertion that the trial court ordered sanctions under Rule 26. The court expressly awarded "attorney fees and costs" under A.R.S. §§ 25-324 and 25-415. We thus decline to consider whether an award under Rule 26 would have been proper.[3] *See Freeport McMoRan Corp. v. Langley Eden Farms, LLC*, 228 Ariz. 474, ¶ 15 (App. 2011) (appellate courts do not decide unnecessary issues or issue advisory opinions).

¶7 We review the trial court's decision to award attorney fees and sanctions under §§ 25-324 and 25-415 for an abuse of discretion. *Myrick v. Maloney*, 235 Ariz. 491, ¶ 6 (App. 2014) (§ 25-324); *Hays v. Gama*, 205 Ariz. 99, ¶¶ 14, 17 (2003) (discovery sanctions). But we review a court's interpretation and application of statutes de novo. *Clark v. Clark*, 239 Ariz. 281, ¶ 6 (App. 2016) (§ 25-324); *Riepe v. Riepe*, 208 Ariz. 90, ¶ 5 (App. 2004) (§ 25-415).

¶8 Owens argues that because the hearing was set in response to Echard's Rule 26 motion, and because he did not file any other motion for fees or sanctions, "[o]f course the court sanctioned [her] under Rule 26." Relying on Rule 35(a)(1), Ariz. R. Fam. Law P., Owens contends a fee or sanctions request must be made by separate motion. While this is true for Rule 26 sanctions, Ariz. R. Fam. Law P. 26(c)(3)(A), the same is not true for attorney fees requests under § 25-324, Ariz. R. Fam. Law P. 78(e)(1); *see Lundy v. Lundy*, 242 Ariz. 198, ¶ 15 (App. 2017), or sanctions for litigation misconduct under § 25-415, *cf. Hays*, 205 Ariz. 99, ¶ 17 (court can impose discovery sanctions under its "inherent contempt power").

¶9 Nevertheless, Echard properly requested attorney fees and costs under those authorities throughout the litigation. For example, he requested attorney fees and costs under § 25-324, "based on [Owens's] unreasonableness," in his motion to extend the dismissal date on the inactive calendar and schedule an evidentiary hearing, which was filed

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rule, the moving party must attempt to resolve the matter by consultation. Ariz. R. Fam. Law P. 26(c)(2).

[3]In its ruling, the trial court ruminated about whether it could sua sponte award sanctions under Rule 26 after a party moves and then withdraws a motion for Rule 26 sanctions. Presumably, it did so because this question was heavily litigated by the parties below. Ultimately, however, the court did not award Rule 26 sanctions.

before Owens moved to dismiss the case. Echard made the same request under § 25-324 in his reply, as well as in an amended response to the paternity petition. Moreover, in Echard's motion to withdraw his Rule 26 motion, he argued that he was entitled to attorney fees and costs under A.R.S. §§ 25-324, 25-415, and 25-809(G), and that his "claims for fees and sanctions exist independently" of Rule 26.[4] These requests were also repeated with supporting arguments in his pretrial statement.

¶10 Owens argues the trial court lacked the authority to impose attorney fees and sanctions independently from Rule 26 because Echard filed and subsequently withdrew the Rule 26 motion. She maintains that Rule 26 "must control and must provide the exclusive remedy" for conduct that would fall under a Rule 26 violation. In support of this argument, she relies on the proposition that when "two rules deal with the same subject, the more specific rule controls." *In re Marriage of Thorn*, 235 Ariz. 216, ¶ 6 (App. 2014). But the statutes under which the court granted attorney fees do not govern the same subject matter as Rule 26. Section 25-324 governs attorney fees, not sanctions. And the sanctions for costs and attorney fees that the court ordered under § 25-415 were based on Owens "knowingly present[ing] a false claim, [and] knowingly violat[ing] a court order compelling disclosure or discovery," which is distinct from conduct that would constitute a Rule 26 violation. *Compare* § 25-415(A)(3), *with* Ariz. R. Fam. Law P. 26(c). We decline to "hastily find a clash between a statute and court rule," *Duff v. Lee*, 250 Ariz. 135, ¶ 14 (2020), especially when the statue and rule govern different subjects.

¶11 Owens next argues that the attorney fees and costs awarded under §§ 25-324 and 25-415 were improper because they were neither "necessary nor reasonable." She asserts Echard's fees "were literally $0" prior to November 2023 and if his counsel had "simply picked up the phone in mid-December and asked [her] about her intentions . . . she would have informed him that she was no longer pregnant, and there was nothing

[4]Echard repeated this argument in his response to Owens's combined motion for judgment on the pleadings and his renewed motion to dismiss. The trial court found Owens's motion to be moot and "decline[d] to take further action." However, there was a delay in the parties' receipt of the court's ruling, and the court found this motion was "filed with the belief the court had not accepted [Echard's] motion to withdraw."

further to litigate." She similarly argues that Echard's decision to file the Rule 26 motion was the precipitating factor in incurring fees. She contends that if Echard had "done nothing," the case would have been administratively dismissed "without a single dollar of fees incurred by either side." Therefore, she maintains that even if her petition were unreasonable, it was not the filing itself that caused fees to be incurred but rather Echard's choice to pursue sanctions. But that administrative dismissal would have been without prejudice, so it would not have precluded Owens from initiating a future paternity action. Nor would that dismissal have been equivalent to the order Echard sought—and ultimately obtained—that he was not the father in connection with the alleged pregnancy.

¶12 At any rate, none of these scenarios posited by Owens have any bearing on the propriety of the fees awarded in this case, as that determination must be based not on conjecture, but on what actually occurred. At the time of Echard's request for an evidentiary hearing on the paternity issue, attorney fees, and Rule 26 sanctions, Owens had not informed him that she was going to move to dismiss the case. And in her response to Echard's request, filed simultaneously with her motion to dismiss, she acknowledged that "the only remaining issue [was Echard's] request for attorney fees." Echard objected to Owens's motion to dismiss, arguing her avowal that she was "no longer pregnant" was insufficient to grant a dismissal. He also requested an "adjudication that she was never pregnant or, at least, that she was never pregnant by [him]" and an evidentiary hearing on his attorney fees request. The trial court ultimately granted Echard's motion to extend the dismissal deadline, stating "the issue of sanctions and attorney's fees remain." Owens does not challenge this ruling on appeal. And the fact that the parties incurred attorney fees because they heavily litigated these issues was within the court's discretion to consider and not something this court will reweigh.

¶13 Here, the trial court found Owens had "acted unreasonably in the litigation" by filing the case "without basis or merit." *See* § 25-324 (court may award attorney fees after considering, in part, "the reasonableness of the positions each party has taken throughout the proceedings"); *see also Magee v. Magee*, 206 Ariz. 589, n.1 (App. 2004) ("[A]n applicant need not show both a financial disparity and an unreasonable opponent in order to qualify for consideration for an award."). The court also found it "disingenuous at best but certainly misleading to the [c]ourt" that Owens had testified the purpose of her motion seeking mediation was to inform Echard the pregnancy was not viable. It further found she had

failed to comply with disclosure requirements, which "caused [Echard] to incur substantial legal fees attempting to locate records that may, or may not [have] exist[ed]." The court also concluded that § 25-324(B) applied because Owens had "provided false testimony as to the viability of the pregnancy" and had sent Echard a letter prior to her deposition that "indicat[ed] her intention to sue him for 1.4 million dollars in collateral allegations unless he agreed to dismiss this action that she initiated."

¶14 On appeal, Owens does not meaningfully challenge these findings but, instead, argues § 25-324 does not apply in paternity actions. Section 25-324(A) permits a court to "order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under [chapter 3] or chapter 4, article 1 of this title." Chapter 3 governs dissolution of marriage and, relevant here, chapter 4, article 1 governs legal-decision making and parenting time. Owens argues that paternity actions are "[b]y definition" excluded. A family court's authority to conduct legal decision-making and parenting time proceedings is provided by A.R.S. § 25-402. Under that statute, a parent is required to request such a determination in "any proceeding for marital dissolution, legal separation, annulment, paternity or modification of an earlier decree or judgment." § 25-402(B)(1); *see Tanner v. Marwil*, 250 Ariz. 43, ¶ 11 (App. 2020). Here, Owens petitioned the trial court for orders concerning paternity, legal decision-making, parenting time, and child support. While the court ultimately did not issue legal decision-making and parenting time orders, Echard "defend[ed] any proceeding under . . . chapter 4, article 1 of this title," by virtue of Owens's petition, as was reflected in his amended response. § 25-324(A).

¶15 Even assuming the trial court's fee award was improper under § 25-324 because of this case's procedural posture, the court's findings would have supported a fee award under § 25-809(G). *See Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9 (App. 2006) (we may affirm trial court if legally correct for any reason). Echard cited § 25-809 in seeking attorney fees, so the issue was also properly before the court. The language in § 25-809(G) largely mirrors that in § 25-324(A), and permits a court to "order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any [paternity] proceeding." We reject Owens's suggestion that this paternity action somehow transformed into some other type of proceeding because the parties only incurred fees after it was scheduled for administrative dismissal without prejudice. The court did not err in awarding attorney fees.

¶16 The trial court also properly awarded fees and costs as a sanction under § 25-415. The court found that fees under this statute were appropriate because Owens had "knowingly violated a court order compelling disclosure or discovery." Owens argues she fully complied with the court's disclosure order as was "demonstrated by the fact [Echard] never brought any motion seeking sanctions under A.R.S. § 25-415." She argues because no motion had been filed, she did not have the opportunity to prove she fully complied with the court's order. Although § 25-415 does not require the filing of a separate motion, as previously noted, Echard requested relief under this statute. Section 25-415(A)(3) states that "[t]he court shall sanction a litigant for costs and reasonable attorney fees incurred by an adverse party if the court finds that the litigant . . . [v]iolated a court order compelling disclosure or discovery."[5] Here, the court made such a finding; thus, it was required to sanction Owens for the costs and reasonable attorney fees Echard had incurred. Owens does not meaningfully challenge that finding. Again, the court did not err in awarding Echard his costs and reasonable attorney fees.

¶17 On appeal, Owens also claims that the amount of the fee award was unreasonable. The substance of her argument is that below she had "noted the *amount* of fees was patently unreasonable in light of the controlling standard of E[thical] R[ule] 1.5." But because she "fails to identify with any particularity what evidence supports" her argument, "we conclude that the court did not abuse its discretion in fixing the amount of attorneys' fees it awarded [Echard]." *A. Miner Contracting, Inc. v. Toho-Tolani Cnty. Imp. Dist.*, 233 Ariz. 249, ¶ 43 (App. 2013).

II. Denial of Motion for Relief from Judgment

¶18 Owens argues that the trial court erred by denying her motion for relief from judgment or, alternatively, to alter or amend the judgment. We review the denial of such motions for an abuse of discretion. *Pullen v. Pullen*, 223 Ariz. 293, ¶ 10 (App. 2009) (motion to alter or amend judgment); *Quijada v. Quijada*, 246 Ariz. 217, ¶ 7 (App. 2019) (motion for relief from judgment). Because Owens does not argue how the court erred in denying her motion but instead asserts that the "only available remedy" is "automatic reversal" because the "misconduct is per se structural error of

[5]Section 25-415(A)(3) provides two exceptions: if "the court finds that the failure to obey the order was substantially justified or that other circumstances make an award of expenses unjust," it is not required to impose sanctions. The trial court made no such findings here.

the most obvious kind," we do not address the court's denial of her motion. *See Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2 (App. 2007) (undeveloped argument waived on appeal).

III. Judicial Bias

¶19 Owens argues the trial court improperly "performed an independent and undisclosed investigation into the facts of this case" and, from this investigation, "made post-trial findings" not based "on the evidence admitted at trial." In the findings of fact section of its ruling, the court stated that Echard's expert had "testified that Planned Parenthood is not open on Sundays, when [Owens] testified, she sought care July 2, 2023 [a Sunday]." The parties agree the expert did not testify that Planned Parenthood is closed on Sundays, and that the court's finding was therefore erroneous. Instead, they dispute which standard of review should apply. Owens argues this amounted to structural error, requiring automatic reversal, because it "prove[s] the trial judge was biased, as shown by the judge's decision to engage in unlawful conduct which violated [her] right to due process." Conversely, Echard argues that "[t]he controlling standard for alleged mistakes in family law proceedings is harmless error."

¶20 Structural error is generally applied in criminal cases and is error that affects the framework within which the trial proceeds, rather than simply an error in the trial process itself. *State v. Henderson*, 210 Ariz. 561, ¶ 12 (2005). "The Supreme Court has defined relatively few instances in which we should regard error as structural," but one of those instances is "a biased trial judge." *State v. Ring*, 204 Ariz. 534, ¶ 46 (2003). We nevertheless decline to apply a structural-error analysis given the record before us.

¶21 Here, Owens moved for a change of judge for cause under Rule 6.1, Ariz. R. Fam. Law P., on the basis of bias and prejudice within the meaning of A.R.S. § 12-409(B)(5). The presiding judge denied her motion. While acknowledging that the trial judge's finding about Planned Parenthood's business hours was clearly erroneous, the presiding judge concluded that Owens had "failed to show by a preponderance of the evidence" that this finding "reflect[ed] bias or prejudice against [her]." Owens contends that we need not "separately decide whether the Presiding Judge erred when she denied [Owens]'s Notice of Change of Judge For Cause" because the requested "relief is subsumed within the structural error arguments" that we "must review de novo." But as we explain below, the record does not show that the trial judge was biased. Thus, even assuming without deciding that structural error applies in family cases, it

did not occur, and the presiding judge did not abuse her discretion in denying Owens's motion for change of judge for cause. *See Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562, ¶ 21 (App. 2013) ("We review for an abuse of discretion the denial of a motion for change of judge based on a claim of judicial bias.").

¶22 Owens argues the trial court's erroneous finding of fact demonstrated it was biased and therefore committed structural error. Her argument is based on conjecture; she does not provide any evidence showing actual bias. Her claim of bias is based on her assertion that the court intentionally "tried to conceal [its] misconduct" in "performing [its own post-trial] investigation into the facts" by "falsely attributing the testimony" to Echard's expert. Owens claims this is the "only plausible conclusion" given that online supporters of Echard had "vociferously post[ed] about this issue online hours after the trial ended." These unsupported and speculative allegations fail to meet her burden to prove bias by a preponderance of the evidence. *State v. Ellison*, 213 Ariz. 116, ¶ 37 (2006).

¶23 Owens further contends that "*any* independent factual investigation by a trial judge is unlawful . . . [and] shows bias." But for structural-error review to apply, the type of judicial bias that must be shown is that which implicates a party's due process rights, "such as bias based on a 'direct, personal, substantial pecuniary interest.'" *State v. Granados*, 235 Ariz. 321, ¶ 11 (App. 2014) (quoting *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)). None of those grounds apply here. We therefore review for an abuse of discretion. *Stagecoach Trails MHC, L.L.C.*, 232 Ariz. 562, ¶ 21.

¶24 While a trial court's reliance on extra-judicial information may give rise to a claim of judicial bias apart from any structural-error claim, *see State v. Emanuel*, 159 Ariz. 464, 469 (App. 1989), the critical inquiry that would require reversal is whether the conduct demonstrates an "extrajudicial source of bias or deep-seated favoritism," *Stagecoach Trails MHC, L.L.C.*, 232 Ariz. 562, ¶ 21. Owens correctly notes that the court misstated trial testimony. But she is incorrect in asserting that "because harmless error analysis does not apply," she does not need to make a separate showing of resulting prejudice. "Prejudice will not be presumed but must be evidenced from the record." *Town of Paradise Valley v. Laughlin*, 174 Ariz. 484, 487 (App. 1992); *see* Ariz. R. Fam. Law P. 86 ("Unless justice requires otherwise, an . . . error by the court or a party . . . is not grounds for . . . disturbing a judgment or order."). Therefore, even if the court conducted independent research, under a prejudice analysis, we would still

have to determine whether Planned Parenthood's business hours were "vitally important" to the court's ultimate conclusions, as Owens claims. However, Owens does not argue prejudice. Consequently, the presiding judge did not err in denying Owens's motion for change of judge for cause. The record does not show judicial bias and Owens does not challenge any of the presiding judge's rulings under the appropriate standards for appellate review. *See Polanco*, 214 Ariz. 489, n.2.

IV. Attorney Fees on Appeal

¶25 Owens and Echard request their attorney fees and costs on appeal under § 25-809(G). Echard additionally requests fees and costs under § 25-324. Under both statutes, the court may award attorney fees and costs "[a]fter considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings." § 25-324(A); § 25-809(G). While the record does not support a disparity in the parties' financial resources, Owens's position on appeal is unreasonable. *See Magee*, 206 Ariz. 589, n.1. Her Rule 26 argument is not grounded in law or fact. Likewise, her assertion that the trial judge was biased and committed structural error does not meaningfully address the trial court's rulings below and also ignores the applicable jurisprudence. We therefore award Echard his reasonable attorney fees and costs on appeal upon his compliance with Rule 21, Ariz. R. Civ. App. P. *See* § 25-809(G) (fees); § 12-341 (costs).

Disposition

¶26 For the foregoing reasons, we affirm the trial court's judgment.