Court of Appeals

STATE OF ARIZONA
DIVISION TWO

Laura Owens, Petitioner/Appellant, v. Clayton Echard, Respondent/Appellee.	Case No. 2 CA-CV-0315 FC Maricopa County Superior Court Case No. FC2023-052114 Judge Julie A. Mata

MOTION FOR RECONSIDERATION

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I. INTRODUCTION

Pursuant to Ariz. R. Civ. App. P. 22, Petitioner Laura Owens respectfully moves for reconsideration of this Court's decision dated March 28, 2025. Laura understands reconsideration is rarely granted and is *not* an appropriate vehicle to rehash arguments previously raised and rejected. At the same time, Rule 22 allows the "appellate court to consider whether its decision contained erroneous determinations of fact or law."

Here, the Memorandum Decision contains erroneous determinations of both fact and law which directly affected the decision. For that reason, reconsideration is appropriate.

II. DISCUSSION

A. The Structural Error Analysis Misstated Arizona Law

In her appellate briefing, citing cases such as *Marchese v. Aebersold*, 530 S.W.3d 441 (Ky. 2017), Laura argued the trial judge violated the Due Process Clause and committed structural error by considering extra-judicial evidence (relating to the business hours of Planned Parenthood in Los Angeles). This Court rejected Laura's arguments for several reasons. Due to the limited nature of reconsideration requests, Laura will not re-raise the same legal arguments this Court has already considered.

Instead, Laura notes this Court's own legal analysis of that point rests on an erroneous application of Arizona law. Specifically, on page 10, ¶ 24 of its decision, after rejecting Laura's structural error argument, this Court explained the law as follows:

> 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.

This statement is incorrect. It contradicts the cited authority and is not an accurate statement of Arizona law. In fact, the cited authority requires reversal of the lower court's judgment in this case.

That conclusion comes from the first case cited, *State v. Emanuel*, 159 Ariz. 464 (App. 1989), which involved a defendant who worked as a legal secretary in the Yuma area. The defendant was charged with theft. As the case explains, "The victim of the theft was the clerk of the Yuma County Superior Court." *Emanuel*, 159 Ariz. at 465.

After accepting a plea, the defendant appeared for sentencing where she asked the judge to disqualify himself, arguing bias. The defendant explained to the judge: "I feel that you have personal disgust and animosity

and hatred and maybe dislike for me and that you are on a personal basis with the victim which I believe could cause bias." *Id.*

The judge refused to recuse. In his colloquy with the defendant, the judge explained prior to sentencing, he talked privately with other lawyers who knew the defendant, as well as the court clerk (the victim). According to the judge, those *ex parte* discussions were *not* prejudicial. On the contrary, the judge stated: "I did talk to two lawyers and I did talk to the clerk. What they told-or that is what the lawyers told me was, what I would say, is in your favor." 159 Ariz. at 466 (emphasis added).

On appeal, the defendant argued the judge's *ex parte* communications mandated recusal and entitled her to resentencing before a different judge ***without*** *any other showing of bias or prejudice required*. The Court of Appeals agreed; "Where a trial judge personally investigates a defendant's background, *ex parte,* prior to sentencing, must he recuse himself from sentencing? We hold that he must." *Id.* at 465 (emphasis added).

When judicial misconduct of this type takes place, *Emanuel* **did not** hold: "the critical inquiry that would require reversal is whether the conduct demonstrates an 'extrajudicial source of bias or deep-seated favoritism'". *Emanuel* says no such thing. In fact, it says *exactly the opposite*.

Nothing in *Emanuel* states prejudice is required, or that a judge's consideration of extra-judicial evidence is subject to harmless error review. *Emanuel* held the opposite – the defendant's sentence was vacated and the matter remanded for resentencing without any other showing or even any discussion of prejudice or bias; the judge's consideration of extra-judicial evidence was, standing alone, the only proof of bias required.

Likewise, the other case cited by this Court —*Stagecoach Trails MHC, L.L.C. v. City of Benson*, 232 Ariz. 562 (App. 2013) — does not support the cited premise (i.e., that when **judicial misconduct** occurs, "the critical inquiry that would require reversal is whether the conduct demonstrates an "extrajudicial source of bias or deep-seated favoritism …." Memo. Op. at ¶ 24. This misstates the holding of *Stagecoach Trails*.

Unlike *Emanuel* and this case, *Stagecoach Trails* did not involve judicial misconduct. Rather, the sole argument in *Stagecoach Trails* was the trial judge's rulings were too one-sided. Despite the well-settled rule that bias cannot be established solely by adverse rulings, the presiding judge granted a hearing and allowed the defendant to offer *other* proof of bias (which it failed to do).

As a result, the defendant's bias claim failed, producing the quote this

Court applied here, out of context. Viewed in full context, the error is clear; "Judicial rulings alone do not support a finding of bias or partiality *without a showing of an extrajudicial source of bias or a deep-seated favoritism.*" *Stagecoach Trails*, 232 Ariz. at 568 (emphasis added).

This rule has no application here. Laura's structural error argument was never based on "judicial rulings alone". Furthermore, *Stagecoach Trails* did not involve the trial judge conducting *ex parte* interviews or considering extra-judicial evidence. As such, *Stagecoach Trails* does not support this Court's conclusion that a structural error claim based on a judge reviewing *ex parte* evidence requires a separate showing of "bias or a deep-seated favoritism". The case says no such thing.

To the extent this Court held *Emanuel* and/or *Stagecoach Trails* require a showing of prejudice when a judge considers extra-judicial evidence (or that such conduct was not established by the evidence in this case), it misstated Arizona law. When a judge considers *ex parte* evidence, that is *the only showing of bias required* (as the Court held in *Emanuel*). Arizona law does not require any further showing of actual prejudice or bias in cases involving the specific type of misconduct which occurred here; the misconduct itself *is conclusive* proof of bias.

B. Reversal Is Mandatory Because The Trial Court Failed To Make The Required Statutory Findings To Support An Award of Fees Under A.R.S. §§ 25-324 or 25-809

The Court is familiar with the procedural history of this case, so a full discussion is unnecessary except to note a few basic facts. The case began with a petition to establish paternity filed by Laura on August 1, 2023.

In the form pleading she filed, Laura checked a simple box asking the court to award "reasonable parenting time". Laura also submitted a generic, *pro forma* plan proposing joint custody with equal time. [ROA 4]

Laura's Petition To Establish – ROA 1

b. PARENTING TIME: Award parenting time as follows:

- [X] **Reasonable parenting time** rights as described in the Parenting Plan, **OR**
- [ ] **Supervised parenting time** between the children and [ ] Party A **OR** [ ] Party B, **OR**
- [ ] **No parenting time** rights to the [ ] Party A **OR** [ ] Party B.

These two pleadings – Laura's *pro se* petition and generic parenting plan – are the only pleadings ever filed in this case where parenting time issues were raised or discussed in any substantive way.

In his *pro se* response, Respondent Clayton Echard denied paternity. As for parenting time, Clayton's response was entirely blank. Clayton never submitted a parenting plan of his own (hardly surprising given that no children were ever born).

Clayton's Parenting Time Position — ROA 9

Case No. FC2023-052114

B. PARENTING TIME: Award parenting time as follows:

☐ **Reasonable parenting time rights** as described in the Parenting Plan, **OR**

☐ **Supervised parenting time** between the children and ☐ Party A **OR** ☐ Party B, **OR**

☐ **No parenting time** rights to the ☐ Party A **OR** ☐ Party B.

After Clayton retained counsel in mid-December 2023, the first substantive pleading he filed was a request to *amend* his response to Laura's petition. In that pleading, Clayton sought leave to add a request for Rule 26 sanctions, while also *withdrawing* his request for fees under A.R.S. § 25–809 (and adding a request for fees under § 25-324 based on Laura's general "unreasonableness", without any mention of parenting time).

Clayton's Motion for Leave to Amend — ROA 33

WHEREFORE, based upon all of the foregoing, Respondent respectfully requests the Court enter the following Orders:

A. Issue an order declaring that Respondent is not the natural father of ~~**the minor children;**~~ **any children born to Petitioner;**

~~**B. Order that both parties be ordered to submit to such blood and tissue tests as may be necessary by this Court to establish paternity, and Petitioner be ordered to pay all costs and expenses of this lawsuit under Arizona law, A.R.S. 25-809.**~~

C. Issue an Order compelling Ravgen Inc produce all records and documents related to the fetal DNA testing in this matter;

D. That this Court sanction Petitioner pursuant to Rule 26;

E. That this Court award Respondent his reasonable attorney's fees and costs based on Petitioner's unreasonableness, pursuant to A.R.S. § 25-324;

While parenting time was never litigated, because no children were ever born, the issue of Rule 26 sanctions was litigated *extensively and aggressively*. Just days after Clayton raised the issue of Rule 26 sanctions, Laura retained counsel who apparently had a single phone discussion with Clayton's counsel regarding Rule 26. The next day, on December 28, 2023, Laura invoked the safe harbor provision of Rule 26 by moving to dismiss her petition, *with prejudice*, explaining she was no longer pregnant. [ROA 37].

Despite Laura invoking the safe harbor of Rule 26, and before Clayton's request to amend his pleading was granted, Clayton filed a Motion for Rule 26 sanctions. [ROA 45] This filing caused in the parties to spend nearly four months aggressively litigating the question of Rule 26 sanctions (but not parenting time, as that issue was moot by then), which eventually concluded when Clayton withdrew his Rule 26 motion on April 3, 2024. [ROA 83]

The record is clear — the parties did spend extensive time litigating Rule 26 sanctions, but spent no time litigating parenting time. For that reason, Laura took the position (both in the trial court and in this appeal), that the award of $150,000 of fees and costs must have been made under Rule 26, not A.R.S. § 25–324 or 809(G).

In its Memorandum Decision, this Court rejected Laura's position, concluding that because the trial court "expressly awarded fees and costs under A.R.S. § 25–324 and 25–415", any discussion of Rule 26 was simply irrelevant and unnecessary. This aspect of the Court's decision was incorrect as a matter of law for a separate reason the Court appears to have overlooked — while this Court correctly noted that Clayton generally asked for fees under other authority at various times (including A.R.S. § 25–324), and while the Court is correct that other statutes like A.R.S. § 25–324 were generally *mentioned* in the lower court's post-trial under advisement ruling, this Court overlooked the fact the trial court never made the specific statutory findings required to support an award under A.R.S. § 25–324. That fact, standing alone, requires reversal here. *See Kent v. Kent*, 2025 WL 602832 (App. Div. 1, Feb. 25, 2025) (reversing award of fees husband under A.R.S. § 25–324 where wife requested findings which trial court failed to make).

Prior to trial, Laura made a timely request for findings of fact and conclusions of law. [ROA 121] Laura's request was clear:

> Pursuant to Rule 82(a)(1), Ariz. R. Fam. L.P., Petitioner Laura Owens ("Laura" or "Petitioner") hereby requests findings of fact and conclusions of law with respect to all issues submitted for decision in this matter ….

Because Laura asked for findings, Rule 82(a) required the trial court to make specific findings on all issues of fact and law, including any fee award. To support an award of fees under A.R.S. § 25–324 based on unreasonable conduct, the trial court was required to make a specific finding that the fees requested were "*necessary* to the full and proper presentation of the action …." A.R.S. § 25–324(C) (emphasis added). The absence of that finding precludes an award of fees under § 25–324.

That exact issue was discussed by this Court in *State v. Torrez*, 154 Ariz. 522, 744 P.2d 434 (App. Div. 2 1987). That case involved a petition by the state seeking to recover fees and costs from a putative father. After father conceded paternity, the state was awarded $4,177.55 in attorney's fees under A.R.S. § 12–849 (the predecessor to A.R.S. § 25–809).

At that time, A.R.S. § 12–849 contained language identical to A.R.S. § 25–324, permitting an award of "attorney's fees, deposition costs and such other reasonable expenses as the court finds necessary to the full and proper presentation of the action …." *Torres*, 154 Ariz. at 524. Based on the necessity requirement, the father in *Torres* argued fees could not be awarded unless the trial court found the fees were "necessary to the full and proper presentation of the action" (a finding the trial court *did not make*).

This Court agreed with father's argument:

> The statute clearly requires that before awarding the costs and expenses of maintaining any proceeding under this section, the court must find that such expenses *were necessary* to the full and proper presentation of the action and must consider the financial resources of both parties. The court has made no such finding in this case.

Torres, 154 Ariz. at 524 (emphasis added).

The same is true here. Laura asked the trial court for findings of fact and conclusions of law, but at no time did the court make a specific finding that the $150,000 in fees claimed by Clayton were *necessary* to the full and proper presentation of any parenting time or paternity issues. Just as this Court held in *Torres*, that omission mandates reversal of the fee judgment.

To be sure, in the lower court's post-trial under advisement ruling here, the court noted, purely as a hypothetical matter, fees may be awarded under A.R.S. § 25–324 if those fees are reasonable and if the court finds they were **necessary** to the resolution of the case. Laura does not challenge that general premise of law.

But at the time of the lower court's under advisement ruling (on June 17, 2024), the court had no factual basis to determine precisely *what amount* of fees (if any) were reasonable, or whether the specific fees requested were

actually necessary to the disposition of the case. This is so because when the UAR was issued on June 17, 2024, Clayton had not yet submitted his application for fees. Claytons' fee application was not provided to the court until weeks later, on July 8, 2024. [ROA 130]

Upon receiving Clayton's fee application, Laura raised extensive objections, both in her Motion for New Trial, ROA 132, and also her objection to Clayton's fee application. [ROA 135; filed July 29, 2024] Among numerous other arguments, Laura's fee objection specifically reminded the court that fees could not be awarded absent a finding they were necessary, and "Here, the post-trial minute entry does not contain any finding that any of Clayton's fees or costs were necessary, nor is there any basis for such a finding …." [ROA 135 at 11:14–12:3] (emphasis added)

Rather than addressing Laura's objections and/or making the required findings, the trial court simply ignored the issue. Thereafter, without Clayton even responding to Laura's objections, on August 16, 2024 the trial court awarded fees and costs in the amount of $149,219.76. [ROA 137]

This was error because neither the original fee judgment [ROA 137] nor the amended version [ROA 9-S] found the fees awarded were necessary to the disposition of either Laura's parenting time petition or the

establishment petition. The trial court's failure to make those findings requires reversal. *See Torres*, 154 Ariz. at 524; *Kent*, 2025 WL 602832, *1 (reversing fee award based on lack of findings, and quoting A.R.S. § 24-324(A); "the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions.")

Because this Court cannot make factual findings in the first instance, it is unnecessary to analyze the issues further. However, it is worth noting the lack of findings that Clayton's fees were necessary to the issue of parenting time is *not* merely an academic problem.

This is so because while A.R.S. § 25-324 does permit a party to recover fees necessary for the resolution of parenting time issues, Clayton's fee application contains [ROA 130] extensive time entries which clearly had *nothing whatsoever* to do with parenting time and thus could not have been properly awarded under A.R.S. § 25-324.

For instance, the fee application contains entries for time spent speaking with "*lawyers for Warner Brothers*" (presumably having something to do with Clayton's status as a former TV celebrity). Not surprisingly, the

trial court never found these fees were necessary to resolve any parenting time issues.

Time Billed Consulting *Entertainment Lawyers*; ROA 130 at ep 27

	IR	STAFF WITH GREGG REGARDING CONTACT FROM ABC REGARDING LAURA'S ALLEGATIONS	0.30 295.00/hr	88.50
1/30/2024	IR	CALL WITH LAWYERS FOR WARNER BROTHERS WITH GW REGARDING LAURA'S ALLEGATIONS	0.20 295.00/hr	59.00

			Hrs/Rate	Amount
1/30/2024	GRW	CALL WITH LAWYERS FROM WARNER BROTHERS WITH IR	0.20 650.00/hr	130.00

Similarly, the fee application reflects thousands of dollars of time spent on other non-parenting time issues, such as drafting Clayton's Motion for Rule 26 Sanctions and his later request to *withdraw* that motion.

Time Spent On Rule 26 Issues; ROA 130 at ep 27

	MR	REVIEWED MOTION FOR SANCTIONS PER IR REQUEST AND STAFF WITH LC REGARDING REFORMATTING AND STRUCTURAL REVISIONS	0.20 425.00/hr	85.00
	IR	EDITS AND UPDATES TO REPLY TO RESPONSE TO EXPEDITED MOTION AND FORWARD TO CLIENT FOR REVIEW	0.30 295.00/hr	88.50
	IR	MINOR EDITS TO MOTION FOR SANCTIONS	0.20 295.00/hr	59.00
	MR	SUBSTANTIAL REVIEW AND REVISIONS TO MOTION FOR SANCTIONS PER IR REQUEST AND STAFF WITH IR AND LC REGARDING STRATEGY ISSUES	0.40 425.00/hr	170.00
4/3/2024	IR	EDITS TO DRAFT MOTION TO WITHDRAW RULE 26 .5; STAFF WITH MR AND GW REGARDING SAME .1	0.60 295.00/hr	177.00
	MR	EDITS TO DRAFT MOTION TO WITHDRAW AND LEGAL RESEARCH REGARDING SAME AND STAFF WITH IR	3.50 425.00/hr	1,487.50
	GRW	CALL WITH CLAYTON TO ADDRESS FILING, HE VERFIED, STAFF WITH IR REGARDING TASKS TO GET THIS FILED	0.40 650.00/hr	260.00

To be clear — if Laura had *not* invoked the safe harbor of Rule 26, Clayton could have sought fees for time spent drafting and researching the Rule 26 motion. But Laura did invoke the safe harbor, and while Clayton had no basis to do so, he filed his Rule 26 motion and then later withdrew it. These are not "parenting time" issues for which fees could be awarded under A.R.S. § 25–324 (yet that is exactly what happened).

Here, the trial court never made the statutorily required findings needed to support the fees awarded, despite Laura requesting those findings, and despite her objecting to any fee award made without such findings. For that reason alone, this Court should reconsider its decision to affirm the lower court's fee judgment and should remand this matter for such findings to be made, and for any further objections to be addressed.

C. The Court Also Failed To Make Specific Findings As To The *Amount* Of Fees Awarded Under A.R.S. § 25–415

In her merits brief, Laura argued the trial court's award of $150,000 in fees could not be justified under A.R.S. § 25–415 on the basis that she violated a court order compelling discovery. Laura noted Clayton never sought relief under that statute, therefore she never had any chance to explain her side of the issue.

This Court dismissed that argument with this terse conclusion:

> 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.

Laura maintains there was no factual basis for the finding that a discovery violation occurred, but even if she was wrong, that does not end the inquiry. Just as the trial court failed to make the findings required by A.R.S. § 25-324 (identifying which part of the fees were attributed to which specific conduct), the trial court also did *not* make any finding as to the specific amount of fees *caused* by the purported violation of A.R.S. § 25–415.

If this Court intended to hold that *any* violation of a discovery order under A.R.S. § 25–415 (however minor) could result in an award of unlimited fees for the entire proceeding without any finding as to the reasonableness of fees or their direct causal connection to the discovery violation, it should say so. On that issue, Laura notes that while substantial authority (including Family Law Rule 82) mandates specific fee-related findings when requested, it appears the only authority interpreting the findings required by A.R.S. § 25–415 for a discovery order violation is an unpublished ruling; *In re Custody of Jacob C.*, 2020 WL 1320880 (App. Div. 2 2020).

In that case, a party was sanctioned $15,000 for, *inter alia*, violating a discovery order. On appeal, the sanctioned party argued "the trial court did not make findings sufficient to support an award of attorney fees …." 2020 WL 1320880, *4 ¶ 18. This Court rejected that argument, but not because § 25–415 requires no findings of any sort.

Rather, the Court explained that although the ultimate fee judgment did not contain any findings to support the fee award, a prior ruling did contain such findings. *See id*. While certainly *obiter dictum*, this holding implies an award of fees under A.R.S. § 25–415 for a discovery violation would be improper in the absence of *any* findings as to the amount and reasonableness of the fees caused by the violation. Such is the case here.

As noted above, because Clayton did not apply for fees until weeks *after* the trial court issued its under advisement ruling, the trial judge had no way of knowing what specific amount of fees (if any) Clayton claimed were caused by the alleged discovery violation. Similarly, at the time of trial, Laura had no way of *responding* to the specific details of Clayton's discovery-related fee claim because those details were not yet known.

As such, the trial court's UAR contains nothing beyond sheer speculation that Laura's alleged discovery violation *may* have caused

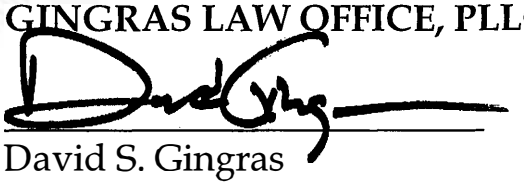
Clayton to incur *some* fees. Until the court was provided with the actual fee application, it could not have found, and never did find, that any of the fees sought or awarded were actually caused by the alleged discovery violation. That error separately mandates reversal and remand.

III. CONCLUSION

For the reasons stated above, the Court of Appeals should reconsider its decision in this matter.

DATED April 11, 2025.

GINGRAS LAW OFFICE, PLLC



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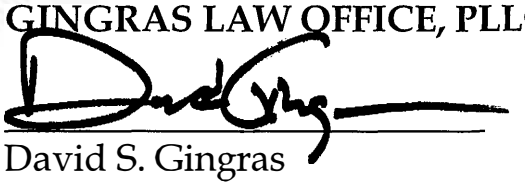
CERTIFICATE OF COMPLIANCE

Pursuant to Ariz. R. Civ. App. P. 22(e), the undersigned certifies that the brief to which this Certificate is attached uses Book Antiqua 14 point font, is double-spaced (where required) and contains 3,476 words.

The document to which this Certificate is attached does not exceed the word limit that is set by Rule 14, Rule 22, Rule 23, or Rule 29, as applicable.

DATED April 11, 2025.

GINGRAS LAW OFFICE, PLLC



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CERTIFICATE OF SERVICE

On this date, the below-signing lawyer e-filed the "Opening Brief" with the Clerk of the Court for Division Two, and e-mailed copies of it to the following:

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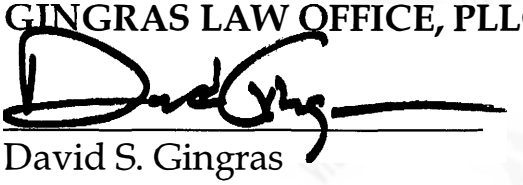

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