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**

# RESPONSE TO APPELLANT'S MOTION FOR RECONSIDERATION

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## INTRODUCTION

On April 11, 2025, Appellant, Laura Owens ("Laura"), filed her Motion for Reconsideration (the "Motion"), pursuant to Rule 22, Ariz. R. Civ. App. Proc. ("ARCAP"). On April 15, the Court issued an Order taking the Motion under advisement and setting a deadline for Appellee, Clayton Echard ("Clayton") to respond. Clayton interprets the Order as inviting a response pursuant to ARCAP 22(d).

Laura's Motion offers two arguments:

1. The Court's structural error analysis misstated Arizona law.
2. 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 preamble to Laura's Motion states that reconsideration is "*not* an appropriate vehicle to rehash arguments previously raised and rejected" and "Laura will not re-raise the same legal arguments this Court has already considered." But that is mostly what she has done. In fact, arguments that were not previously raised cannot be made for the first time in a Rule 22 motion. A Rule 22 motion can allege error in the appellate decision, of course, but it cannot make new arguments that could have been offered in the trial court or appellate briefs. If Laura's assertion is

true, and only new arguments are raised, then the Court can stop reading after the first page.

Part of the Motion—on pages 2 through 5—alleges the Court misinterpreted the law. Clayton disagrees and explains the law below. The remaining sections—on pages 6 through 18—allege new arguments that were not raised or developed in the briefs despite being available to Laura before the Memorandum Decision. Clayton briefly addresses these arguments but categorically objects to the consideration of new arguments that were either never raised previously or were not properly developed in the trial court or appellate briefs. This Court cannot condone the relentless reframing of arguments that were either already rejected, not raised below, or not properly developed until the current Motion. *See Polanco v. Indus. Comm'n*, 215 Ariz. 489, n.2 (App. 2007) (undeveloped argument waived on appeal). Like any other litigant, Laura strategically decided which arguments to bring and which to abandon at each stage of the proceedings. *See* Memo. Dec., ¶¶ 6 (noting significant portion of appellate argument relies on incorrect assertions about Rule 26), 14 (appeal does not meaningfully challenge § 25-324 findings). When an appellant strategically devotes limited space in the opening brief to arguments lacking legal merit, they must accept the consequences of that decision.

## DISCUSSION

### A. The Court properly held that structural-error analysis is inappropriate and actual prejudice must be shown to warrant reversal.

Laura argues, just as she did in the briefs, that a judge considering extra-judicial or ex parte evidence is per se reversible error. Not even *Emanuel* says that:

> "We agree that the rule that a trial judge must be impartial, 'does not mean that a judge must recuse himself from a criminal case merely because he has heard unfavorable remarks about the defendant in the course of prior litigation.'"

*Emanuel*, supra, at 469 (citing *Commonwealth v. Campbell*, 266 N.E.2d 44, 57 (1977); *see also State v. Munoz*, 110 Ariz. 419, 421 (1974) (finding no prejudice when sentencing judge already possessed accurate information about the defendant prior to sentencing from involvement in other matters); *cf. McElhanon v. Hing*, 151 Ariz. 403, 410-13 (1986) (vacating opinion of court of appeals that reversal was required because of ex parte communications where no actual prejudice resulted). The Motion relies on cases addressing the substantive analysis of a bias claim, not per se reversal.

Laura argues that the Court erred because the ruling relied upon "an erroneous application of Arizona law" and that "[i]n fact, the cited authority requires reversal." Specifically, Laura alleges the Court misstated the law when it cited *State v. Emmanuel*, 159 Ariz. 464, 469 (App. 1989) and *Stagecoach Trails MHC, L.L.C.,* 232 Ariz. 562, ¶ 21 (App. 2013).

For context, the Court "decline[d] to apply a structural-error analysis given the record before us." Memo. Dec. at ¶ 20. The reason Laura argued so intently for a structural-error analysis is apparent from the briefs and the Motion: she can only obtain reversal if the Court adopts a standard that does not require showing actual prejudice. This Court correctly declined to apply structural-error analysis, but that did not end the Court's inquiry because reversible bias could still arise *outside* of the structural-error context. The ruling correctly cites *Emanuel* for the proposition that "a trial court's reliance on extra-judicial information may give rise to a claim of judicial bias" separate from a structural error claim. *Emanuel* was not a structural error case and does not discuss or apply that standard.

Next, the Court cites to *Stagecoach Trails*, specifically ¶ 21, for the proposition that the "critical inquiry" in a prejudicial bias analysis is "whether the conduct demonstrates an 'extrajudicial source of bias or deep-seated favoritism.'" This is precisely what *Stagecoach* states: "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 MHC, L.L.C.*, 232 Ariz. 562, ¶ 21 (emphasis added). In fact, that entire paragraph in *Stagecoach* is a collection of nested citations from other cases articulating the general types of evidence and standards necessary to prove reversible bias, not per se reversal under structural-error analysis. These cases do not support the idea that prejudice must be presumed

(except in the most extreme circumstances). *Town of Paradise Valley v. Laughlin*, 174 Ariz. 484, 487 (App. 1992) ("Prejudice will not be presumed but must be evidenced from the record"); *but see Grant v. Arizona Pub. Serv.*, 133 Ariz. 434, 456 (1982) (prejudice may be presumed when the trial court seems to have completely lost control of the proceedings and made a mockery of the concept of a fair and impartial trial). This Court already addressed these arguments and found Laura failed to even properly *argue* prejudice, much less establish it to such an extent that requires reversal. *See* Memo Dec. at 10-11, ¶ 24 ("However, Owens does not argue prejudice. [...] Owens does not challenge any of the presiding judge's rulings under the appropriate standards for appellate review."). The Motion does not raise any valid basis to revisit the Memorandum Decision, and resolving the appeal on new grounds raised in a Rule 22 motion would visit tremendous inequity on Clayton and his right to due process.

B. **The Court did not err in finding attorney's fees were appropriate under A.R.S. §§ 25-324, 25-809, and 25-415.**

Laura argues in her Motion for Reconsideration that Clayton's Motion for Leave to Amend withdrew his request for fees under A.R.S. § 25-809 and that, because the parties "spent no time litigating parenting time" and the trial court "never made the specific statutory findings," Clayton was not entitled to fees under A.R.S. § 25-324. To the extent these arguments are raised now, for the first time, they cannot be considered. *See Ramsey v. Yavapai Family Advocacy Ctr.,* 225 Ariz.

132 ¶ 18 (App. 2010) (arguments raised for the first time in motion for reconsideration waived). Moreover, in so arguing, she misstates the record and relies on an inapposite, unpublished decision in *Kent v. Kent*. In *Kent*, the trial court made no findings explaining the reason for its fees award despite repeated and specific requests to do so. Conversely, in the case sub judice, the trial court made over two full pages of findings explaining the reasons for its awards under A.R.S. §§ 25-324 and 25-415. This Court already decided that the trial court did not err and that the awards would be upheld even if the trial court did not cite the most correct authority. *See* Memo. Dec. ¶ 15 (citing *Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9 (App. 2006) (reviewing court may affirm trial court if legally correct for any reason).

Laura further claims that Clayton cannot be awarded fees under A.R.S. § 25-324 because the "trial court never made the specific findings required" after Laura requested findings of fact and conclusions of law under Rule 82. Laura relies on *State v. Torrez*, 154 Ariz. 522 (App. 1987), but her argument ignores the basis for the holding in that case. In *Torrez*, this Court found that A.R.S. § 12-849 did not allow an award of attorney fees **to the state**. Laura's misleading citation stops just short of the key parts of the discussion. The very next sentence after her quotation reads: "If the legislature had intended to require a defendant in a paternity case **to reimburse the state** for reasonable expenses incurred in bringing the case, it could

have so stated." *Torrez*, 154 Ariz. at 524 (emphasis added). The next paragraph explains further:

> It is apparent that **if the complaining witness had retained a private attorney and filed the case in her name, the facts would have justified the award** of reasonable expenses incurred in prosecuting the action. However, the complaining witness instead **availed herself of the county attorney's designated attorney services provided for all persons by Gila County without the requirement that they pay any fees**. Therefore, she had the proper means to litigate the paternity issue, and the attorney's fee award was improper. Historically, attorney's fees have not been awarded in the absence of a statute authorizing them. We conclude that A.R.S. § 12-849(E) does not permit an award of attorney's fees in this case.

*Id.* at 524-25 (emphasis added).

*Torrez* finds the fees award would have been proper had the prevailing party incurred any, but she was represented by the state and incurred no fees. The *reason* the fees were not "necessary to the full and proper presentation of the action" was because *there were no fees*. The statute did not expressly enable the state to seek fees in such cases, and this Court declined to legislate the issue itself. *City of Phoenix v. Butler*, 110 Ariz. 160, 162 (1973) ("[T]he courts [do not] rewrite statutes.") (internal citation omitted); *Parker v. City of Tucson*, 233 Ariz. 422, 430, ¶ 20 (App. 2013) ("We will not rewrite statutes to effectuate a meaning different than the one the legislature intended."). *Torrez* does not support Laura's argument in the way she asserts.

The trial court also awarded Clayton attorney fees and costs pursuant to A.R.S. § 25-415 because "Laura Owens knowingly presented a false claim, knowingly violated a court order compelling disclosure or discovery." The Court "shall sanction a litigant for costs and reasonable attorney fees" where a false claim is knowingly presented or a court order compelling disclosure or discovery is violated. § 25-415(A)(1), (3). Because these conditions existed, the Court properly held that "the court made such a finding; thus, it was required to sanction Owens" and that "Owens did not meaningfully challenge that finding." Memo. Dec. at ¶ 16. Laura claims that "Clayton never sought relief" under A.R.S. § 25-415 and "therefore she never had any chance to explain her side." This is false. As this Court notes, "[a]lthough § 25-415 does not require the filing of a separate motion, as previously noted, Echard requested relief under this statute." Memo. Dec. at ¶ 16. Specifically, on March 11, 2024, Clayton filed a motion to compel Laura's compliance with Rule 49, *Arizona Rules of Family Law Procedure*, and to disclose, among other items, her purported Planned Parenthood records. [ROA 74]. On April 9, 2024, the trial judge granted Clayton's Motion to Compel. [ROA 87]. Still, Laura did not comply, and the trial court found she presented a false claim and knowingly violated a court order compelling discovery such that an award is appropriate under A.R.S. § 25-415. [ROA 126 ep 17]. Fees under A.R.S. § 25-415 were, therefore, mandatory and appropriate. Laura had notice, opportunities to

comply, and opportunities to be heard before relief was given. She cannot change tack and challenge the discretionary amount of the award now.

Lastly, Laura now raises objections as to individual time entries. She alleges they were not related to "any parenting time issues" and should therefore have been categorically excluded. Any such argument not raised below is waived. Laura's objection to the *China Doll* application appears at [ROA 135]. The objection disputes the fact of the award, arguing inter alia that the court could not award fees because Laura invoked Rule 26 safe harbor, the fees were for tort-based counterclaims, etc. She argued generally that the hourly rates were not reasonable under ER 1.5 but did not object to any specific time entries as she now does. She argued that the fees were not necessary because Laura intended to let the case be dismissed and alleged "Clayton's desire to use this case for purposes of publicity and his counsel's wish for personal revenge against Laura" were "actionable abuse of process[.]" She did not object to specific time entries or develop an argument as to the fees being unnecessary or causally unrelated to her conduct as she now attempts to do.[1] This argument has been waived. *See Ramsey,* 225 Ariz. 132 ¶ 18 (App. 2010).

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[1] Regarding the time entries for consulting with "*Entertainment Lawyers*" challenged on pages 13-14 of the Motion, Clayton's counsel learned that Laura once auditioned to be a contestant on *The Bachelor* and contacted the attorneys regarding producing her application materials for possible impeachment use. Investigating potential sources of information, including prior statements of a

## CONCLUSION

The Court of Appeals correctly affirmed the trial court's ruling. Clayton requests the Court deny the Motion for Reconsideration and grant leave for Clayton to file a supplemental application for attorney fees incurred in responding to it. The Court should also note that Laura did not timely file an objection to the Application for Attorney Fees and Costs filed in this appeal on April 4, 2025. *See* ARCAP 21(b)(4).

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party, is especially appropriate when a party has not provided full and accurate disclosures (as occurred in this case). It is well within the trial court's discretion to award fees incurred for investigation relating to a party's missing, incomplete, edited, or inaccurate disclosures of information where credibility is at issue.

## CERTIFICATE OF COMPLIANCE

Pursuant to Ariz. R. Civ. App. Proc. 22, undersigned counsel certifies that the Response to Appellant's Motion for Reconsideration contains 2,348 words in the body text, including footnotes, as calculated using the word processing system used to prepare the filing. *See* ARCAP 14(b) and 4(b)(9). The filing 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** April 29, 2025.

**WOODNICK LAW, PLLC**

Markus Risinger
*Attorney for Appellee Clayton Echard*

## CERTIFICATE OF SERVICE

Pursuant to Ariz. R. Civ. App. Proc. 4(g), undersigned counsel certifies that the Response to Appellant's Motion for Reconsideration has been filed and delivered to the Court of Appeals using the e-filing system on April 29, 2025. A copy of the filing has been delivered contemporaneously to the following party by email:

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**DATED** April 29, 2025.

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