No. CV-25-0124-PR

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

LAURA OWENS,
Petitioner/Appellant

v.

CLAYTON ECHARD,
Respondent/Appellee

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

Court of Appeals, Division 2, Case No. **2 CA-CV-2024-0315**

APPELLEE'S RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

Owens v. Echard is not an important case. This is not to understate the meaning of this case to the litigants—whose stakes in the outcome are self-evident—nor its significance to the many Superior Court Judges who labored over the underlying dispute and who now continue to do so in the criminal division. It also does not diminish the diligent interest of public observers who have followed, scrutinized, and reported on the proceedings with voracious appetites for transparency and understanding of the legal process. None of these acknowledgments change the simple fact that Laura's appeal failed to develop any meaningful issue that this Court could properly consider. A case can have substantial meaning to the parties, and even the public, while having nothing to offer in developing the state's common law.

The Court of Appeals found that Laura's arguments—the same she asserts in the Petition for Review—were not just incorrect but were unreasonable, not grounded in law or fact, did not meaningfully address the trial court's rulings, and ignored the applicable jurisprudence. *Owens v. Echard*, 2 CA-CV 2024-0315, ¶ 25 (Ariz. App. 3/28/25) (mem. decision).[1] On appeal, Laura did not meaningfully challenge the trial court's substantive findings. *Id.*, ¶¶ 12-14. Instead, she suggested

[1] Citations to the memorandum decision of the Court of Appeals are made to establish the law of the case pursuant to Ariz. R. Sup. Ct. 111(c)(1)(A).

"that this paternity action somehow transformed into some other type of proceeding" and ignored that the trial court "was required to sanction Owens for the costs and reasonable attorney fees Echard had incurred" caused by her misconduct. *Id.*, ¶¶ 14-16. She "'fail[ed] to identify with any particularly what evidence supports' her argument" and applied incorrect legal standards. *Id.*, ¶¶ 17-20. The Court of Appeals found that her "unsupported and speculative allegations" against the trial judge "fail to meet her burden to prove bias" and that she "[did] not challenge any of the presiding judge's rulings [denying the motion for change of judge for cause] under the appropriate standards for appellate review." *Id.*, ¶¶ 22-24.

The underlying appeal wholly failed to raise meritorious claims. There are no issues for this Court to properly consider because they were either not implicated in the trial court's ruling or not meaningfully developed on appeal. Of the hundreds of cases vying for limited space on this Court's calendar at any given time, this one simply does not rank among those with important questions of law deserving the State's highest level of jurisprudence.

REASONS TO DENY REVIEW

The Petition for Review asserts two primary issues: (1) the application of Rule 26 of the Arizona Rules of Family Law Procedure; and (2) the standard for

reversible error in family law proceedings.[2] Neither presents a question that is both ripe and facially meritorious.

I. The record does not present a Rule 26 "safe harbor" issue that this Court could consider on review

The Petition for Review reproduces a relatively succinct summary of Laura's "Rule 26" argument and does not differ in any meaningful respect from what she proffered in the lower courts. Relying mostly on case law interpreting Federal Civil Rule 11, Laura argues that every litigant is entitled to an absolute "safe harbor" from sanctions in the form of written notice and an unconditional opportunity to dismiss the litigation. The only significant addition in the Petition for Review is the history of the family law rule's amendment and renumbering—from Rule 31 to Rule 26—in the 2019 restyling. Petition at 10-11. This history is irrelevant because the trial court did not sanction Laura under Rule 26 (or abrogated Rule 31, or Civil Rule 11, for that matter).

The Petition acknowledges that the Court of Appeals "refused to even discuss any of the federal authority supporting Laura's position," but she still

[2] "Issue 4" in the Petition for Review asserts the trial court failed to make required findings to support the fees award, which is an argument Laura raised for the first time in a motion for reconsideration at the Court of Appeals. This argument is waived. *See Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2 (App. 2008) (underdeveloped argument waived on appeal). The argument also lacks facial merit because the trial court made extensive findings supporting the award. The Court of Appeals summarized these findings in the Memorandum Decision. *Owens v. Echard*, supra at ¶¶ 12-17.

seems to misunderstand the reason her argument failed: Rule 26 was never the basis for the trial court's judgment and had no effect on its ability to award fees. The trial court awarded fees and costs under A.R.S. § 25-324 (court may award fees after considering financial positions and reasonableness of the parties)[3] and A.R.S. § 25-415 (court must award fees incurred by an adverse party if it finds that a litigant violated a court order compelling disclosure or discovery). Even if Laura's interpretation of Rule 26 was correct—a thoroughly contested hypothetical—it was irrelevant to the trial court's analysis. The court was neither required nor persuaded to grant Laura's motion to dismiss her petition after Clayton filed his response and made substantive counterclaims. By rule, once a response is filed, the court may dismiss a family law case only on such terms and conditions as the court deems proper, including the resolution of any claims by the responding party. Rule 46(a)(1)(B), Ariz. R. Fam. L. Proc. Laura's original motion to dismiss even acknowledged this barrier, yet she failed to challenge the denial of that motion on appeal. *See* [ROA 37 ep 2]; Memo. Dec. at 6, ¶ 12.

The Court of Appeals disposed of this entire Rule 26 argument in three sentences:

> As a preliminary matter, we note that a significant portion of Owens's appellate argument relies on her incorrect assertion that the trial court

[3] The trial court's award was also proper under A.R.S. § 25-809(G). *See* Memo. Dec. at 7, ¶ 15 (noting statutory language is nearly identical, relief was pleaded, and judgment may be affirmed if legally correct for any reason).

> 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. *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). *Owens v. Echard*, 2 CA-CV 2024-0315, ¶ 6 (Ariz. App. 3/28/25) (mem. decision).

Despite vehement disagreement on the merits of this argument, the topic of whether and how Rule 26 should be interpreted is not before this Court. It was not properly before the lower courts, either. Given its limited and discretionary calendar, the Supreme Court does not grant review to weigh in on hypotheticals or resolve purely academic debates like this one. *Fraternal Order of Police Lodge 2 v. Phoenix Employee Relations Bd.*, 133 Ariz. 126, 127 (1982) (barring exceptional issue of public importance, the Arizona Supreme Court will refrain from considering moot or abstract questions).

II. The "Planned Parenthood is not open on Sundays" finding does not constitute reversible error under any standard of review

Laura argues that the Court of Appeals erred in refusing to apply a structural error standard to the trial court's erroneous finding that a witness "testified that Planned Parenthood is not open on Sundays, when Laura testified, she sought care July 2, 2023 [a Sunday]." Memo. Dec. at 9, ¶ 19. The day of the alleged visit is only noteworthy because Laura's testimony at trial substantially changed from what she said at her deposition and in subsequent sworn affidavits. *See* Answering

Brief, pp. 37-38. This was not a "key adverse finding" and served as nothing more than cumulative impeachment.

Laura has presented this argument in various ways throughout the proceedings, arguing that the inclusion of this statement proves the trial judge conducted an "independent and undisclosed investigation into the facts of this case," that the finding proves the trial judge was biased against her, that she was denied due process, and that the undisclosed investigation she speculates occurred constitutes structural error. Laura frames the issue as one of obligatory judicial recusal and further contends that refusal to recuse is structural error. Neither is an accurate statement of Arizona law.

In all judicial proceedings in Arizona, "[n]o cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done." Ariz. Const., art. 6, § 27, *McElhanon v. Hing*, 151 Ariz. 403, 413 (1986). The Rules of Family Law Procedure espouse the same harmless error standard. Rule 86, Ariz. R. Fam. L. Proc. It is well-established in Arizona that a due process error—if what Laura describes even constitutes one—requires reversal only if a party is thereby prejudiced. *See, e.g., Volk v. Brame*, 235 Ariz. 462, ¶ 26 (App. 2014); *County of La Paz v. Yakima Compost Co.*, 225 Ariz. 590, 598, ¶ 12 (App. 2010). When a party challenges a judge's impartiality—including alleging extrinsic information as

evidence of bias—recusal is not required without showing prejudice. *State v. Carver*, 160 Ariz. 167, 172-74 (1989). Prejudice will not be presumed but must be evidenced from the record. *Town of Paradise Valley v. Laughlin*, 174 Ariz. 484, 487 (App. 1992).

Laura's most recent iteration of this argument conflates an ordinary (and meritless) allegation of judicial bias with the extraordinary form of bias necessary to trigger structural error review. She must formulate the argument this way because she has shown neither bias nor prejudice, and she cannot succeed in her appeal under any standard that requires such showing. Regardless, she has not shown structural error, bias, or prejudice.

A. Structural error did not occur in this case

First, the Court of Appeals rejected Laura's argument to apply structural-error analysis because structural error did not occur: "Thus, even assuming without deciding that structural error applies in family law 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." *Id.*, ¶¶ 20-21 (emphasis added). The Court of Appeals found that "a biased trial judge" may be considered a structural error—*see State v. Ring*, 204 Ariz. 534, ¶ 46 (2003)—but Laura failed to show bias. Memo. Dec. at 9, ¶¶ 20-21. Both the presiding judge and the Court of Appeals found that Laura's "unsupported and speculative allegations fail to meet her burden to prove bias" and

rejected her claims on the merits. *Id.*, ¶ 22. Moreover, Laura failed to show the type of bias necessary to implicate due process rights. Although landmark criminal cases—like *Ring* and *Valverde*—"generically refer to "judicial bias" as structural error, the defendant must allege a form of bias that would implicate his due process rights, such as that which is based on a 'direct, personal, substantial pecuniary interest' to establish structural error. *State v. Granados*, 235 Ariz. 321, ¶ 11 (App. 2014) (quoting *Tumey v. Ohio*, 273 U.S. 510, 523 (1927)).

Accordingly, even if the structural error doctrine could theoretically apply in family law proceedings, the facts necessary to establish such an extraordinary defect in the trial mechanism simply do not appear in this record. This is another abstract question that may appear academically interesting, but its answer will have no impact on the outcome of the case.

B. Laura did not establish bias or prejudice

The Court of Appeals also analyzed Laura's argument as a claim of judicial bias separate and apart from any structural-error or presumed prejudice claim. A judicial bias claim requires proof that the judge abandoned impartiality and that the appellant was prejudiced as a result. This is the same standard the presiding judge applied when reviewing Laura's motion for change of judge for cause. Memo. Dec. at 10-11, ¶ 24; [ROA 136].

On appeal, Laura did not argue actual prejudice. Memo. Dec. at 10, ¶ 24. The record is replete with evidence supporting the trial judge's ruling, and Laura invited scrutiny regarding her alleged visit to Planned Parenthood by changing the location and date in her testimony multiple times. The Court of Appeals conducted a brief prejudice analysis even though Laura did not properly develop these arguments on appeal. Upon finding waiver, the reviewing court could have just rejected the arguments without further discussion. Instead, the record at every stage of the proceedings shows extraordinary patience and fairness to Laura despite persistent unreasonableness. *Id.*, ¶ 25. The trial judge kept control of a difficult case, and the reviewing judges found no prejudice from one insignificant misstatement of trial testimony. When the record so thoroughly supports the trial court's conclusion and justice has been done, reversal would serve no meaningful purpose. Indeed, "[t]here comes a time when every case must end; otherwise, the process becomes more important than the resolution." *McElhanon,* 151 Ariz. at 412. It is time for this case to end.

ATTORNEY FEES AND COSTS

Clayton requests an award of attorney fees and costs incurred in response to the Petition for Review pursuant to A.R.S. §§ 25-324 (fees), 25-809(G) (fees in paternity actions), 12-341 (costs), and ARCAP 21.