24A245

No. 24A22

IN THE SUPREME COURT OF UNITED STATES

RICHARD RYNN, next friend and parent of MR, a minor,

Petitioner/Appellant

V.

Gregory Mckay, in his official capacity as Director of the Arizona Department of Child Safety, and personally, et al

Respondents/Appellees

APPLICATION UNDER RULE 60(b)-(d). and 60(d)(3),28 U.S.C.1651 TO VACATE INJUNCTION, VOID JUDGEMENTS BASED ON FRAUD, NEW EVIDENCE, VIOLATION OF CONSTITUTIONAL RIGHTS, INSUFFICIENT SERVICE OF PROCESS, OR STAY OF PROCEEDINGS UNTIL STATE CASE ADDRESSED, FILED IN THE NINTH CIRCUIT WHICH DECLINED TO RESPOND DUE TO CLERK SAID CASE CLOSED REFUSING TO ACCEPT FURTHER FILINGS ON THIS CASE APPLICATION TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Richard Rynn
1299 E. Marlin Drive
Chandler, AZ 85286
(520)510-6370
richardrynn@yahoo.com
Petitioner/Appellant
Pro Se

PARTIES TO PROCEEDING

State of Arizona, Department of Child Safety, Gregory Mckay, Desert Vista Behavioral Health Center, UHS, Quail Run Behavioral Health, La Frontera Empact

Table of Contents

Page #

District court decisions are rendered void due to reliance on false reports from Quail Run and DCS to Pinal County Superior Court Case No. S1100JD201700116 decisions that are void based on false reports from Quail Run and DCS in direct conflict to Maricopa Superior court

Table of Authorities

Cases

CONSTITUTIONAL PROVISIONS AND STATUTES

DIRECTLY RELATED CASES

Quail Run v Richard Rynn Maricopa County Superior Court
Case No. LC2017-000316 (10/27/2017)

RYNN V Daniel Washburn, Department of Child Safety
United States Supreme Court Case No.24A136----------pending
Pinal County Superior Court Case No. S1100JD201700116---pending

Rynn V First Transit, Et Al Ninth Circuit Case No. 23-15869
U.S. Supreme Court Case No. 24A17----------pending

Opinions Below

Decisions of Ninth Circuit Court of Appeals
Denial of rehearing, April. 23, 2024

Ninth Circuit Court of Appeals
Memorandum, Affirmed Oct..23, 2023

District Court Filed March. 31, 2023
Order Docket No. 112

Application Under Rule 60(b)-(d), 60(d)(3), and 28 U.S.C. § 1651 to Vacate Injunction from District Court and Pinal County Superior court

This application seeks to vacate an injunction, correct facts in dispute that voids judgments based on fraud, newly discovered evidence, deprivation of constitutional rights under color of law, abuse of process, insufficient service of process, or stay proceedings until the state case is addressed. The application was filed in the Ninth Circuit, which declined to respond, citing the case as closed and refusing to accept further filings. This application is now submitted to the United States Supreme Court of Appeals for the Ninth Circuit.

Petitioner Appellant Rynn petitions under Civil Rule 60(b)-(d) and Civil Rule 60(d)(3) and pursuant to Rule 23 for application to vacate void judgments based on new evidence and grounds of fraud, perjury, abuse of the process, interference in custody, violations of constitutional rights, insufficient service, and insufficient process of service, breach of contract.

Civil Rule 60(b)-(d) and Civil Rule 60(d)(3) supersede all rules of the court and authorizes immediate relief from void judgments, to vacate

injunction issued by Arizona District Courts refusal to address new evidence and fraud and refusal to accept further filings from Appellant. This request is based on fraud on the court, necessitating the filing of additional pleadings that were unjustly denied by the Court of Appeals for the Ninth Circuit and the district court (docket 112). The Ninth Circuit failed to respond to Appellants Motion to vacate.

The Ninth Circuit and District Court's decisions have been rendered void based on new evidence and state court decisions from Maricopa County Superior court Quail Run v Richard Rynn Case No. LC2017-000316 (10/27/2017) Reverse and Remand based on hearsay, that contradict this court's prior rulings, as well as fraud on the court. The U.S. Supreme Court instructed the Appellant to first file for relief in Ninth Circuit court. Ninth Circuit court failed to respond to all of Appellants motions without cause and without addressing merits in violation of due process.

Appellant filed the following motions for relief and notes in Ninth Circuit.

1. Motion to vacate and stay proceedings on June 12, 2024. Dk 30
2. Motion to recall the mandate on June 13, 2024. Dk 31
3. Notice on June 21, 2024. Dk 32
4. Motion to expedite ruling on June 28, 2024. Dk 33

5. Revised application under Rule 60(b)-(d) and 60(d)(3) to vacate void judgments based on fraud, filed on July 29, 2024. Dk 35
6. Notice lower court decision voiding this court's decisions due to fraud, state court subpoena to district court John Tuchi and response from John Tuchi.
7. Motion for Clarification filed on August 8, 2024

Ninth Circuit failed to correct fraud on the district court based on personal knowledge and newly discovered evidence regarding insufficient service of process and lack of personal jurisdiction (docket 62, Exhibits A-C). The defendants defective ex parte custody injunction, which was not served to Rynn, renders previous rulings void and necessitates review and vacating of these decisions. Appellant seeks to file additional pleadings for a new trial, based on new evidence and fraud on the court, in accordance with ARS Rule 43.1.

Issues Presented

1. Critical contradictions between district court decision an order from doctor and state court Division One decision of no doctor order arising case as a basis to vacate and reopen case for fraud.

2. Deprivation of rights under color of law by private companies seizing parents child under direction of the state without obtaining legal custody. (docket 62, Exhibits A-C).

3. Deprivation of Due process court denying the filing of further pleadings and refusing to address critical new evidence of deprivation of rights under color of law and fraud.

Jurisdiction

Appellant timely mailed an application for injunction relief to the United States Supreme Court on May 22, 2024. The Supreme Court requested the Appellant to refile the pleadings to comply with court rules on May 29, 2024. Appellant mailed a second application to vacate on June 7, 2024. The Supreme Court clerk informed the appellant on June 11, 2024, that the application to vacate needed to be filed first in the Ninth Circuit. Consequently, Appellant refiled motion to vacate in the Ninth Circuit and Ninth Circuit refused to answer.

Appellant files Application to vacate due to obstruction of justice, Ninth circuit and district court refusal to accept further filings, refusal to review critical new evidence of fraud on the court damaging integrity of the courts. Appellant's rehearing in the Ninth Circuit Court of Appeals was denied on April 23, 2024. Ninth Circuit refuses to rule on Appellants additional filings.

The appellant timely filed this application to vacate the injunctions. This court has jurisdiction per 28 U.S. Code § 1253 and 28 U.S.C. §

1651 (All Writs Act) for direct appeal from the denial of vacating the defective custody injunction that was not served, denial of due process rights, and vacating the district court's injunction preventing further briefs on this matter while factual disputes remain unresolved.

Standard of Review

Three basic categories of decisions are reviewable on appeal, each with its own standard of review:

- Decisions on questions of law are reviewed de novo.
- Decisions on questions of fact are reviewed for clear error.
- Decisions on matters of discretion are reviewed for abuse of discretion (Pierce v. Underwood, 487 U.S. 552, 558 (1988)).

Findings of Fact

Findings of fact and other "essentially factual" issues are reviewed for clear error (Husain v. Olympic Airways, 316 F.3d 829, 835 (9th Cir. 2002)). The Federal Rules of Civil Procedure state that a court of appeals "must set aside" a trial court's "findings of fact" when they are clearly erroneous (Fed. R. Civ. P. 52(a)(6)).

Conclusions of Law

Conclusions of law are subject to de novo review by the appellate court. De novo means "from the beginning" or "anew" in Latin, giving no weight to the trial court's conclusions.

Abuse of Discretion

An issue on which the trial court has discretion will be reviewed for abuse of discretion (Hernandez v. County of Tulare, 666 F.3d 631, 636 (9th Cir. 2012)). This standard is often used when the issue concerns the court's ability to administrate cases and manage its docket. The court reviews the lower court record to determine whether the trial

court applied the appropriate standard of review. Reversal is warranted if the court did not address evidence from the appellant, failed to address fraud, due process violations, constitutional rights violations, civil rights violations, interference in custody, abuse of process, and available relief under AZ Rule 60 (b)(1)(2)(3)(6)(d)(1)(3). This court should apply this standard, vacate, reverse, and remand.

Constitutional Provisions Involved

Rynn's rights under the Fifth and Fourteenth Amendments were violated, along with deprivation of constitutional rights under color of law under Section 242 of Title 18 and violations of Section 1983 of Title 42. These include due process violations, parental rights violations, interference with legal custody, and violations of AZ Rule 65 and Rule 48.

Reasons for Vacating District Court Injunction

Declaratory relief required to vacate the district court's restrictions on filing further briefs in a case with unresolved factual matters such as fraud and a defective custody injunction (docket 62, Exhibits A-C) due to fraud and insufficient service of process. The court failed to review new evidence of insufficient service and fraud discovered in 2022, which changes the final judgment and substantiates fraud on the court. Interference with parental rights and custody rights occurred, and the

court failed to correct factual flaws in judgments affecting the case, causing a manifest injustice. Judgments tainted by fraud, particularly the April 28, 2017, ex parte custody injunction (docket 62, Exhibits A-C), are not legally enforceable due to insufficient service of process. The petition granted ex parte on April 28, 2017, was not disclosed to Rynn until discovered in year 2022, violating due process.

Procedural History of the Case

The case arose on April 24, 2017, during the discharge of Plaintiff Rynn's daughter, Marcella (M.R.), from Quail Run facility. Defendants Quail Run and La Frontera knowingly and intentionally acted with malice under color of law as state actors by seizing and imprisoning Marcella, a competent sixteen-year-old, during discharge, thereby interfering with Plaintiff Rynn's custody rights and violating constitutional rights by deprivation of rights under color of law. (docket 110, pages 4-6).

State defendants filed a juvenile court petition on April 28, 2017, based on fraudulent and maliciously false accusations. The April 28, 2017, ex parte order was obtained without notice, violating ARS Rule 65 and Rule 48 requirements for an ex parte order. The April 28, 2017,

petition and ex parte order are void due to insufficient process of service and were discovered by Rynn in 2022 during an appeal, violating due process (dockets 108, 109, 110).

The district court denied Plaintiff's motion for a new trial, motion for summary judgment, and motion for recusal without addressing the fraud and new evidence of insufficient service (docket 112). The Ninth Circuit Court of Appeals denied Plaintiff's opening brief and granted Defendants' motion to dismiss by summary affirmance without addressing the merits of new discovered evidence (Ninth Circuit dockets 6, 8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27).

Legal Standard

A complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief" to give the defendant fair notice of the claim and its grounds. While detailed factual allegations are unnecessary, a well-pleaded complaint may proceed even if the facts seem improbable to a savvy judge, and recovery appears remote and unlikely.

Statement of the Case

Petitioner Rynn respectfully submits this application to the Supreme Court to vacate the injunction issued by the Ninth Circuit and District Court refusing to accept further filings on this case.

Petitioner initially filed this case in state court, which was transferred to district court (docket 1). The case was previously appealed to the Ninth Circuit and by certiorari to the U.S. Supreme Court. Due to Fraud and critical new evidence discovered in 2022 regarding the insufficient service of the April 28, 2017, ex parte custody injunction provides the basis for a new trial.

Petitioner filed a motion for a new trial under Rule 60 in district court based on fraud and new evidence (dockets 110, 108, 109, 111). The district court denied these motions without addressing the fraud and new evidence (docket 112) and issued an injunction preventing further filings on the case.

The Ninth Circuit's failure to address the district court's errors and the unresolved factual disputes requires this court to vacate, reverse, and remand the case for further proceedings.

Appellant appealed to the Ninth Circuit Court of Appeals to correct falsification of facts, vacate the district court's injunction, address the unresolved factual matters of insufficient service of process, fraud, vacate juvenile case due to fraud or stay proceedings until state case

resolved, and remand the case for further proceedings in light of the newly discovered evidence and allegations of fraud on the court. The Ninth Circuit dismissed under summary affirmance and issued an injunction preventing further filings on the case.

Motion to Reconsider and Vacate Void Judgments Due to Fraud

The district court erred the threats on April 24, 2017 came from defendant Quail Run not Richard Rynn. see Maricopa Superior court case No. LC2017-000316. Due to the nature of the grossly false accusations on a petition and the engagement of prohibited ex parte communications and the lack of disclosure of the ex parte communications and false accusations by state DCS failing to serve Appellants to the state juvenile case in violation of due process.

District court decisions are rendered void due to reliance on false reports from Quail Run and DCS to Pinal County Superior Court Case No. S1100JD201700116 **decisions that are void based on false reports from Quail Run and DCS in direct conflict to Maricopa Superior court decision** case No. LC2017-000316 (October 27, 2017), **of facts of Fraud** of Marcella not returned home as legally and

contractually agreed **from Quail Run false reports in year 2017 is Grounds for Vacating Judgments and ground for claims of fruad, abuse of process, breach of contract, etc.**

Lower courts failed to review evidence from the Maricopa County Superior Court, which dismissed the accusations from Quail Run as false substantiates claims of fraud before the court and defendants not credible.

The Superior Court's decision in case No. LC2017-000316 (October 27, 2017), which ordered "reverse and remand" and not originating from Richard Rynn. This discrepancy supports this position. As established in *Savord v. Morton,* 235 Ariz. 256, 330 P.3d 1013 ¶ 11 (Ct. App. 2014), the ex parte IAWH decision was based on hearsay statements from a third party that were "completely unverified."

The Glendale City Court's ex parte decision, dismissed in Superior Court case No. LC2017-000316 was similarly flawed, relying on reports from Quail Run that did not originate from Richard Rynn. Quail Run's reports to the Glendale Court were based on submissions from another party, directly contradicting the false reports provided from the

Department of Child Safety on April 28, 2017 to the juvenile court ex parte without notice until discovered in year 2022. The Memorandum Decision by district court is void due to reliance on false reports from Quail Run and La Frontera in April 2017. The Department of Child Safety was aware of the falsity of these reports from Quail Run and La Frontera but continued to present grossly inaccurate information to the courts in bad faith, without disclosing the truth to Appellant.

The ex parte order issued on April 28, 2017, in Pinal County Superior Court Case No. S1100JD201700116, was granted without notice, without disclosure of the petition of accusations in violation of due process, and was based on grossly false and unverified reports. The order failed to meet the requirements set forth under ARPOP, Rule 38(g). Consequently, the injunctions and subsequent court decisions must be vacated as they are void.

The decisions of this court are void due to reliance on egregiously false accusations from the Defendants, which were not disclosed to Appellants until 2022 and were not addressed on the merits in the amended complaint. Given the complexity of the fraud involved, an

evidentiary hearing is necessary to resolve disputed facts and adjudicate the case on its merits. No discovery or trial has taken place in this matter. The courts decisions must be vacated due to the profoundly fraudulent nature of the accusations. Disputable facts remain unresolved, including procedural abuse and insufficient service of process by the State Defendants in the state juvenile case. Additionally, the juvenile court and DCS failed to disclose prohibited ex parte communications with the Department of Child Safety and juvenile court judge Daniel Washburn on April 28, 2017 thereby undermining its authority to issue judgments in this matter.

The case cannot proceed in light of the severe damage caused by the false accusations against Appellants. Therefore, it is imperative to vacate the juvenile court's rulings and either reverse, remand, or stay proceedings until the resolution of the state juvenile case. Motions are pending in the Supreme Court of United States to vacate the state case based on fraud, perjury, insufficient service of process, lack of legal representation, inadequate representation, and procedural failures.

LEGAL ARGUMENT IN SUPPORT OF VACATING DISTRICT COURT INJUNCTION AND STAY OF PROCEEDINGS PENDING STATE CASE RESOLUTION

This request arises from Ninth Circuit's failure to address the necessity of vacating the District Court's injunction in light of new evidence of fraud, and falsification of facts which necessitates additional pleadings. The District Court's refusal to accept further pleadings on this matter has resulted in damaging integrity of court by not correcting falsification of facts. (Docket No. 112).

The District Court's denial of a new trial (Docket No. 112), despite the discovery of new evidence indicating insufficient service of custody injunction and fraud, constitutes an abuse of discretion. There are significant grounds for a new trial (Docket No. 110).

Per Federal Rule 25(4), the clerk must not refuse to accept for filing any paper.

Fatal errors in the judgments necessitate correction. Defendants interfered with legal custody and did not obtain legal custody of Plaintiff's daughter due to the failure to serve Rynn. (Docket No. 110, pg. 8 line 11, pg. 7 line 23), providing a basis for a new trial.

DEPRIVATION OF CONSTITUTIONAL RIGHTS UNDER COLOR OF LAW

The district court decision Richard acted in accordance to doctors orders. Quail Run Doctor ordered Richard to discharge his daughter to take home as contractually agreed and directed by Dr. Tan Fermo of Quail Run, with the discharge order requiring Marcella. to return home on April 24, 2017. Additionally, in dispute the Department of Child Safety did not arrive at the Quail Run facility and did not meet with Rynn on April 24, 2017 in relation to 183 claims of deprivation of constitutional rights under color of law as indicated by police report: (doc. 109 pg. 3, filed 3/27/2023) and discharge contract.

Notably district court failed to make a decision on statement of facts with facts in dispute in violation of due process. (doc. 109 with exhibits)

See decision August 16, 2018 page 2, lines 3-6

"was scheduled to be released today, Gelliana and Richard came to the facility to pick her up"

The Court decisions are unsupported by the evidence, erred in failing to correct the falsification of facts, despite the Appellants' personal knowledge of the disputed issues. The court neglected to address the core claims underlying the Appellants' lawsuit, including assault, false imprisonment, and interference with

custody, all occurring under the color of law during a doctor-ordered discharge. These actions resulted in the deprivation of constitutional rights and the breach of a written contractual agreement. Specifically, the court referenced a juvenile court case without providing a factual basis, clarity, specific names, or dates, and without acknowledging that Rynn was not served notice of the juvenile case. The defendant, Quail Run, conspired with La Frontera to initiate a court injunction, while the state commenced an ex parte juvenile court case involving only one party and without providing notice to Rynn. The injunction obtained by Quail Run was ultimately reversed and remanded based on fraud.

The defendant state failed to serve the Appellant and did not disclose the basis for the juvenile court case, which lacked jurisdiction over Rynn. Rynn only became aware of this prohibited ex parte communication and ex parte juvenile court petition in January 2022, upon reviewing the juvenile court docket. The juvenile case was baseless, relying on the false claim of "*no discharge date,*" despite the fact that Appellants daughter discharge was confirmed by the district court's decision on August 16, 2018. (doc. 109 pg. 1-10, with exhibits)

Critical contradictions between district court decision August 16, 2018, and state Division One court's decision on July 18, 2024 of facts arising case is a basis to vacate and reopen case for fraud.

A critical contradiction exists between the District Court's decision:

"went to retrieve (pick daughter up) M.R., who was under an order from her doctor to be discharged. At the discharge meeting" (*Dr. Tan Fermo of Quail Run ordered M.R. to be discharged home),*

and the Arizona Court of Appeals Division One Case No: 1 CA- CV 23-0392 July 18, 2024 Decision which stated:

"attempted to remove her despite being warned it was not safe for her to leave", (due to no discharge date).

Notably, Division One failed to identify any individual responsible for making these false accusations.

The state court is basing decision on Richard not supposed to remove his daughter in contradiction to district court basing decision on doctor ordered Richard to remove his daughter substantiating deceit, malicious conduct, and fraud on the court requiring vacate and remand for further proceeding and an evidentiary hearing to resolve critical disputable facts.

Court failed to correct the fact that the state Department of Child Safety (DCS) did not arrive to the Quail Run facility on April 24, 2017. The court's failure to recognize that the individual was a private actor operating under the color of law constitutes a significant error, which invalidates the District Court's decisions.

The Defendants did not obtain legal custody of the Appellants daughter due to the actions of Quail Run and La Frontera on April 24, 2017. These entities, acting under the color of law on behalf of the state, wrongfully seized the Appellant's daughter, thereby depriving the Appellant of constitutional rights, including liberty and custody rights.

The actions taken by Quail Run and La Frontera, based on a phone call from the state, were without legal cause or proper custody authorization. As the Department of Child Safety did not arrive at the Quail Run facility on April 24, 2017, the Defendants' actions were without legal justification and resulted in the deprivation of the Appellant's rights under color of law. (Docket No. 110, pg. 7 pg. 2 line 7, Docket No. 110, pg. 8 line 11, pg. 7 line 23).

New evidence discovered in 2022 (Docket No. 109, pg. 10 line 4-10) indicates that DCS failed to disclose false accusations of "no discharge date" and failed to serve Rynn with a summons or a complaint in juvenile court action (Docket No. 62, Ex. A-C), in violation of Rule 65 (4) (2) (Docket No. 110, pg. 13 line 1-5, pg. 6) and Federal Rule 12 (4)(b). The constitutional challenges to the judgments have not been

addressed. Defendants do not dispute that the judgments are void due to fatal errors requiring correction through a motion for a new trial, which was denied without an evidentiary hearing, thereby harming the integrity of the court. See Beltran v. Santa Clara County, 514 F.3d 906 (9th Cir. 2008).

Appellant introduced new facts of void judgments from the new evidence of fraud and insufficient service of the April 28, 2017 ex parte order, discovered in 2022, which were not available earlier in 2018 during the commencement of proceedings. This substantiates a failure to follow due process requirements necessary to obtain legal custody and an unfair trial. The court's failure to address this new evidence indicates that any judgments obtained by Defendants are void due to their failure to serve Rynn and Rynn's daughter (Docket No. 62, Ex. A-C).

State Defendants' failure to disclose to the District Court or Plaintiff that they failed to serve Plaintiff and Plaintiff's daughter constitutes abuse of process, substantiating fraud, interference in legal custody of Plaintiff's daughter, causing prejudicial harm to Plaintiff, and

damaging the integrity of the court. Defendants' failure to disclose state Defendants' violation of Rule 65 (4) (2) and the violation of due process required for a fair trial (Docket No. 110, pg. 13 line 1-5, 19-20; Docket No. 109, pg. 7-9, with exhibits).

1. Failure to address DCS's failure to serve an April 28, 2017 ex parte judgment, not serving an April 28, 2017 petition or a summons of juvenile court to Plaintiff in violation of Rule 65 (4) (2) (Docket No. 110, pg. 12-line 24-25, pg. 12 line 8-9, pg. 13 line 21-22).
2. Appellant did not receive notice of the juvenile court's April 28, 2017 ex parte judgment until year 2022. Appellant is not bound by any judgment from juvenile court due to the violation of Rule 65 (4) (2) (Docket No. 110, pg. 12 line 8-9, pg. 13 line 21-22; Docket No. 110, pg. 13 line 1-5; Docket No. 62, Ex. A-C).

Rule 65 (4) (2) states that the order binds only those who receive actual notice of it by personal service.

Defendants' liability extends beyond merely phoning DCS with false reports of "no discharge date" and "refusal to permit treatment center"

(Docket No. 109, pg. 8; Docket No. 110, pg. 6). On April 24, 2017, while knowing Plaintiff's daughter was contractually required to be discharged to Plaintiff's home on April 24, 2017 but instead was imprisoned and assaulted UNDER COLOR OF LAW by private actors Quail Run and La Frontera from a phone call from and for the state in violation of Quail Run's contractual agreement that stated Plaintiff daughter discharged, "Parents Rynn contributed to goals/plan" (Docket No. 109, pg. 7), substantiating fraud. Defendants acted with malice, depriving Appellant of constitutional rights under color of law, interfering in custody, imprisoning and drugging Appellants daughter.

Evidence of the Quail Run contract with Appellant requiring M.R. to return home was excluded by the State Department of Child Safety in violation of the Brady Rule. The state did not disclose the Quail Run April 20, 2017, contract requiring M.R.to return home on April 24, 2017. This non-disclosure violated Rynn's due process rights to evidence disclosure, as established in *Giglio v. United States*, 405 U.S. 150 (1972).

Duty. The plaintiff will prove that the defendant owed them a duty of care requiring M.R. to return home on April 24, 2017 after a seven day stay at Quail Run facility.

> A duty of care arises when the law recognizes a relationship between the plaintiff and defendant requiring the defendant to exercise a certain standard of care so as to avoid harming the plaintiff. The applicable standard of care is the degree of care that a "reasonable person" would exercise under the circumstances. Plaintiff(s) **claim** under **section 1983**, wo critical points: a person subjected the plaintiff to conduct that occurred under color of state law, and this conduct deprived the plaintiff of rights, privileges, or immunities guaranteed under federal law or the U.S. Constitution. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law,

Defendants violated Plaintiffs rights of Due Process there has been a deprivation of the Plaintiff's liberty, custody and (2) the procedures used by the government to remedy the deprivation were constitutionally inadequate.

False reports about a discharge date do not constitute abuse or neglect and are not a reporting requirement under Arizona law. A.R.S. § 13-3620 (J) and 8-805. Plaintiff adequately distinguishes between Defendants in terms of their unlawful and unconstitutional conduct. Under A.R.S. §§ 13-3620(J) and 8-805, the Complaint contains sufficient

facts from which the Court can plausibly infer that Defendants acted with malice and abused Plaintiff's daughter M.R.

Under 42 U.S.C. § 1983, the Complaint's allegations are sufficient to show Quail Run and EMPACT were state actors, as required to sustain a § 1983 claim against them.

Regarding punitive damages, the Complaint contains factual allegations from which the Court can plausibly infer Defendants acted with the requisite evil mind by falsely accusing of no discharge date.

Immunity Under A.R.S. §§ 13-3620 and 8-805

Arizona law provides that a person who knowingly makes false reports to DCS, knowing that a minor has not been the subject of physical abuse or neglect, is not immune from civil or criminal liability for such actions when they acted with malice and abused Plaintiff's daughter M.R.

Plaintiff's allegations are sufficient to show that Quail Run, La Frontera, and defendant state DCS are not immune from Plaintiff's claims. Plaintiff's claims substantiate sufficient facts from which the Court can plausibly infer that Quail Run, La Frontera, and DCS acted with malice and intentionally lied about "no discharge date," "refusal to permit treatment center to allow for maximum treatment," and abused

Plaintiff's daughter M.R. (A.R.S. §§ 13-3620(J); 8-805). These actions interfered with Plaintiff's custody and parental rights to Plaintiff's daughter. The Complaint contains factual allegations forming the basis of claims against all Defendants for refusing to discharge Plaintiff's daughter to Plaintiff's home on April 24, 2017, as legally and contractually required (Docket No. 109, pg. 7-9 line 12-17).

Plaintiff substantiates claims under § 1983:

" Action under § 1983, plaintiff shows (1) that the conduct complained of was committed by a person acting under color of state law, and (2) that the conduct deprived the plaintiff of a constitutional right."

Plaintiff's allegations are sufficient to show that Quail Run and La Frontera Empact were state actors, as required to sustain a § 1983 claim against them and DCS.

Punitive Damages

The Complaint adequately states a prayer for punitive damages. Under Arizona law, punitive damages are awardable "a reasonable jury could find the requisite evil mind by clear and convincing evidence." In determining whether a defendant exhibited an "evil mind," courts consider "the nature of the defendant's conduct, including the reprehensibility of the conduct and the severity of the harm likely to result, as well as the harm that has occurred, the duration of the misconduct, the degree of defendant's awareness of the harm or risk of harm, and any concealment of it."

Under a § 1983 claim, "a jury may be permitted to assess punitive damages when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to

the federally protected rights of others." Smith v. Wade, 461 U.S. 30, 56 (1983).

The allegations in the Complaint regarding punitive damages are adequate, as there are factual allegations demonstrating that Defendants acted with the requisite evil mind in this case. Defendants' liability extends beyond phoning DCS with false reports of "no discharge date" and "refusal to permit treatment center" (Docket No. 109, pg. 8), contradicting the contractual requirement for Plaintiff's daughter's discharge to Plaintiff's home on April 24, 2017, and Quail Run's contractual agreement stating "Parents Rynn contributed to goals/plan" (Docket No. 109)

See cases below,

RYNN V ARIZONA DEPARTMENT OF CHILD SAFETY
United States Supreme court Case No.24A136------pending
Pinal County Superior Court Case No. S1100JD201700116- pending

Discovery Rule

The discovery rule is perhaps the most common exception to the statute of limitations, in Arizona and elsewhere. Under the discovery rule, a plaintiff's statute of limitations deadline will be extended if they are not aware of the injuries they suffered due to the defendant's fault, and they could not have reasonably discovered the injury.

Appellants have six years to bring a claim based on the breach of Quail Run written contract failing to discharge Marcella home on April 24, 2017.

"Under the discovery rule, ... a cause of action does not accrue until the plaintiff knows or with reasonable diligence should know the facts underlying the cause [of action]." Doe v. Roe, 191 Ariz. 313, ¶ 29, 955 P.2d 951, 960 (App. 1998); see also Walk v. Ring, 202 Ariz. 310, 316, ¶ 22, 44 P.3d 990, 996 (2002); Little v. State, 225 Ariz. 466, ¶ 9, 240 P.3d 861, 864 (App. 2010).

Court must relieve a party from a judgment when, by fraud on the court, the other party has prevented a real contest before the court or has committed some intentional act or conduct that has prevented the unsuccessful party from having a fair submission of the controversy. See *Alvarado v. Thomson, 240 Ariz. 12, 16–17 ¶¶ 17–23 (App. 2016).* Fraud on the court "vitiates everything it touches" Damiano v. Damiano, 83 Ariz. 366, 369 (1958), and is "the most egregious conduct involving a corruption of the judicial process itself[,]" Lake v. Bonham, 148 Ariz. 599, 601 (App. 1986).

Courts therefore have inherent authority to take corrective measures at any time when a party commits or attempts to commit fraud upon them. See Green v. Lisa Frank, Inc., 221 Ariz. 138, 151 ¶ 35 (App. 2009); McNeil v. Hoskyns, 236 Ariz. 173, 177 ¶ 15 (App. 2014) ("A judgment resulting from fraud on the court may be set aside by motion or by independent action."). Courts have this authority even in cases addressing parentage and adoption. See Alvarado, 240 Ariz. at 16–17 ¶¶ 17–23 (parentage); In the Matter of the Adoption of Hadtrath, 121 Ariz. 606, 610 (1979) (adoption). ¶12 The same is true regarding void judgments. Courts have inherent power to vacate void judgments for lack of jurisdiction over the parties. Preston v. Denkins, 94 Ariz. 214, 219 (1963). The right to hear such challenges "does not depend upon rules of the court or statute." Id. If a judgment is void for lack of jurisdiction, a court has no discretion but to vacate it. Id. ¶13 Because courts have inherent power to consider vacating judgments for fraud on the court and lack of jurisdiction, Motions "shall conform to the requirements of [Civil] Rule 60(b)-(d)." And Civil Rule 60 "does not limit

the court's power to set aside a judgment for fraud on the court," Civil Rule 60(d)(3), recognizing the court's inherent authority to hear such a motion at any time. (ID 483)

Courts routinely consider motions to set aside judgments for fraud on the court without regard to any time limit. See *Rogone v. Correia, 236 Ariz. 43, 48 ¶ 11 (App. 2014) JAKE V., Real Party in Interest. No. 1 CA-SA 21-0248 FILED 3-31-2022*

District courts are not permitted under Federal Rule of Civil Procedure 56(f)(2) to grant a dismissal judgment on grounds not raised by Plaintiff. Plaintiff must be given notice and an opportunity to respond. District court cannot just spring a new theory with a vague non-descriptive theory of Plaintiff complaint and end case without giving Plaintiff a chance to come forward with relevant evidence and argument on that point. (Dk. 71) (dk. 112 pg. 1-2)

District court did not inform Plaintiff that it intended to grant a dismissal judgment on a basis that was not raised, and Plaintiff prejudiced by the lack of notice and opportunity to respond. (dk.112 pg. 1-2) *Oldham v. O.K. Farms, Inc.*, No. 16-7069 (10th Cir. Sept. 25, 2017).

It is "manifestly unjust" for district court to issue a ruling (dk. 112) without first reviewing new evidence that contradicts District courts judgement. (Dk. 71)

Rule 52 (a) FINDINGS AND CONCLUSIONS.

(1) *In General.* In action tried on the facts without a jury court must find the facts specially and state its conclusions of law separately

(5) *Questioning the Evidentiary Support.* Plaintiff may later question the sufficiency of the evidence supporting the findings, Plaintiff may object to them, and move to amend the findings.

(6) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must be set aside when clearly erroneous.

Appellant provides a basis to amend based on new discovered evidence of fraud.

ARS Rule 15 When an issue not raised by the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings.

A complaint must include "only 'a short and plain statement of claim showing that pleader is entitled to relief,' in order to 'give defendant fair notice of what the claim is and grounds upon which it rests.
While complaint attacked by a Rule 12(b)(6) motion does not need detailed factual allegations, well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that 'recovery is very remote and unlikely."

Appellant provided a basis for liability based on fraud and new discovered evidence that was not reviewed by the court substantiating a basis for vacating court decisions.

Conclusion

Appellant respectfully requests declaratory relief to vacate the District Court's injunction and Pinal County Superior Court Case No. S1100JD201700116. Additionally, Appellant seeks permission to file further briefs on this matter, citing fraud and the need to review newly

discovered evidence on the merits. Appellant also requests compensation and asks the court to reverse and remand the case for further briefing.

RESPECTFULLY SUBMITTED

this 31st day of August 2024

Richard Rynn

CERTIFICATE OF SERVICE

A copy of this application was served by email or and U.S. mail to Defendants listed below in accordance with Supreme Court Rule 22.2 and 29.3.

Elizabeth Peterson
Megan A. Evans
SLATTERY PETERSEN, PLLC
340 E Palm Ln #250,
Phoenix, AZ 85004
Attorneys for Desert Vista Behavioral Health Center

Carolyn Armer Holden
Michael J. Ryan
Nathan S. Ryan
HOLDEN AND ARMER, PC
4505 E. Chandler Blvd., St. 210
Phoenix, AZ 85048
Attorneys for Quail Run Behavioral Health

Stephany Elliot
ATTORNEY GENERALS' OFFICE
2005 N. Central Ave
Phoenix, AZ 85004-1592

Broening, Oberg, etc.
2800 North Central Avenue Suite 1600
Phoenix, AZ 85004
Attorneys for LA FRONTERA EMPACT

this 31st day of August 2024

By _____
RICHARD RYNN

APPENDIX

Ninth Circuit Court of Appeals
Denial of motion for clarification, 8/20/2024

Decisions of Ninth Circuit Court of Appeals
Denial of rehearing, April. 23, 2024

Ninth Circuit Court of Appeals
Memorandum, Affirmed Oct..23, 2023

District Court Order Filed March. 31, 2023
Docket No. 112

District Court Order Filed November 6, 2018
Docket No. 71

District court John Tuchi response to two state court issued subpoenas for John Tuchi personal involvement in Appellant state court cases date August 13, 2024

Superior Court of Maricopa County Quail Run V Richard Rynn case No. LC2017-000316-001 10/23/2017
Reverse and Remand, hearsay and fraud

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD RYNN, next friend and parent of MR, a minor person; next friend of M.R.,

Plaintiff-Appellant,

v.

GREGORY A. MCKAY, in his official capacity as Director of Arizona Department of Child Safety and personally; et al.,

Defendants-Appellees.

No. 23-15607

D.C. No. 2:18-cv-00414-JJT
District of Arizona,
Phoenix

ORDER

Before: W. FLETCHER, CALLAHAN, and BENNETT, Circuit Judges.

Appellant's motion for reconsideration (Docket Entry No. 17) is denied. *See* 9th Cir. R. 27-10.

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD RYNN, next friend and parent of MR, a minor person; next friend of M.R.,

Plaintiff-Appellant,

v.

GREGORY A. MCKAY, in his official capacity as Director of Arizona Department of Child Safety and personally; et al.,

Defendants-Appellees.

No. 23-15607

D.C. No. 2:18-cv-00414-JJT
District of Arizona,
Phoenix

ORDER

Before: W. FLETCHER, CALLAHAN, and BENNETT, Circuit Judges.

The motion to correct the opening brief (Docket Entry No. 9) is granted.

Appellant's motion for an extension of time (Docket Entry No. 11) to file a response to the motion to dismiss is granted. The response has been filed.

A review of the record, the opening brief filed on August 31, 2023, and the parties' briefing on the motion to dismiss demonstrates that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating summary affirmance standard). Accordingly, the motion to dismiss (Docket Entry No. 10) is treated as a motion for summary affirmance and is granted.

AFFIRMED.

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Richard Rynn,

Plaintiff,

v.

Gregory A. McKay, *et al.*,

Defendants.

No. CV-18-00414-PHX-JJT

ORDER

At issue are *pro se* Plaintiff Richard Rynn's Motion for Summary Judgment (Doc. 108), For Retrial and to Set Aside Judgment (Doc. 110), and for Recusal (Doc. 111). Because the Court will deny all these motions, the Court will not await responses from Defendants and will not hold oral argument. *See* LRCiv 7.2(f).

Over four years ago, on November 6, 2018, the Court entered judgment dismissing Plaintiff's claims in this lawsuit with prejudice. (Docs. 59, 71, 72.) Plaintiff moved for a new trial (Doc. 75), which the Court denied (Doc. 77). Plaintiff then moved to set aside the judgment (Doc. 82) and filed a supplemental motion to set aside the judgment (Doc. 84), which the Court denied (Doc. 96). Plaintiff appealed the Court's decisions (Doc. 102), and on March 9, 2023, the Ninth Circuit Court of Appeals affirmed the Court's decisions (Doc. 107). Plaintiff now requests again to set aside the judgment, for summary judgment, and for the undersigned to recuse. The Court has already addressed Plaintiff's arguments in its multiple prior Orders, and Plaintiff has given the Court no basis in the new set of

Motions to set aside the prior judgment—which has been affirmed on appeal—or to grant summary judgment in favor of Plaintiff, or for the undersigned to recuse from this case.

This matter has been and now remains closed. No further filings will be permitted.

IT IS THEREFORE ORDERED denying Plaintiff's Motion for Summary Judgment (Doc. 108), For Retrial and to Set Aside Judgment (Doc. 110), and for Recusal (Doc. 111). This case remains closed.

IT IS FURTHER ORDERED that the Clerk of Court shall not accept any further filings in this matter.

Dated this 30th day of March, 2023.

Honorable John J. Tuchi
United States District Judge

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Richard Rynn,

Plaintiff,

v.

Gregory A. McKay, *et al.*,

Defendants.

No. CV-18-00414-PHX-JJT

ORDER

At issue are three Motions to Dismiss (Docs. 61, 62, 64) filed by the remaining Defendants in this matter, as well as a Motion for Summary Adjudication (Doc. 70). The Court resolves the Motions without oral argument. *See* LRCiv 7.2(f).

The Court previously entered an Order (Doc. 59) dismissing all of the claims in Plaintiff's Complaint but granting Plaintiff leave to amend certain claims. Plaintiff then filed a First Amended Complaint (Doc. 60, FAC), which all remaining Defendants now seek to dismiss (Docs. 61, 62, 64).

Plaintiff requested an extension of time (Doc. 67) to respond to the Motion to Dismiss filed by EMPACT Suicide Prevention Center (Doc. 61), which the Court granted (Doc. 68), and Plaintiff then filed a Response (Doc. 69) to EMPACT's Motion to Dismiss. Because the Court will grant EMPACT's Motion, it did not await a Reply.

Plaintiff did not timely file a Response to the Motions to Dismiss filed by the State Defendants (Doc. 62) or the Quail Run Defendants (Doc. 64), and the Court will therefore grant those Motions both under LRCiv 7.2(i) and because Plaintiff failed to cure

the defects identified in the Court's prior Order. The Court will therefore dismiss the claims against the State Defendants and the Quail Run Defendants with prejudice and grant the Quail Run Defendants' Motion for Summary Adjudication (Doc. 70).

With regard to Plaintiff's remaining claims against EMPACT, the Court found in its prior Order (Doc. 59) that Plaintiff's claims in the Complaint failed because, among other reasons, (1) Plaintiff did not make any allegation as to an action taken by EMPACT that would give rise to a claim, plainly failing to meet the pleading requirements of Federal Rule of Civil Procedure 8; and (2) Plaintiff did not allege any facts to show that EMPACT is a state actor, as required to sustain a claim under 42 U.S.C. § 1983 against it.

In the FAC, Plaintiff has done nothing to cure these defects. As in the original Complaint, the sole allegation even implicating EMPACT is that one of its employees "asked to keep M.R. for three more days." (FAC ¶ 16.) As the Court stated in its prior Order, this is wholly insufficient to support Plaintiff's claims, and, considering Plaintiff did not even begin to cure the defects in his claims when given the opportunity, the Court will now dismiss those claims with prejudice.

The Court also notes that Plaintiff did not state a federal claim in the Complaint and again failed to state a § 1983 claim against EMPACT in the FAC, and the Court finds that Plaintiff cannot plausibly cure the defect in his § 1983 claim by amendment. Without that federal question claim and considering that diversity jurisdiction is clearly lacking, the Court also lacks subject matter jurisdiction over Plaintiff's state law claims. *See* 28 U.S.C. §§ 1331, 1332. The United States Supreme Court has stated that a federal court must not disregard or evade the limits on its subject matter jurisdiction. *Owen Equip. & Erections Co. v. Kroger*, 437 U.S. 365, 374 (1978). Thus, a federal court is obligated to inquire into its subject matter jurisdiction in each case and to dismiss a case when subject matter jurisdiction is lacking. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004); Fed. R. Civ. P. 12(h)(3). To proceed in federal court, a plaintiff must allege enough in the complaint for the court to conclude it has subject matter jurisdiction. *See* Fed. R. Civ. P. 8(a); Charles Alan Wright & Arthur R. Miller, *5 Fed. Practice &*

Procedure § 1206 (3d ed. 2014). In the FAC, Plaintiff has failed to show that the Court has subject matter jurisdiction over his claims, and the Court must dismiss Plaintiff's claims for this additional reason.

IT IS THEREFORE ORDERED granting Defendant EMPACT-Suicide Prevention Center, an Arizona Nonprofit Corporation's Motion to Dismiss (Doc. 61).

IT IS FURTHER ORDERED granting the State Defendants' Motion to Dismiss (Doc. 62).

IT IS FURTHER ORDERED granting Defendants Quail Run Behavioral Health and Candy Zammit, *et ux.*'s Motion to Dismiss (Doc. 64).

IT IS FURTHER ORDERED granting Defendants Quail Run Behavioral Health and Candy Zammit, *et ux.*'s Motion for Adjudication of their Motion to Dismiss (Doc.70).

IT IS FURTHER ORDERED that all of Plaintiff's claims in the First Amended Complaint (Doc. 60) are dismissed with prejudice.

IT IS FURTHER ORDERED directing the Clerk of Court to enter judgment accordingly and close this case.

Dated this 6th day of November, 2018.

Honorable John J. Tuchi
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
SANDRA DAY O'CONNOR UNITED STATES COURTHOUSE
401 WEST WASHINGTON STREET, SUITE 525, SPC 83
PHOENIX, ARIZONA 85003-2161

John J. Tuchi
United States District Judge

Chambers: (602) 322-7660
Fax: (602) 322-7669

August 13, 2024

Richard Rynn
1299 East Marlin Drive
Chandler, Arizona 85286

Re: Subpoena issued to Hon. John Tuchi in *David-Rynn, et al. v. UHS of Phoenix, LLC, et al.*, Case No. CV2020-094244 (Maricopa County Superior Court)

Dear Mr. Rynn:

I am in receipt of the subpoena you mailed to me at the Sandra Day O'Connor courthouse. The subpoena was issued in the matter of *Richard David-Rynn v. UHS of Phoenix, et al.*, No. CV2020-094244 (Maricopa County Superior Court). A final judgment dismissing all claims was entered in that matter, which was affirmed on appeal. *See David-Rynn v. UHS of Phoenix, LLC*, No. 1 CA-CV 21-0605, 2022 WL 4242261 (Ariz. Ct. App. Sept. 15, 2022) (mem. decision). The United States Supreme Court denied review. *See Rynn v. UHS of Phoenix, LLC*, 144 S. Ct. 329 (2023) (cert. denied). Thus, there is no basis to serve discovery requests or to have had a subpoena issued in this matter as the matter is closed.

The subpoena, which is very similar to the subpoena you served in *Rynn v. Mathews, et al.*, Case No. LC2022-000265 (Maricopa County Superior Court), directs me to provide written responses to interrogatories inquiring about the facts of, and reasons for, my judicial decisions in *Rynn v. McKay, et al.*, Case No. 2:18-cv-00414 (D. Ariz.) and *Rynn v. First Transit, Inc.*, Case No. 2:20-cv-01309 (D. Ariz.), federal district court cases over which I presided. The *McKay* action was dismissed on November 6, 2018. *See* Doc. 71 in Case No. 2:18-cv-00414. The dismissal was upheld on appeal. *See* Doc. 81-1 in Case No. 2:18-cv-00414. In the *First Transit* matter, summary judgment was granted in the defendant's favor on July 28, 2021. *See* Doc. 116 in Case No. 2:20-cv-01209. The decision was affirmed on appeal. *See* Doc. 168-1 in Case No. 2:20-cv-01209. The subpoena also seeks to have me to answer interrogatories regarding the employment status, financial interests, and professional activities of my household, as well as providing the source of my judicial authority.

The Guide to Judiciary Policy, Volume 20, Chapter 8, governs the production or disclosure of official information or records by the federal judiciary and the testimony of

present or former judiciary personnel relating to any official information acquired by any such individual as part of that individual's performance of official duties or by virtue of that individual's official status, in federal, state or other legal proceedings. You can access the portion of the Guide to Judiciary Policy relevant to subpoenas at https://www.uscourts.gov/rules-policies/judiciary-policies/subpoena-regulations. Anyone requesting testimony or production of official information must include with their request—in this case, the subpoena issued in CV2020-094244—a written statement that contains an explanation of the nature of the testimony or records sought, the relevance of the testimony or records sought to the legal proceedings, and the reasons why the testimony or records sought, or the information contained therein, is not readily available from other sources or by other means. *See* Guide to Judiciary Policy § 830(a). Where the request does not contain a sufficient explanation, the determining officer may deny the request or ask the requestor to provide additional information. *Id.* at § 830(a)(2). Since the request for testimony is directed to me, I am the determining officer. *Id.* at § 840(b)(1).

Your request is not accompanied by the written statement required by Section 830(a) of the Guide to Judiciary Policy. Nevertheless, I have reviewed the subpoena and have determined not to authorize disclosure of the federal judicial information sought in the subpoena. In coming to this decision, I have considered, among other things, the need to avoid spending the resources of the United States for private purposes, including conserving the time of federal judicial personnel for the performance of official duties and minimizing the federal judiciary's involvement in issues unrelated to its mission; whether the testimony would assist the federal judiciary in the performance of its official duties; whether the testimony is appropriate under the Arizona Rules of Civil Procedure and under the subsequent law of privilege; whether the request is within the proper authority of the party making it; whether the request meets the requirements of the Guide to Judiciary Policy; whether the testimony would violate a statute, regulation, or ethical rule; whether the testimony would disclose information regarding the exercise of my judicial responsibilities in the decisional or deliberative process; whether the testimony could reasonably be expected to result in the appearance of favoring one litigant over another or endorsing or supporting a position advocated by a litigant; and whether the request seeks personnel files, records or documents of a current judicial officer.

As noted above, your subpoena is inappropriate under the Arizona Rules of Civil Procedure. It is axiomatic that discovery can only be obtained in an open case. The subpoena was issued in Case No. CV2020-094244, in which a judgment has been issued against you, and all avenues of appeal have been exhausted. Because there is no pending case, the subpoena is improper and is not authorized by the Arizona Rules of Civil Procedure. Additionally, a subpoena issued pursuant to Rule 45 of the Arizona Rules of Civil Procedure can command the person to whom it is directed to attend and testify at a deposition, hearing or trial, produce and permit inspection of documents, information or tangible things, or permit the inspection of premises. A subpoena cannot compel a non-party to answer interrogatories. Finally, I note the subpoena was not properly served.

Because the subpoena is not appropriate under or authorized by the Arizona Rules of Civil Procedure, as the determining officer, I decline to authorize disclosure of the requested information.

If you have questions, you may contact Katherine Branch at the United States Attorney's Office at (602) 514-7500.

Sincerely,

JOHN J. TUCHI
United States District Judge

JJT/meg

Michael K. Jeanes, Clerk of Court
*** Electronically Filed ***
10/27/2017 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
T. DeRaddo
Deputy

QUAIL RUN BEHAVIORAL HEALTH HOSPITAL

QUAIL RUN BEHAVIORAL HEALTH HOSPITAL
2545 W QUAIL AVE
PHOENIX AZ 85027

v.

RICHARD RYNN (001)

RICHARD RYNN
44997 W SAGE BRUSH DR
MARICOPA AZ 85139

GLENDALE MUNICIPAL COURT
REMAND DESK-LCA-CCC

HIGHER COURT RULING/REMAND

Lower Court Case No. CV 2017009585

Defendant-Appellant Richard Rynn (Defendant) appeals the Glendale Municipal Court's determination that sustained Plaintiff-Appellee's Quail Run Behavioral Health Hospital (Plaintiff) Injunction Against Workplace Harassment (IAWH). Defendant contends the trial court erred. For the reasons stated below, the Court reverses the trial court's judgment.

I. FACTUAL BACKGROUND.

Plaintiff filed a Petition for an IAWH and claimed Defendant told his wife—who then told her sister—that Defendant was planning to kill the staff at the hospital and that Candy Zammit, an employee, was "#1" on his list. Plaintiff alleged Defendant's wife asked her sister—Nancy Ortiz—to notify the hospital and the hospital's agent—David Carnahan—spoke with Ms. Ortiz. Mr. Carnahan asserted Ms. Ortiz related that Defendant's wife was afraid to call the hospital because (1) she was scared of Defendant; and (2) the parties have two other children in the home. Mr. Carnaham stated Defendant apparently blamed the hospital because DES removed Defen-

dant's 16 year-old daughter from Defendant's custody. Mr. Carnahan maintained he filed a report with the Phoenix Police Department.

Defendant requested a contested hearing and claimed the information in the Petition was false. The trial court set the hearing for May 8, 2017. Neither Plaintiff nor Defendant appeared for the hearing. The trial court sustained the IAWH. The only comment in the trial court file is that the order was kept in effect due to "the nature of event."

Defendant filed a timely appeal.[1] Plaintiff failed to file a responsive memorandum. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12–124(A).

II. ISSUE: DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT SUSTAINED THE IAWH.

Standard of Review

Appellate courts review the trial court's granting—or continuing—a protective order[2] under a clear abuse of discretion standard.

> We review orders granting injunctions under a clear abuse of discretion standard. *Ariz. Dep't of Pub. Safety v. Superior Court,* 190 Ariz. 490, 494, 949 P.2d 983, 987 (App.1997). The misapplication of the law to undisputed facts is an example of an abuse of discretion. *Id.* (citing *City of Phoenix v. Superior Court (Laidlaw Waste Sys.),* 158 Ariz. 214, 217, 762 P.2d 128, 131 (Ct. App.1988).

---

[1] Defendant failed to comply with Superior Court Rules of Appellate Procedure—Civil, (SCRAP—Civ.) Rule 8(a)(3) in that he failed to (1) provide a concise argument; (2) provide legal authority; and (3) cite to the record. When a litigant fails to include citations to the record in an appellate brief, the court may disregard that party's unsupported factual narrative and draw the facts from the opposing party's properly-documented brief and the record on appeal. *Arizona D.E.S. v. Redlon*, 215 Ariz. 13, 156 P.3d 430 ¶ 2 (Ct. App. 2007). Allegations that do not have specific references to the record do not warrant consideration on appeal absent fundamental error, *State v. Cookus*, 115 Ariz. 99, 104, 563 P.2d 898, 903 (1977), which is rarely found in civil cases. *Monica C. v. Arizona D.E.S.*, 211 Ariz. 89, 118 P.3d 37 ¶¶ 23–25 (Ct. App. 2005). However, SCRAP—Civ., Rule 2, allows this Court to (1) suspend the requirements of these rules in a particular proceeding and (2) construe the rules liberally in the interests of justice. Accordingly, this Court waives strict compliance with SCRAP—Civ. Rule 8(a)(3) and will address those issues which this Court is able to identify. However, waiving compliance does not necessarily equate to success. This Court is "not required to assume the duties of an advocate and search voluminous records and exhibits" or to "substantiate a party's claim" *Adams v. Valley National Bank*, 139 Ariz. 340, 343, 678 P.2d 525, 528 (Ct. App. 1984). Furthermore, merely mentioning a claim is insufficient. "In Arizona, opening briefs must present significant arguments, supported by authority, setting forth an appellant's position on the issues raised. Failure to argue a claim usually constitutes abandonment and waiver of that claim." *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989).

[1] Plaintiff also failed to comply with Superior Court Rules of Appellate Procedure—Civil, (SCRAP—Civ.) Rule 8(a)(3) in that it failed to provide a concise argument; legal authority; and failed to cite to the record. The remainder of footnote 1 applies equally to Plaintiff.

[2] A protective order includes an Order of Protection (OOP) as well as an IAH and an IAWH. See ARPOP, Rule 4.

LaFaro v. Cahill, 203 Ariz. 482, 56 P.3d 56 ¶ 10 (Ct. App. 2002). Appellate courts accord great deference to the trial court's determination. In *Cardoso v. Soldo*, 230 Ariz. 614, 277 P.3d 811 ¶ 17 (Ct. App. 2012) the Arizona Court of Appeals referenced *Goats v. A.J. Bayless Mkts., Inc.*, 14 Ariz. App. 166, 169–71, 481 P.2d 536, 539–41 (1971) and cited the "(superior court is in the best position to judge credibility of witnesses and resolve conflicting evidence, and an appellate court generally defers to its findings unless there has been an abuse of judicial discretion. In addition, the appellate court views the evidence in the light most favorable to upholding the trial court's decision. *Mahar v. Acuna*, 230 Ariz. 530, 287 P.3d 824, ¶ 2 (Ct. App. 2012)

Abuse of Discretion

In reviewing a case for an abuse of discretion, this Court must determine if there was sufficient evidence for the trial court's determination. The appellate court must not re-weigh the evidence to see if it would reach the same conclusion as the original trier-of-fact. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2 1185, 1189 (1989). Instead, the appellate court must find if the trial court could find sufficient evidence to support its decision.

Where this Court reviews the trial court's actions based on an abuse of discretion standard, this Court will not change or revise the trial court's determination if there is a reasonable basis for the order. A court abuses its discretion when there is no evidence supporting the court's conclusion or the court's reasons are untenable, legally incorrect, or amount to a denial of justice. *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 141 P.3d 824 ¶ 17 (Ct. App. 2006). A trial court abuses its discretion if it makes decisions unsupported by facts or sound legal policy. As our Supreme Court of Arizona stated:

> In exercising its discretion, the trial court is not authorized to act arbitrarily or inequitably, nor to make decisions unsupported by facts or sound legal policy. . . . Neither does discretion leave a court free to misapply law or legal principle.

City of Phoenix v. Geyler, 144 Ariz. 323, 328–29, 697 P.2d 1073, 1078–79 (1985) (citations omitted). In this case, there is a dearth of facts because neither Plaintiff nor Defendant appeared for the contested hearing. The trial court heard no evidence. Consequently, the issue is whether the trial court should have affirmed the IAWH in the absence of any evidence other than the fact that Plaintiff obtained an ex parte order.

The Failure of All Parties To Appear At The Contested Hearing.

As stated, the legal standard for the review of a protective order is the appellate court views the evidence in the light most favorable to upholding the trial court's decision. Because the trial court issued the ex parte Order, this Court presumes the trial court found a basis for the initial Order.

Defendant failed to provide this court with a transcript of the ex parte hearing. According to the May 25, 2017, letter the trial court sent to Defendant, there was no recording for the May 8,

2017, "contested" hearing. The procedures to be used in appealing an IAWH issued by a municipal court are the same as those used for an appeal from a protective order issued by a Justice Court and are set forth in A.R.S. § 22–261[3] and § 22–425.[4] The requirements for the record on appeal to the Superior Court are governed by the Superior Court Rules of Appellate Procedure—Civil (SCRAP—Civ.), Rule 7. Although Defendant was not required to provide the hearing transcript for the ex parte hearing, SCRAP—Civ. Rule 7(b)(10), in the absence of the transcript or specific references to the transcript as mandated by SCRAP—Civ. Rule 8(a)(3), this Court has little basis with which to evaluate the evidence presented to the trial court prior to the trial court's ex parte decision. However, as our Supreme Court stated, when an appellate court is faced with an incomplete record, a reviewing court must assume any evidence not available on appeal supported the trial court's action. *State v. Printz,* 125 Ariz. 300, 609 P.2d 570 (1980); *Bliss v. Treece*, 134 Ariz. 516, 519, 658 P.2d 169, 172 (1983).

Defendant's failure to appear at the scheduled contested hearing resulted in serious consequences. Defendant was only entitled to a single hearing. ARPOP, Rule 38(a) provides:

> At any time while a protective order or a modified protective order is in effect, a defendant may request **one hearing** in writing.

(Emphasis added.) In addition, A.R.S. § 12–1810(G) states:

> **G.** If the court issues an ex parte injunction pursuant to this section, the injunction shall state on its face that the defendant is entitled to a hearing on written request and shall include the name and address of the judicial office in which the request may be filed. At any time during the period that the injunction is in effect, **the**

---

[3] A.R.S. § 22–261 states:

> **A.** Any party to a final judgment of a justice court may appeal to the superior court.
> **B.** The party aggrieved by a judgment in any action in which the validity of a tax, impost, assessment, toll or a statute of the state is involved may appeal to the superior court without regard to the amount in controversy.
> **C.** An appeal shall be on the record of the proceedings if such record includes a transcript of the proceedings. De novo trials shall be granted only when the transcript of the proceedings in the superior court's evaluation is insufficient or in such a condition that the court cannot properly consider the appeal. A trial de novo shall not be granted when a party had the opportunity to request that a transcript of the lower court proceedings be made and failed to do so. At the beginning of each proceeding the judge shall advise the parties that their right to appeal is dependent on their requesting that a record be made of the justice court proceedings. Any party to an action may request that the proceedings be recorded for appeal purposes. The cost of recording trial proceedings is the responsibility of the court. The cost of preparing a transcript, if appealed, is the responsibility of the party appealing the case. The supreme court shall establish by rule the methods of recording trial proceedings for record appeals to the superior court, including electronic recording devices or manual transcription

[4] Ariz. Rev. Stat. Ann. § 22-425(B) states:

> Either party may appeal from a municipal court to the superior court in the same manner as appeals are allowed from justice courts.

> **defendant may request a hearing.** The court shall hold the hearing within ten days after the date of the written request unless the court finds compelling reasons to continue the hearing. The hearing shall be held at the earliest possible time. After the hearing, the court may modify, quash or continue the injunction

(Emphasis added.) Thus, this Court has no basis for ordering a second hearing. Defendant did not provide any reason for his failure to appear.[5]

Rule 38, ARPOP, governs contested hearings. However, while Rule 38 addresses the standard of proof, the ARPOP do not include any provisions for the situation presented by this case—where both parties failed to appear for the scheduled contested hearing. A review of ARPOP Rule 38 reveals Rule 38(c) requires Plaintiff to be notified about the hearing. The trial court record reflects the trial court complied and (1) mailed notice of the hearing to the Plaintiff; and (2) personally provided notice of the hearing to the Defendant informing both parties the hearing was set for 3:00 PM on May 8, 2017.

When a party fails to appear at a scheduled hearing, that party waives—gives up—the right to contest the matter at hand *Monica C. v. Arizona Dep't of Econ. Sec.*, 211 Ariz. 89, 118 P.3d 37 ¶ 9 (Ct. App. 2005). In describing the need to appear at a scheduled arbitration hearing, our Court of Appeals stated:

> Specifically, we agree that when a party to an accident contests liability and has relevant first-hand testimony to offer on the subject, that party must make himself available for cross-examination at the arbitration hearing, unless mutually satisfactory alternative arrangements have been made. A failure to do so can reasonably be regarded as a failure to appear and participate in the hearing.

Sabori v. Kuhn, 199 Ariz. 330, 18 P.3d 124 ¶ 9 (Ct. App. 2001). While an arbitration hearing is not identical to a contested protective order hearing, the rationale is the same and the A.R.C.P. provides some guidance—particularly because the ARPOP adopted both the Arizona Rules of Family Law Procedure (ARFLP) and the Arizona Rules of Civil Procedure (A.R.C.P) where these rules are not inconsistent with the ARPOP. Rule 2, ARPOP states—in relevant part:

> In all other cases, the Arizona Rules of Civil Procedure apply when not inconsistent with these rules.

Based on the above, Defendant may have waived his right to contest the IAWH.

[5] Plaintiff also failed to appear for the contested hearing. However, Plaintiff was not obliged to respond to the appeal—SCRAP—Civ. Rule 8(a)(1)—and it was not a confession of error for Plaintiff to fail to respond.

This does not fully resolve the issue. While the underlying rationale may be the same, arbitrations are not the same as protective orders. Unlike arbitrations, protective orders carry collateral consequences which militate against just adopting standards used in arbitration cases.

Once a contested hearing is requested, the plaintiff has the burden of proving the need for the protective order. ARPOP, Rule 38 (g) specifically provides that for a protective order to remain in effect as originally issued—or as modified at a hearing—the plaintiff must prove the case by a preponderance of the evidence. Because Plaintiff also missed the hearing, Plaintiff failed to comply with this Rule and failed to prove the case by a preponderance of the evidence. The trial court file reflects the trial court determined the Plaintiff's burden was met by the "nature of event". The trial court file does not indicate how or why the trial court arrived at this conclusion since the trial court held no hearing. ARPOP Rule 38(h) requires the judicial officer to state the basis for continuing the protective order. This Court understands the trial court might have been persuaded by the allegation that Defendant intended to kill an employee. However, this Court notes that although the Petition stated the Defendant was planning to kill staff at the Plaintiff hospital, the ex parte IAWH Order did not include any order restricting Defendant from possessing firearms.[6]

There is little law dealing with this situation. The Court of Appeals addressed the situation of a missed hearing in a memorandum decision, *Barraza v. Warfield*, No. 1 CA-CV 16-0362, 2017 WL 1882336, at *1 (Ct. App. May 9, 2017).[7] *Barraza* involved a defendant who requested a contested protective order hearing at the Justice Court but failed to appear on time. The justice court sustained the protective order. The Court of Appeals did not indicate if the plaintiff in *Barraza* also failed to appear at the contested hearing. Thereafter, the Superior Court conducted a new hearing and heard testimony from the plaintiff that substantiated the plaintiff's allegations. The Superior Court sustained the IAH and Mr. Warfield appealed. The Court of Appeals decided that reversal of the IAH was warranted under the clear abuse of discretion standard because the record was "devoid of competent evidence to support the decision". The Court of Appeals stated:

> We review the superior court's entry and continuation of the injunction against harassment for a clear abuse of discretion. *See LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 10 (App. 2002). **Reversal is warranted** under this standard "**when the record,** viewed in the light most favorable to upholding the trial court's decision, **is devoid of competent evidence to support the decision**." *Mahar v. Acuna*, 230 Ariz. 530, 534, ¶ 14 (App. 2012) (citation omitted). We similarly review for an abuse of discretion the court's denial of (1) Warfield's motion for new trial in which he asserted that the decision was not supported by the evidence

[6] ARPOP, Rule 26(f) and A.R.S. § 12–1810(F)(2) allow the trial court to grant relief that is necessary for the protection of the plaintiff's employees or other persons who enter the employer's property and that is proper under the circumstances.

[7] Rule 111(c) of the Arizona Rules of the Supreme Court provides for the citing of memorandum decisions issued after Jan. 1, 2016, for persuasive value if no opinion adequately addressed the issue before the court.

> and (2) Warfield's request for relief from judgment based on his claim of substantial injustice. *See Styles v. Ceranski*, 185 Ariz. 448, 450 (App. 1996); *Skydive Arizona, Inc. v. Hogue*, 238 Ariz. 357, 364, ¶ 24 (App. 2015).

Barraza v. Warfield, id., at *2 (emphasis added). The Court of Appeals determined that although the defendant—in *Barraza*—argued there was no evidence other than the Plaintiff's unsubstantiated allegations, the Superior Court heard testimony at the hearing it held and this testimony supported the Superior Court's decision. In the case before this Court, the trial court did not have any testimony from anyone and, consequently, the trial court had no evidentiary basis for determining Plaintiff met its burden of proof. In sustaining the Superior Court's decision in *Barraza,* the Court of Appeals determined the record provided an adequate basis for the Superior Court's decision. In the current case, the trial court did not make any finding about an adequate basis for sustaining the Order.

In order to resolve the problem posed by this IAWH, this Court must balance (1) the standard of review of a protective order case; against (2) the clear language of ARPOP, Rule 38(g) requiring the Plaintiff to prove the need for a protective order by a preponderance of the evidence when the Defendant contests the ex parte order. The language of the Plaintiff's Petition indicated the IAWH was based on double hearsay. Plaintiff did not provide any evidence showing how or why the statements allegedly from the sister of Defendant's wife—who did not hear the statements from Defendant—should have been granted credence by the trial court.[8]

Protective orders can have collateral consequences. Our Court of Appeals in *Cardoso v. Soldo*, 230 Ariz. 614, 277 P.3d 811 ¶ 12 (Ariz. Ct. App. 2012) commented on the collateral consequences of a protective order and stated:

> Further, because an order of protection is issued for the purpose of restraining acts included in domestic violence, its very issuance can significantly harm the defendant's reputation—a collateral consequence that can have lasting prejudice. Accordingly, courts throughout the United States have recognized expired orders of protection are not moot because of their ongoing reputational harm and stigma. As explained by the Supreme Court of Connecticut, the "threat of reputation harm is particularly significant in this context because domestic violence restraining orders will not issue in the absence of the showing of a threat of violence.... [and] being the subject of a court order intended to prevent or stop domestic violence may well cause harm to the reputation and legal record of the defendant."

Our Court of Appeals also held:

[8] Plaintiff's ex parte order was based on Plaintiff's allegations that Ms. Ortiz—the sister—reported statements that were allegedly made by Defendant to Defendant's wife.

> It is well settled that the issuance of an order of protection is a very serious matter. *See, e.g., Cardoso,* 230 Ariz. at 619, ¶ 14, 277 P.3d at 816. Once issued, an order of protection carries with it an array of "collateral legal and reputational consequences" that last beyond the order's expiration. *Id.* Therefore, granting an order of protection when the allegations fail to include a statutorily enumerated offense constitutes error by the court. *See* A.R.S. § 13–3601 (Supp.2013) (listing offenses that justify issuance of an order of protection).

Savord v. Morton, 235 Ariz. 256, 330 P.3d 1013 ¶ 11 (Ct. App. 2014). Because (1) the ex parte IAWH was based on statements that were completely unverified; (2) Plaintiff did not meet the requirements of ARPOP, Rule 38(g); (3) protective orders have collateral consequences; (4) the trial court provided no underlying basis for continuing the protective order as required by ARPOP, Rule 38(h); and (5) the only reason proffered was "the nature of event", this Court finds the trial court erred by sustaining the IAWH.

III. CONCLUSION.

Based on the foregoing, this Court concludes the Glendale Municipal Court erred.

IT IS THEREFORE ORDERED reversing the judgment of the Glendale Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Glendale Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Myra Harris
THE HON. MYRA HARRIS
Judicial Officer of the Superior Court

102520171952

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.

RE: case status

From: Questions CA09Operation (questions@ca9.uscourts.gov)

To: richardrynn@yahoo.com

Date: Thursday, August 29, 2024 at 09:13 AM MST

Hello,

The cases are now closed.

Thanks

From: richard rynn <richardrynn@yahoo.com>
Sent: Thursday, August 29, 2024 2:07 AM
To: Questions CA09Operation <questions@ca9.uscourts.gov>
Subject: case status

CAUTION - EXTERNAL:

Request for Status on Two Pending Cases Rynn V Mckay Case No.: 23-15607 Rynn V First Transit case No. 23-15869

According to the Notice from the United States Supreme Court, the Appellant has filed multiple motions in the Ninth Circuit and an application to vacate, which supersedes all court rules. The court's decision ordered that no further filings be accepted. The Ninth Circuit's order is rendered void pursuant to Appellant application to vacate under Rule 60 for fraud on the court.

Sincerely,

Richard Rynn

CERTIFICATE OF SERVICE

A copy of this application was served by U.S. mail to Defendants listed below in accordance with Supreme Court Rule 22.2 and 29.3, or 33.2.

Kimberly Marie Shappley, R. Shawn Oller
Littler Mendelson PC - Phoenix, AZ
2425 E Camelback Rd., Ste. 900
Phoenix, AZ 85016-2907
602-474-3600, 949-705-3000
Email: kshappley@littler.com
Attorney for Defendant First Transit

Elizabeth Peterson
Megan A. Evans
SLATTERY PETERSEN, PLLC
340 E Palm Ln #250,
Phoenix, AZ 85004
Attorneys for Desert Vista Behavioral Health Center

Carolyn Armer Holden
Michael J. Ryan
Nathan S. Ryan
HOLDEN AND ARMER, PC
4505 E. Chandler Blvd., St. 210
Phoenix, AZ 85048
Attorneys for Quail Run Behavioral Health

Stephany Elliot
ATTORNEY GENERALS' OFFICE
2005 N. Central Ave
Phoenix, AZ 85004-1592

Broening, Oberg, etc.
2800 North Central Avenue
Suite 1600
Phoenix, AZ 85004
Attorneys for La Frontera Empact

this 31st day of August 2024

By: _____
RICHARD RYNN