

Supreme Court, U.S.
FILED
OCT 21 2024
OFFICE OF THE CLERK

24A415

No. _____

IN THE SUPREME COURT OF UNITED STATES

Richard Rynn, Gelliana David Rynn, M.R.
Petitioners/Appellants

v.

Daniel Washburn
Department of Child Safety
Respondents/Appellees

APPLICATION UNDER RULE 60(b)-(d). and 60(d)(3), 28 U.S.C. 1651
TO VACATE INJUNCTION, VOID JUDGEMENTS BASED ON NEW
EVIDENCE, FRAUD, VIOLATION OF CONSTITUTIONAL RIGHTS
AND INSUFFICIENT SERVICE OF PROCESS, TO THE UNITED
STATES COURT OF APPEALS FOR THE ARIZONA SUPREME COURT

Richard Rynn, Gelliana David Rynn
M.R.
1299 E. Marlin Drive
Chandler, AZ 85286
(520)510-6370
richardrynn@yahoo.com
Petitioners/Appellants
Pro Se

RECEIVED
OCT 24 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Questions Of Issues Presented

1. Does the legal standard of evidence require a showing of imminent harm to justify the issuance of an ex parte custody injunction without notice?
2. 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.
3. Deprivation of rights under color of law by private companies seizing parents child under direction of the state without obtaining legal custody.
4. The age of the minor does not impact the right to vacate an injunction that was issued fraudulently and without jurisdiction.

TABLE OF CONTENTS

Item	Page
Table of Contents.....	2
Questions Of Issues Presented.....	2
Issues Presented For Review.....	2
Table of Authorities.....	4
STATUTES AND CONSTITUTIONAL PROVISIONS	5
Opinions From Lower Courts.....	7
State Courts Violated Appellants Constitutional Rights.....	8
Rule 65 (4) (2) <i>Persons Bound</i>	10
Court of Appeals Division Two decisions are void based on false reports from Quail Run and DCS in direct conflict to Maricopa Superior court decision of facts of Fraud from Quail Run false reports in year 2017 is Grounds for Vacating Judgments	13
A critical contradiction exists between the District Court's decision: <i>“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).</i>	12
Memorandum of Facts	15
PROCEDURAL HISTORY	21
LEGAL ARGUMENT TO VACATE VOID JUDGEMENTS	31

Clarification required-----42

Conclusion-----42

Certificate of Service-----44

Appendix-----45

TABLE OF AUTHORITIES

CASES

Savord v. Morton, 235 Ariz. 256, 330 P.3d 1013 ¶ 11 (Ct. App. 2014)--13

Alvarado v. Thomson, 240 Ariz. 12, 16–17 ¶¶ 17–23 (App. 2016)-----15

Damiano v. Damiano, 83 Ariz. 366, 369 (1958)-----15

Lake v. Bonham, 148 Ariz. 599, 601 (App. 1986)-----15

Green v. Lisa Frank, Inc., 221 Ariz. 138, 151 ¶ 35 (App. 2009)-----15

McNeil v. Hoskyns, 236 Ariz. 173, 177 ¶ 15 (App. 2014)-----15

Hadtrath, 121 Ariz. 606, 610 (1979))-----15

Preston v. Denkins, 94 Ariz. 214, 219 (1963) -----15

Rogone v. Correia, 236 Ariz. 43, 48 ¶ 11 (App. 2014) -----15

Cypress on Sunland Homeowners Ass’n v. Orlandini, 227 Ariz. 288,
299–300 ¶ 43 (App. 2011) -----15

Ruffino v. Lokosky, 245 Ariz. 165, 168–69 ¶ 10 (App. 2018)-----16

Koven v. Saberdyne Sys., Inc., 128 Ariz. 318, 321 (App. 1980)-----16

Marquez v. Rapid Harvest Co., 99 Ariz. 363, 365 (1965)-----16

James M. v. Silvia M., No. 1 CA-JV 20-0289, 2021 WL 1923655, at
*1–3 ¶¶ 7–15 (Ariz. App. May 13, 2021)-----16

Jones v. Weller, 362 N.E.2d 73, 76–77 (Ill. App. 1977) -----16

Paternity of Tompkins, 518 N.E.2d 500, 507 (Ind. App. 1988) -----16

Matter of Adoption of M.M.B., 376 N.W.2d 900, 902 (Iowa 1985)--16

Doe v. Smith, 200 So. 3d 1028, 1035 ¶ 24 (Miss. 2016)-----16

Wimber v. Timpe, 818 P.2d 954, 958 & n.7 (Or. App. 1991) -----16

McGee v. Gonyo, 140 A.3d 162, 167 ¶ 19 (Vt. 2016) -----17

Ryan v. Commission on Judicial Performance
(1988) (45 Cal. 3d 518, 533)-----12

Commonwealth v Arias 2017 Mass. App. Lexis 148)(Nov.9, 2017)-18

Washington v. Glucksberg, 521 U.S. 702 (1997)-----18

Hardwick v. County Of Orange, No. 15-55563 9th Cir., 2017)-----22

Monell v. Department of Social Services, 436 U.S. 658 (1978)-----22

Giglio v. United States, 405 U.S. 150 (1972)-----25

United States v. Bagley, 473 U.S. 667 (1985)-----25

U.S. v. Agurs, 427 U.S. 97 (1976); *Strickler v. Greene*, 527 U.S.
263 (1999)-----25

Hanson v Denckla, 357 US 235, 2 L Ed 2d 1283, 78 S Ct 1228---30

Beltran v. Santa Clara County. 514 F.3d 906 (9th Cir. 2008) -----35

Gault, 387 U.S. 1 (1967)(U.S. supreme court) -----39

STATUTES AND CONSTITUTIONAL PROVISIONS

A.R.S. § 12-120.22 (B) -----10

ARPOP, Rule 38(g)-----11, 40

Civil Rule 60(b)-(d).” and Civil Rule 60(d)(3), ----- throughout

ARS Rule 65----- throughout

ARS Rule 60-----throughout

Fourth, sixth, fourteenth amendments-----19

Arizona law (ARS Rule 65 and ARS Rule 48). -----	22
Brady Rule-----	12, 20, 24
Section 242 of Title 18 -----	30
Section 1983 -----	33, 35, 43
fifth amendment-----	36
ARS 4(3) -----	36
A.R.S. § 13-3601-----	38
ARS Rule 65 (b)(1)(A) -----	throughout
14th amendment-----	39
A.R.S. § 12-2101 -----	42
Article 6 Section 5 -----	42

DIRECTLY RELATED CASES

Quail Run v Richard Rynn, Superior Court Of Arizona Maricopa
County Case No. LC2017-00316-001 Order 10/23/2017
Decision “*Devoid of competent evidence*”, “Reverse & Remand”--8. 21

Rynn V Mckay Et Al, Arizona District court
Case No. 2:18-cv-00414-JJT “*went to retrieve (pick daughter up)*
M.R., who was under an order from her doctor to be discharged.
At the discharge meeting”
(Document 59 Filed 08/16/18 Page 2 of 9)----- 11, 32

Rynn V Craig Jennings Et Al
District court Case No. CV-2:24-02674-CDB

Opinions From Lower Courts

Supreme Court state of Arizona
July 22, 2024, denied Petition to Vacate,
denied Petition for Review.

Arizona Court of Appeals Division Two
February 7, 2024, denied to accept jurisdiction
for Petition for special Action.

Pinal County Superior Court
Case No. S1100JD201700116 denied to accept jurisdiction
due to age of minor

Superior Court Of Arizona Maricopa County
Case No. LC2017-00316-001 Order 10/23/2017
Decision "*Devoid of competent evidence*",
"Reverse & Remand"

Arizona Court of Appeals Division Two
Case No. 2 CA-JV 2017-0165, Decision Feb. 6, 2018

Applicants (Petitioners/Appellants) Rynn timely petitions United States Supreme court under Civil Rule 60(b)-(d). and Civil Rule 60(d)(3), and pursuant to Rule 23 and the All-Writs Act, 28 U.S.C. 1651, to vacate Pinal County Superior Court Case No. S1100JD201700116 ex parte custody injunction from the disposition of appeal from the Arizona Supreme court on July 22, 2024. Arizona Supreme court Order July 22, 2024 denied Appellants petition under Civil Rule 60(b)-(d) and Civil Rule 60(d)(3) to vacate the lower courts decisions, and denied En Banc review. Court of Appeals Division Two Order February 7, 2024 denied to accept jurisdiction for Appellants Petition for Special action to vacate Superior court injunction based on age of minor.

State Courts Violated Appellants' Constitutional Rights

The state courts violated appellants' constitutional rights by failing to address the fraud, due process violations, and newly discovered evidence presented as the basis for the appellants' motion to vacate. The courts improperly dismissed the motion based on the minor's age, without any legal justification. The refusal to hear Appellants motion to vacate constituted a violation of the appellants' due process rights.

The Arizona Supreme Court erred by not adhering to Arizona Rule of Civil Procedure 60(b)-(d) and specifically Rule 60(d)(3), which supersedes other court rules. The courts also violated Rule 24.2(a)(1)-(3), which permits vacating a judgment based on newly discovered evidence, fraud, and lack of jurisdiction in the original dependency case. The judgments were obtained in violation of both the United States Constitution and the Arizona Constitution, as well as Rule 60(b)-(d) and Rule 60(d)(3). The courts failed to review clear and convincing evidence demonstrating that the dependency case was void.

False accusations were improperly presented ex parte, leading to a defective custody injunction entered without proper notice or disclosure, in violation of due process. This injunction, issued based on a preponderance of the evidence, did not satisfy the evidentiary requirements for a threat to life and was granted ex parte without an affidavit of imminent threat, in violation of both state and federal standards under ARS Rule 65(b)(1)(A)-(B)(2).

A.R.S. § 12-120.22 (B) No case, appeal or petition for a writ brought in the supreme court or court of appeals shall be dismissed for reason only

that it was not brought in proper court but it shall be transferred to proper court or division.

No time limit to vacate case based on fraud, violations off due process and jurisdictional defects. Arizona Supreme court erred not resolving all factual matters remaining in dispute as required Per Ariz. R. Civ. P. 54 (c) Judgment as to All Claims and Parties.

Petitioners/Appellants Richard, Gelliana, and M.R. Entitled to Relief Under Civil Rule

Petitioners/Appellants. respectfully petition the court under Civil Rule 60(b)-(d) and Civil Rule 60(d)(3) to vacate the judgments. The basis for this petition includes fraud, perjury, violations of constitutional rights, and insufficient service of process. Civil Rule 60(b)-(d) and Civil Rule 60(d)(3) supersede other procedural rules and provide for immediate relief from void judgments. The petition to vacate the juvenile case is grounded in substantial merit, as evidenced by claims of fraud on the court and the court's lack of jurisdiction. Relevant documents supporting this petition include:

- **Civil Rule 60(b)-(d) and Civil Rule 60(d)(3)** filings, demonstrating the basis for relief due to fraud, insufficient service of process. Rule 65 (4) (2) *Persons Bound*.
- **Motion to Vacate** filed on June 20, 2023 (pages 6-11).
- **Rule 59 Motion** filed on February 10, 2023.

- **Civil Rule 60(b)-(d) and Civil Rule 60(d)(3)** filings, demonstrating the basis for relief due to fraud, insufficient service of process. Rule 65 (4) (2) *Persons Bound*.
- **Motion to Vacate** filed on June 20, 2023 (pages 6-11).
- **Rule 59 Motion** filed on February 10, 2023.
- **Failure to comply** to rule ARPOP, Rule 38(g) failed to meet standards of evidence of an imminent threat that is required for ex parte injunctions.
- **Breach of contractual discharge** requiring M.R. home. (*ID 174, p. 41, Ex. B*) Police reporting discharge on April 24, 2017.
- **Failure to comply** to due process requirements of clear and convincing evidence standard.

These filings substantiate the petitioners' claims that the judgments are void and warrant immediate judicial relief. The state DCS failed to serve the Appellants and did not disclose the basis for the juvenile court case, which lacked jurisdiction over Rynn. Rynn only became aware in January 2022 of this prohibited ex parte communication and ex parte juvenile court petition, upon reviewing the juvenile court docket during a new appeal. The juvenile case was baseless, relying on the false "*claim of treatment*" from a false claim of "*no discharge date*," despite the fact that Appellants daughter M.R. discharge was confirmed by the district court's decision on August 16, 2018. (Rynn V Mckay 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

JJT Document 59 Filed 08/16/18 Page 2 of 9)(Dr. Tan Fermo of Quail Run ordered M.R. discharged home),

In contradiction to Arizona Court of Appeals Division One Case No: 1 CA- CV 23-0392 July 18, 2024 decision derived from Division Two decision which stated: "*attempted to remove her despite being warned it was not safe for her to leave*", (due to a lie of no discharge date).

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

The state court is wrongly basing decisions on Richard removing 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 vacating case.

Not resolved critical disputable facts of M.R. discharge to return home as directed by Quail Run doctor but omitted by the state courts decisions in violation of Brady Rule requiring disclosure of doctors discharge order on April 24, 2017. Courts failed to review credible and critical evidence from Maricopa Superior court and district court that contradicts courts decisions.

Pinal County Superior court and Court of Appeals Division Two decisions are void based on false reports from Quail Run and DCS in

direct conflict to Maricopa County Superior court decision of **facts of Fraud** from Quail Run false reports in year 2017 is **Grounds for Vacating Judgments.**

Lower courts failed to review evidence from Superior court decisions that dismissed Quail Run accusations about Rynn on April 28, 2017, petition because they are false and not from Richard Rynn. see Quail Run v Richard Rynn, Superior Court Of Arizona Maricopa County Case No. LC2017-00316-001 Order 10/23/2017 Decision “*Devoid of competent evidence*”, “Reverse & Remand”

False reports from Quail Run to the juvenile court and Division Two case No. 2CA-JV 2017-0165 (Ariz. App. Feb. 6, 2018) are void and must be vacated in light of the Maricopa County Superior Court’s decision Case No. LC2017-00316-001, 10/23/2017

The Superior Court’s decision in case No. LC2017-000316 (October 27, 2017), ordered “reverse and remand” (ID 485, pp. 43-50), 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**

statements from hearsay from another party that were
“completely unverified.”

The Glendale City Court’s ex parte decision was dismissed in Superior court case *No. LC2017-000316 (October 27, 2017)* (ID 485, pp. 43-50) 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, which directly contradicted the false reports provided to the Department of Child Safety in April 2017. This discrepancy substantiates claims of fraud before the court. The Memorandum Decision by Division Two are rendered 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 but continued to present **grossly inaccurate information to the courts in bad faith**, without disclosing the truth to the court and Richard, Gelliana, and M.R.

Memorandum of Facts

The court failed to properly adjudicate the case by neglecting to conduct an evidentiary hearing on the new evidence discovered in 2022.

This evidence was previously unavailable due to inadequate service of process, insufficient service, and fraudulent conduct.

Fraud on the Court

Courts must relieve a party from a judgment when the opposing party has committed fraud on the court, preventing a fair contest or impeding the unsuccessful party's opportunity for a fair submission of the controversy. In Alvarado v. Thomson, 240 Ariz. 12, 16–17 ¶¶ 17–23 (App. 2016), fraud on the court is defined as conduct that “vitiates everything it touches” (Damiano v. Damiano, 83 Ariz. 366, 369 (1958)), and represents “the most egregious conduct involving a corruption of the judicial process itself” (Lake v. Bonham, 148 Ariz. 599, 601 (App. 1986)).

Courts possess inherent authority to take corrective measures at any time when fraud upon them has occurred. This authority is affirmed in Green v. Lisa Frank, Inc., 221 Ariz. 138, 151 ¶ 35 (App. 2009), and McNeil v. Hoskyns, 236 Ariz. 173, 177 ¶ 15 (App. 2014), which state that a judgment resulting from fraud on the court may be set aside by motion or independent action. This authority extends to cases involving parentage and adoption (Alvarado, 240 Ariz. at 16–17 ¶¶ 17–23; In the Matter of the Adoption of Hadtrath, 121 Ariz. 606, 610 (1979)).

Void Judgments

Courts have inherent power to vacate void judgments due to lack of jurisdiction over the parties. As established in Preston v. Denkins, 94 Ariz. 214, 219 (1963), the right to challenge void judgments “does not depend upon rules of the court or statute.” If a judgment is void for lack of jurisdiction, a court must vacate it. Rogone v. Correia, 236 Ariz. 43, 48 ¶ 11 (App. 2014), holds that courts can set aside a judgment for fraud on the court at any time, and Cypress on Sunland Homeowners Ass’n v. Orlandini, 227 Ariz. 288, 299–300 ¶ 43 (App. 2011), reiterates this principle.

Arizona courts have held that void judgments may be challenged even if there is unreasonable delay (Ruffino v. Lokosky, 245 Ariz. 165, 168–69 ¶

10 (App. 2018); Master Financial, Inc. v. Woodburn, 208 Ariz. 70, 74 ¶ 19 (App. 2004); Martin v. Martin, 182 Ariz. 11, 14 (App. 1994)). This is especially true when the claim of voidness is based on a lack of proper service (Ruffino, 245 Ariz. at 168 ¶ 10). Without proper service, a court lacks jurisdiction over a party (Koven v. Saberdyne Sys., Inc., 128 Ariz. 318, 321 (App. 1980); Marquez v. Rapid Harvest Co., 99 Ariz. 363, 365 (1965)

*In James M. v. Silvia M., No. 1 CA-JV 20-0289, 2021 WL 1923655, at *1-3 ¶¶ 7-15 (Ariz. App. May 13, 2021), the court considered whether the lack of proper service voided a parental rights termination order that was more than seven years old.*

Fundamental Rights

M.R. has a constitutional right to be parented by her father and mother. Richard and Gelliana Rynn have a fundamental right to parent M.R. which cannot be taken away without appropriate due process.

The courts have an interest in maintaining a fair system that furthers the legitimate interests of all involved, including the best interests of children, and in preventing litigants from fraudulently obtaining judgments to which they are not entitled.

Judicial Authority and Due Process

Fraud on the court and void judgments, which strike at the heart of judicial legitimacy and litigants' fundamental rights to due process, stand outside normal procedural time limits. Courts of other states recognize their inherent authority to set aside judgments for fraud on the court or jurisdictional defects, even after termination of a parent's rights and adoption of the child (Jones v. Weller, 362 N.E.2d 73, 76-77 (Ill. App. 1977); In re Paternity of Tompkins, 518 N.E.2d 500, 507 (Ind. App. 1988); Matter of Adoption of M.M.B., 376 N.W.2d 900, 902 (Iowa 1985); Doe v. Smith, 200 So. 3d 1028, 1035 ¶ 24 (Miss. 2016); Wimber v.

Timpe, 818 P.2d 954, 958 & n.7 (Or. App. 1991); McGee v. Gonyo, 140 A.3d 162, 167 ¶ 19 (Vt. 2016).

Case-Specific Facts

Court must clarify its judicial authority in cases involving insufficient service of process and fraud on the court. It must vacate judgments when: (1) the court did not have jurisdiction, and (2) newly discovered evidence and material facts exist that satisfy the standards of fraud, thereby damaging the integrity of the court. Void judgments lacking an affidavit of service and a summons substantiate denial of due process, which is guaranteed by the Constitution.

The Superior court admits judgment is void, as evidenced by the April 28, 2017 ex parte order indicating a lack of jurisdiction until proper service to Rynn was achieved. No service of process was ever done. (ID 1, 2, p. 12). Rynn first learned of the April 28, 2017 ex parte order in January 2022 from the Division Two docket of record. The discovery of fraudulent concealment of the April 28, 2017 petition and ex parte order by the state and failure to serve Rynn the April 28, 2017 ex parte order in violation of due process.

The April 28, 2017 ex parte judgment order has no legal validity without service to Rynn. Rynn was not served or provided a copy of the April 28, 2017 petition on which the court judgments from April 28, 2017, to October 9, 2018, are based (ID 139, pp. 1-18). In *Ryan v. Commission on Judicial Performance* (1988), (45 Cal. 3d 518, 533), it was established that judges must provide due process of law, including strict adherence to procedural requirements, before meeting one party for ex parte custody orders. The Arizona Supreme Court failed to vacate void judgments with jurisdictional defects, allowing fraud to damage the court's integrity. The April 28, 2017 ex parte Superior Court judgment was not served to Rynn and is therefore not legally enforceable. Rynn learned of the juvenile court ex parte judgment in 2022, which voids the entire court's judgments (*Commonwealth v. Arias*, 2017 Mass. App. Lexis 148 (Nov. 9, 2017)).

In Washington v. Glucksberg, 521 U.S. 702 (1997), the Constitution and Due Process Clause of the Fourteenth Amendment protect the fundamental right of parents to direct the care, upbringing, and education of their children. The Due Process Clause in the Fifth and Fourteenth Amendments prohibits deprivation of "life, liberty, without due process of law."

Specific Violations

No warrant, court order, or notice was issued to seize M.R. on April 24, 2017. M.R. not brought to court to see the judge in April and May 2017, depriving her of due process rights and violating her Fourth, Sixth, and Fourteenth Amendment rights (Rule 60, pp. 1-18, Filed January 11, 2023). The Fourth Amendment protects citizens from unreasonable search and seizure, and the Sixth Amendment guarantees the right to a public trial, a lawyer, an impartial jury, and the right to know the accusers, charges, and evidence against oneself. Rynn's constitutional rights under the Fourth, Sixth, and Fourteenth Amendments were deprived. The record demonstrates no affidavit of service on file, fraud, and faults in the underlying judgments. The fraudulent concealment of deciding facts, such as M.R. signed contract with Quail Run doctor for her discharge to return home on April 24, 2017, was maliciously omitted by the State Department of Child Safety, causing substantial harm to Rynn. The State Department of Child Safety's omission of the contractual agreement requiring M.R. to go home, along with police reporting M.R. discharge to return home on April 24, 2017, constitutes a fundamental error proving Brady rule violations. *U.S. Supreme Court, Brady v. Maryland, 373 U.S. 83 (1963)*

The state failed to notify the court that it breached Rynn's contract with Quail Run, starting the juvenile case in bad faith and abusing the court process without cause. (ID 174 pg. 41) The state is liable for punitive damages and required to compensate Rynn. Court failed to address that Richard, Gelliana, and M.R. were not served a summons, not provided written notice, and no completed Return of Service, Affidavit of Service, or Certificate of Service was on file as required by statute for the period from April 28, 2017, to October 9, 2018.

Judgments Void Due to Lack of Jurisdiction and Insufficient Service

The judgments in question are void because the court lacked jurisdiction and there was insufficient service of process as no affidavit of notice of service is on record.

Judgments Void Due to Fraud, Perjury, and False Accusations

The judgments are void due to the presence of fraud, perjury, and false accusations affecting the integrity of the judicial process.

Judgments Void Due to Unlawful Ex Parte Orders

The judgments in this case are void due to the issuance of unlawful ex parte orders on April 28, 2017, without an affidavit of imminent threat, in violation of Arizona Rule of Civil Procedure 65.

Procedural History (see Rule 60, p. 3, Filed January 11, 2023)

The case originated on April 24, 2017, during the discharge of M.R., daughter of Richard and Gelliana Rynn, from the Quail Run facility. Per the contract, M.R. was to return home with her parents after a seven-day stay for classes (*Rule 60, pp. 8-10, Filed January 11, 2023*). However, Quail Run and La Frontera maliciously seized and detained M.R., a competent sixteen-year-old, despite her scheduled discharge (*Rule 59, Filed February 10, 2023*)

New evidence shows that Quail Run's Candy Zammit and La Frontera's Renee Miller falsely reported to the Department of Child Safety (DCS) that there was "no discharge date" and that the parents had refused treatment, despite knowing that Doctor Tan Fermo had ordered M.R. to be discharged on April 24, 2017. Instead of releasing her, Quail Run and La Frontera imprisoned M.R. without cause, violating her parents' custody rights and their due process rights.

The integrity of the court requires a review and correction of the court record, which is tainted by fraudulent statements. DCS provided perjured testimony that directly contradicted the material evidence, including the police report ("*scheduled to be released today*") and the Quail Run contract requiring M.R.'s discharge on April 24, 2017. (*ID 174, pp. 41, 45-46, Ex. B*) The judgments at trial, based on this false testimony, violate the Rynn family's Fourth and Fourteenth Amendment rights, as established in *Hardwick v. County of Orange*, No. 15-55563 (9th Cir. 2017), and *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

DCS filed a juvenile court petition on April 28, 2017, based on fraudulent ex parte communication, which led to an unlawful ex parte order for custody without notice or service to Rynn, violating due process requirements under Arizona law (ARS Rule 65 and ARS Rule 48). The ex parte order was based on false accusations of "*no discharge date*" and "*refusal to permit treatment*" and was granted without the necessary affidavit of a threat to life or explanation for why no notice was given. The petition and order were not disclosed to the Rynns until 2022, further violating due process. This delay substantiates the fraud

on the court and warrants the vacating of the juvenile case under Rule 60 (*Filed January 11, 2023*).

DCS engaged in prohibited ex parte communication, failed to disclose ex parte communication and failed to meet the legal requirements for an ex parte order under ARS Rule 65. The lack of notice, absence of an affidavit, and failure to provide evidence of imminent threat render the April 28, 2017, ex parte order void. Under ARS Rule 65, ARS Rule 48, and federal Rule 65, the DCS is liable for damages incurred by the Rynn family due to the wrongful injunction. (*motion to vacate filed June 20, 2023, pp. 6-11; Rule 60, Filed January 11, 2023*).

Judgments in Conflict with Evidence and Breach of Contract

Quail Run on April 20, 2017 entered into a contractual agreement with M.R. and her parents, with the performance under the contract conditioned solely on M.R. discharge to return home on April 24, 2017. Quail Run, La Frontera, and the state DCS had an implied obligation to make a reasonably good faith effort to ensure M.R. return home on that date. However, Quail Run, La Frontera, and the state DCS failed to fulfill their implied obligations under the contract, resulting in a breach of the agreement between Rynn and Quail Run. As a result of this

breach, M.R. suffered permanent physical harm and damage (ID 174, pp. 1-18; ID 177, pp. 1-9). There were violations of 42 U.S.C. § 1983 under the color of law when M.R. was seized on April 24, 2017, without probable cause, without a court order, without a pre-deprivation hearing, and without imminent danger. These actions violated M.R. Fourth Amendment rights and substantive due process rights.

The DCS further violated Rynn's due process rights under the Fourteenth Amendment by misrepresenting facts in the April 28, 2017, petition regarding the seizure on April 24, 2017. Court failed to review the evidentiary material facts provided in Rynn's Rule 60 motion for retrial (ID 174), Rule 59 motion for retrial, and Rule 201 judicial notice of non-disputable facts.

Evidence of the Quail Run contract with Rynn 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

and disclosure, as established in *Giglio v. United States*, 405 U.S. 150 (1972) (Rule 60, p. 10, Filed January 11, 2023).

In the Rule 59 motion filed on October 19, 2023, pp. 8-9, Rynn's due process rights guaranteed by the Constitution were not addressed. The due process violations included the absence of a summons, material evidence related to the April 28, 2017, ex parte petition containing false facts (perjury), and the April 28, 2017, ex parte order granting the petition of false facts in juvenile court. The DCS omitted material evidentiary facts, including the police report and the contract with Quail Run. This evidence was suppressed, either willfully or inadvertently by the state, and no documents were served to Rynn. The suppression of this material evidence resulted in prejudice and fraud on the court, creating a "reasonable probability" sufficient to undermine confidence in the outcome, as established in *United States v. Bagley*, 473 U.S. 667 (1985), *U.S. v. Agurs*, 427 U.S. 97 (1976), and *Strickler v. Greene*, 527 U.S. 263 (1999).

The court's failure to review critical new evidence substantiating fraud is a clear basis for vacating the case. The evidence presented is

sufficient for a jury to find fraud, violations under the color of law, breaches of custody and parental rights, and infliction of emotional harm under § 1983. The State Department of Child Safety engaged in conduct exhibiting a high degree of moral culpability, demonstrating a conscious disregard for Rynn's constitutional rights. This reckless conduct gives rise to claims for damages. Notably, the State Department of Child Safety does not dispute the material facts in Rynn's motion to vacate, underscoring a manifest injustice. As a matter of law, Rynn is entitled to a fair trial, correction of the factual record, and appropriate compensation. Justice requires a new trial, correction of the fact-finding process, and the expungement of false records.

The juvenile court's judgments are void, as they were rendered without jurisdiction over the subject matter or the parties, and the court acted in a manner inconsistent with due process. Rynn was never served with a summons or complaint in the juvenile case, violating fundamental due process rights (Fed. R. Civ. P. 60(b)(4), 28 U.S.C.A.). Judgments must be based on factual accuracy to be legally valid. See Rule 59, filed on October 19, 2023, pp. 8-9.

Rynn substantiates the claim of fraud through personal knowledge and verified critical evidence, including a police report from April 24, 2017, confirming M.R.'s discharge and her scheduled return home following a seven-day stay. Additionally, the contractual discharge order directly contradicts the court's decisions in this case, which were made without proper review, thereby violating due process.

The integrity of the court has been compromised by its failure to adhere to due process requirements of notice and disclosure, and by allowing false statements to influence its decisions. The court neglected to address contradictions between its rulings and the record, and failed to review the evidence of fraud, as demonstrated in Exhibit A and Exhibit B. These exhibits contradict the material facts underlying the judgments, undermining the legitimacy of the entire case and further damaging the court's integrity. (ID 1, ID 175 pg. 1-3) (ID 174 pg. 1-18) (ID 177 pg. 1-18) (Rule 60 pg. 3 Filed January 11, 2023) (Rule 60 pg. 1-61 Filed January 11, 2023)

Exhibit A (ID 174 pg. 21-39) - Dependency case petition Filed Ex parte April 28, 2017.

Exhibit B - Quail Run binding legal signed contract M.R. *return to*

home April 24, 2017, Parents Rynn contributed to goals/plan, No suicidal or homicidal ideation. (ID 174 pg. 41 Ex. B)

Exhibit D (ID 174 pg. 45-46) - Police Report April 24, 2017, color of law seizure by Quail Run and La Frontera for state during discharge for M.R. returning to home.

Exhibit E (ID 174 pg. 48) - Fraudulent fax Custody paper without parents Rynn signature without address. DCS did not arrive at Quail Run facility, location of M.R. and parents Richard, Gelliana on April 24, 2017.

Exhibit F (ID 174 pg. 50-52) – April 28, 2017, Ex parte Order of juvenile court

Exhibit G (ID 174 pg. 54-61) – Maricopa County Superior court Quail Run V Richard Rynn. Judgement Reverse and Remand, page eight, “*ex parte IAWH based on statements from Quail Run completely Unverified*”.

(ID 174 pg. 54-61) (ID 175 pg. 1-3) 2023 juvenile court Ruling January 20, 2023, order release court records to Rynn. State attorney office in same building of judge of juvenile court, address office E. (conflict of interest, unfair, unconstitutional). (ID 176 pg. 1-3)

Petition Discrepancy between date of private companies’ **date of seizure** under color of law by a phone call from state DCS of M.R. on **April 24, 2017** and date of **filing petition** in court of **April 28, 2017**. (ID 174 pg. 21-39, Ex. A)

(Ex. B, ID 174 pg. 41) Fraud proven by Discrepancy between Quail Run Rynn **contract M.R. going home**, and DCS petition. **(Ex. A, Pg. 10, 18,)** **No summons, no service to parents Rynn.**

(Ex. B, ID 174 pg. 41) Fraud proven by contradiction between Quail Run contract on April 20, 2017 with parents, **No suicidal or homicidal ideation. Parents Rynn contributed to goals/plan,** and April 28, 2017 petition (Ex. A, pg. 5) **parents’ instability and refusal to permit the treatment center to allow for the maximum**

amount of treatment available. (ID 175 pg. 1-3)

Exhibit A (ID 174 pg. 21-39) (Rule 60 pg. 3 Filed January 11, 2023)

Juvenile case petition of lies, Filed Ex parte (one party) on April 28, 2017, without notice, without serving. Petition page # 1 to 19. (ID 174 pg. 21-39)

Page 1, *Petition filed April 28, 2017*(ID 174 pg. 21-39, Ex. A)

Page 3, *temporary custody April 24, 2017, taken into temporary custody (assault, M.R. was not taken into custody as state DCS did not arrive to Quail Run facility on April 24, 2017, during contractual discharge to go home after a seven day stay for classes see April 24, 2017 police reporting M.R. discharge.)* (Ex. B, ID 174 pg. 41 Ex. D)

Page 5, *parents' instability and refusal to permit the treatment center to allow for the maximum amount of treatment available. (In contradiction to Ex. B, D, No suicidal or homicidal ideation. Parents Rynn contributed to goals/plan)*

Page 7, *Richard Rynn does not have an order granting him custody of M.R..*

In contradiction to **Richard Rynn is legal birth father and parent of M.R.,**

Page 10, *continuation of the child in the home would be contrary to child's welfare.(In contradiction to Quail Run contract requiring M.R.to go to parents home on April 24, 2017.)* (ID 174 pg. 41)

Page 17, Signed by Attorney General Mark Brnovich Assistant Attorney General

Ardene Fox

Page 18, Petition filed April 28, 2017, Clerk of the court, foregoing email dependency coordinators, foster care review board, Dependency Supervisor Pinal County Juvenile Court Services, Protective Review Board, Cathy Cottee Child Safety worker. Signed by Monica Rae Stein

(unconstitutional violation of due process, Rynn not served petition, not served a summons) (ID 174 pg. 21-39, Ex.A) in violation of due process per 16 A.R.S. Rules of Civil Procedure, Rule 4 (1) (2) (3) (b) (1).

Page 19, sworn upon oath Department of Child Safety signed Cathy Cottee DCS Investigator notary public Lisa Hoelzel (ID 174 pg. 21-39, Ex. A)

Exhibit B, (ID 174 pg. 41)

Quail Run **Contract M.R. “*return to home*”** No suicidal or homicidal ideation. **Parents Rynn contributed to goals/plan** (ID 174 pg. 41)

Discharge contract signed on April 20, 2017, by Dr. Tan Fermo, Nurse Joni Ollick
Social worker Candy Zammit
M.R., Gelliana David

Constitutional Provisions Involved

Rynn's rights have been violated under the Fourth, Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. Additionally, constitutional rights were violated under Section 242 of Title 18. A judgment may not be rendered in violation of the Constitution, as established in *Hanson v. Denckla*, 357 U.S. 235, 2 L. Ed. 2d 1283, 78 S. Ct. 1228.

The violations include:

- **Section 1983 of Title 42:** The state, as a person, is subject to liability for these violations.
- **Due Process Violations:** Fundamental procedural rights were disregarded.
- **Parental Rights Violations:** There was unlawful interference with the legal custody of Rynn's children.
- **Violations of Arizona Rule 65 and Rule 48:** These procedural rules were not adhered to, further undermining Rynn's legal rights.

LEGAL ARGUMENT TO VACATE VOID JUDGMENTS

Petitioners present a factual and legal basis per ARS Rule 60 and Federal Rule 60 to vacate void judgments. There is no time limit to vacate judgments obtained by fraud and perjury. The court failed to demonstrate a credible threat of harm to M.R., as required.

The Arizona Supreme court failed to resolve dispute and failed to review Applicants petition to vacate in violation of due process.

Pure Questions of Law State v. Nichols, 224 Ariz. 569, ¶ 2, 233 P.3d 1148, 1149 (App. 2010) the issue involves a pure question of law, further supporting acceptance of special action jurisdiction. Supreme court has jurisdiction to hear and determine appeals for Special action for declaratory, equitable relief brought pursuant to rules of procedure for special actions, without regard to appellate jurisdiction. Special action accepted when under no rule of law can trial court's actions and refusal to act be justified." See King v. Superior Court, 138 Ariz. 147, 149-150, 673 P.2d 787, 789 (1983).

Newly discovered evidence in year 2022, specifically an ex parte petition and ex parte order issued by Daniel Washburn on April 28, 2017, was not disclosed to Rynn until its discovery in 2022 due to insufficient service of process in violation of due process. This constitutes grounds for a new trial and for vacating the decisions in the Superior Court case. Additionally, the April 28, 2017 ex parte petition and ex parte order failed to apply the correct legal standard for

evaluating evidence of irreparable harm per Federal Rule 65 that is required for an ex parte order. The court's decision was based on an incorrect standard of evidence, leading to a fundamentally flawed ruling.

A conflict exists between the District Court's decision, where *Dr. Tan Fermo of Quail Run ordered M.R. to be discharged home, and directed Richard to discharge daughter M.R.* and state court omitting the doctors discharge order not addressed. Court required to correct factual findings. Court must correct fraud, factual findings to district court factual findings of doctors order M.R. discharge. Plaintiff Richard retrieving daughter as directed by doctor of Quail Run M.R., who was *"under an order from her doctor to be discharged."* See *Rynn v Mckay Case No. 2:18-CV-00414 JJT, USDC AZ-PHOENIX, August 16, 2018 page 2, lines 3-6.*

The court failed to provide case records to the Rynn family and failed to ensure legal representation for M.R., Gelliana, and Richard Rynn from the initiation of state actions on April 24, 2017, through October 2018. Additionally, the court erred in granting an ex parte custody

order on April 28, 2017, without notifying M.R., Richard, or Gelliana, who only became aware of the order in 2022. The appellants have established both factual and legal grounds for vacating the void judgments issued by the Pinal County Superior Court, based on fraud, lack of due process, insufficient service, and improper service of process.

Declaratory relief is necessary to vacate the defective custody injunction, as it resulted from violations of constitutional rights. The court's failure to consider newly discovered evidence in 2022, which substantiates fraud, interference with parental rights, and the wrongful deprivation of custody, further supports this relief.

The manifest injustice necessitates the court legally vacating and correcting factual flaws in the judgments affecting the case. The judgments are clearly tainted by fraud, specifically referring to the April 28, 2017, ex parte custody injunction, which is not legally enforceable due to insufficient process of service. The April 28, 2017, petition was granted ex parte but not disclosed to Rynn until it was discovered in 2022, violating due process.

The Superior Court judgments are void and require vacating, as they should never have been entered. The court had no jurisdiction over Rynn due to the lack of process of service and false accusations. The court is required to find that the entry of the ex parte order on April 28, 2017, without an affidavit of service and without notice, in violation of ARS Rule 65(b), is unconstitutional and must be vacated (IR 1-202).

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

The state does not have a court order regarding the competence of M.R. for hospitalization in April 2017, during which time M.R. required to be home with her parents, Richard and Gelliana. Appellants first discovered the April 28, 2017, ex parte injunction order and petition in 2022, violating due process and depriving Rynn of life and liberty, in violation of the Fifth and Fourteenth Amendments to the United States Constitution. Judgments based on the April 28, 2017, petition of false accusations without disclosure are not legally enforceable without service to Rynn. Rynn first discovered the April 28, 2017, ex parte order in 2022 during an appeal in the case docket record from the Court of Appeals Division Two. The Due Process Clause, found in both the Fifth

and Fourteenth Amendments to the United States Constitution, prohibits the deprivation of life, liberty, or property without due process of law.

Given that Rynn was not served, the Superior Court failed to obtain personal jurisdiction over Rynn. The Superior Court also failed to review jurisdictional defects and address void judgments. See *Beltran v. Santa Clara County*, 514 F.3d 906 (9th Cir. 2008). Rynn entitled to an evidentiary hearing and a review of the case docket to confirm the absence of an affidavit of service to M.R, Richard, and Gelliana Rynn. The state does not dispute failing to serve Rynn, substantiating fraud and jurisdictional defects.

The State DCS does not dispute the failure to serve Rynn, substantiating the deprivation of due process rights and the presence of fraud.

Section 1983 imposes liability without defense on state and local officials acting under color of law in their individual capacities for depriving Rynn of rights created by the Constitution and violating federal law. The Fifth Amendment states that no one may be deprived of life, liberty, or property without due process of law.

Violations of due process requirements not addressed, as no declaration affidavit was filed in Pinal County Superior Court per ARS Rule 65(b)(2)(A)(B)(C)(D), which mandates that the affidavit be promptly filed in the clerk's office and entered into the record (ID 181, pp. 1-15; ID 140, pp. 1-23).

Jurisdictional defects per ARS 4(3) require that a summons be served with a copy of the pleading. Service must be completed before a custody judgment may be granted.

Based on insufficient service of process, the court failed to obtain personal and subject matter jurisdiction over Rynn. The court did not review jurisdictional defects, which legally necessitate vacating the judgment. The court admits it did not have jurisdiction until after proper service to Rynn (ID 2, p. 12).

The Due Process Clause, found in the Fifth and Fourteenth Amendments to the United States Constitution, prohibits the deprivation of life, liberty, or property without due process of law.

Rynn's Entitled to Evidentiary Hearing & Review of Docket

Rynn is entitled to an evidentiary hearing and a review of the case docket to confirm the absence of an affidavit of service to M.R., Richard, and Gelliana Rynn. The State DCS does not contest its failure to serve

the Rynns, further substantiating the deprivation of due process and fraud on the record, as well as confirming jurisdictional defects that mandate the case be vacated (ID 180).

The case, originating on April 24, 2017, was not based on allegations of abuse or neglect but rather on fraudulent actions rooted in malice and deceit. This includes false accusations related to M.R.'s discharge, despite her being cleared to return home on that date.

Rynn's rights to liberty and freedom of speech, specifically the First Amendment right to freedom of association, were violated. The court failed to obtain personal jurisdiction over Rynn, evidenced by the emergency ex parte custody order issued on April 28, 2017, without a threat, proper disclosure, or an affidavit explaining the lack of notice. This violated Arizona Rule of Civil Procedure 65(a)(b)(1)(A)(B)(2)(a)(b)(c)(d). Additionally, substantiated by the record M.R. was not presented before the court for a judicial determination on April 24, 2017, as required for a warrantless seizure by private companies acting under the color of law on behalf of the state.

The juvenile court's allegations were based on unverified false statements, including the claim of "no discharge date," despite the knowledge that M.R. had been discharged. These allegations, unrelated to abuse or neglect, did not include a statutorily enumerated offense, thereby constituting fraud. The failure to serve Rynn with the April 28, 2017, ex parte custody order renders the judgments void under A.R.S. § 13-3601 (ID 181, pp. 1-15; ID 140, pp. 1-23; ID 1-3).

The State DCS's failure to serve Rynn violated Rynn's due process rights essential for a fair trial. Furthermore, the DCS's failure to file a declaration of irreparable harm or an affidavit explaining the lack of notice for the emergency ex parte order on April 28, 2017, led to substantial violations of Rynn's constitutional due process rights under ARS Rule 65(b)(1)(A). No notice was provided to Rynn (Rule 60, pp. 1-18, Filed January 11, 2023).

Due process in such proceedings requires that adequate written notice be afforded to the child and parents. This notice must inform them of the specific issues they must address and must be given at the earliest practicable time, sufficiently in advance of the hearing to permit preparation.

Per ARS 12-120.22, no appeal or petition brought to the Supreme Court or Court of Appeals shall be dismissed solely because it was not brought

in the proper court but shall be transferred to the appropriate court or division.

The proceedings failed to comply with the Constitution. Juvenile proceedings must adhere to the requirements of the Fourteenth Amendment, which include adequate notice of charges, notification of both parents and the child of the juvenile's right to counsel, the opportunity for confrontation and cross-examination at hearings, and adequate safeguards against self-incrimination. Without meeting the requirements of Rule 65(b)(1)(B), the court does not have jurisdiction to enter ex parte judgments without notice.

Gault, 387 U.S. 1 (1967) (U.S. supreme court) U.S. Supreme Court found that procedures used in Gault's case met none of requirements of due process.

ARS Rule 65(1)(B) Describe contents and scope of IAH Per Rule 65(d) Describe reasons why injunction issued; state its terms specifically per Rule 65(1)(B)

The 14th Amendment of the United States Constitution guarantees everyone the right to due process of law, which includes judgments that comply with the rules.

The Superior Court's emergency ex parte custody order of April 28, 2017, did not meet the requirements of ARPOP, Rule 38(g) was based on statements that were completely unverified, issued without notice, lacks legal validity due to the lack of service to Rynn. Rynn not served

and not provided a copy of the April 28, 2017 petition upon which the Superior Court's custody judgments from April 28, 2017 to October 9, 2018 are based. (ID 181, pp. 1-15; ID 140, pp. 1-23). Before obtaining jurisdiction for custody orders, judges are required to provide notice or a valid reason for the lack of notice, and must adhere strictly to the procedural requirements contained in the Code of Civil Procedure. Ignorance of these procedures is not permissible. In order to issue ex parte communication and an ex parte injunction per ARS Rule 65, the Department of Child Safety (DCS) was required to give notice and provide an affidavit or declaration explaining why no notice was given to the appellant. Without meeting all requirements of Rule 65(b)(1)(A) and (B)(2), an emergency ex parte order not be granted without notice. Rynn was not provided notice of the petition filed on April 28, 2017, until discovering the petition in 2022.

Due Process Clause is found in both Fifth, Fourteenth Amendments to United States Constitution, which prohibit deprivation of "life, liberty, without due process of law. No one shall be held nor be deprived of life, liberty, or property, without due process of law. Substantive due process. See Fifth and Fourteenth Amendments, United States Constitution, and Article II, section 4 of the Arizona Constitution.

The case originated on April 24, 2017, without a court order, without legal representation, without due process, without imminent danger,

and in violation of Rynns' constitutional rights. (Rule 60, pp. 3-4, filed January 11, 2023)

Under the Fourth Amendment of the Constitution, children cannot be taken into temporary custody without probable cause. Individuals may not be "seized" without a court order, as established in California v. Hodari, 499 U.S. 621 (1991)

For court integrity, the Court is required by law to correct and vacate untrue statements on record, expunge and reverse void judgments, and address judgments obtained under the color of law, without due process, through fraud, perjury, lies, and omission of facts with the intention to deceive. No summons was served, and the petition was not served (ID 1, ID 174, pp. 21-39, Ex. A).

The court record, being a public record, defames the character of Rynn, necessitating vacating the judgments and providing compensation per ARS Rule 65(c)(1).(c) Security. (1) Generally; On Issuance. The court may issue a preliminary injunction or a temporary restraining order only if the movant provides security in an amount deemed proper by the court to cover the costs and damages sustained by any party wrongfully enjoined or restrained.

Appellate courts have jurisdiction to vacate void judgments under A.R.S. § 12-2101 and Article 6, Section 5, jurisdiction over injunctions and writs, pursuant to the All-Writs Act.

Clarification required

The court must clarify the basis on which the state DCS can claim custody with false statements and without serving process to M.R, Richard, and Gelliana. Additionally, the court needs to specify the date and location originating this case, date and name of person from state that went to Qual Run as state failed to see M.R, in month of April 2017, these crucial details have not been adequately addressed and require clarification.


CONCLUSION

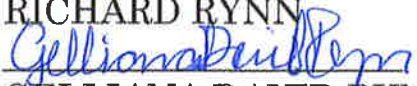
There is no time limitation to vacate void judgments obtained through perjury and fraud. The appellants have demonstrated irreparable harm, presenting both factual and statutory grounds to vacate these void judgments and address the false and defamatory accusations (IR 178, IR 179, IR 189, IR 194). The denial of due process necessitates vacating these judgments due to the deprivation of constitutional rights and fraudulent actions. The record confirms that no affidavit of notice of service exists for M.R., Gelliana, or Richard

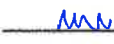
Rynn in the State DCS case (Rule 60, filed January 11, 2023). As a result, Richard, Gelliana, and M.R. were deprived of their due process rights, which are protected under Section 1983 and Title 18 USC § 242, due to fraud, insufficient service, and improper service of process. The court lacked jurisdiction because no affidavit of service was filed, further substantiating the denial of due process and fraud, which materially impacted the Rynn family's substantial constitutional rights, as evidenced by the record. For the legal integrity of the courts, the appellants' application to vacate the judgments is necessary. The court failed to provide a legal basis for the injunction, and, as a matter of law, the judgments must be vacated.

RESPECTFULLY submitted

this 21st day of October 2024.



RICHARD RYNN


GELLIANA DAVID RYNN


M.R.


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.


office of Attorney General
Dawn P. Williama
4211 S. Santa Rita Ave
Tucson, AZ 85714

RESPECTFULLY submitted.

this 21st day of October 2024.



RICHARD RYNN


GELLIANA DAVID RYNN


M.R.

Appendix of Record

Supreme Court state of Arizona
July 22, 2024, denied Petition to Vacate,
denied Petition for Review.

Arizona Court of Appeals Division Two
February 7, 2024, denied to accept jurisdiction
for Petition for special Action.

Superior Court Of Arizona Maricopa County
Case No. LC2017-00316-001
Order 10/23/2017 Decision “*Devoid of competent evidence*”,
“Reverse and Remand”



Supreme Court

STATE OF ARIZONA

ANN A. SCOTT TIMMER
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

TRACIE K. LINDEMAN
Clerk of the Court

July 22, 2024

RE: RICHARD R. et al v HON. WASHBURN/DCS
Arizona Supreme Court No. CV-24-0052-PR
Court of Appeals, Division Two No. 2 CA-SA 24-0007
Pima County Superior Court No. S1100JD201700116

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on July 22, 2024, in regard to the above-referenced cause:

ORDERED: Motion to File Petition to Vacate Exceeding Word Limit due to Complexity of Fraud on Case = DENIED.

FURTHER ORDERED: Petition to Vacate Void Judgements per Rule 60(b)-(d) and 60(d)(3), Based on Fraud and Insufficient Service of Process = DENIED.

FURTHER ORDERED: Petition for Review Request En Banc Review = DENIED.

A panel composed of Chief Justice Timmer, Vice Chief Justice Lopez, Justice Beene and Justice King participated in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:

Marcella R.
Richard R.
Dawn Rachelle Williams
Beth C Beckmann
my

FILED BY CLERK

FEB 7 2024

COURT OF APPEALS
DIVISION TWO



Court of Appeals

STATE OF ARIZONA
DIVISION TWO

ORDER

2 CA-SA 2024-0007
Department A
Pinal County
Cause No. S1100JD201700116

RE: RICHARD R.; MARCELLA R. & GELLIANA D.R. v. HON. WASHBURN

Pursuant to PETITION FOR SPECIAL ACTION,

ORDERED: The Court declines to accept jurisdiction.

Judges Sklar and O'Neil concurring.

DATED: February 07, 2024

_____/s/_____
Christopher P. Staring
Presiding Judge

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. Carnahan stated Defendant apparently blamed the hospital because DES removed Defen-

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

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 order² 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.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

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 LAWH 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, Docket Code 513

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

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. § 22-261³ 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.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

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.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

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.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

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.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

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.