APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 28 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JACQUELINE M. TAUSCHER, Mother of Minor Children Z.H. and A.H.,

Plaintiff - Appellant,

v.

PAMELA DONISON; et al.,

Defendants - Appellees,

CATHERINE A. BRUNNER; et al.,

Defendants - Appellees,

and

BRIAN SKOW,

Defendant.

No. 21-16441

D.C. No. 2:20-cv-02014-GMS
U.S. District Court for Arizona, Phoenix

MANDATE

The judgment of this Court, entered December 06, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

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FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7

Appendix-A

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 6 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JACQUELINE M. TAUSCHER, Mother of Minor Children Z.H. and A.H.,

Plaintiff-Appellant,

v.

PAMELA DONISON; et al.,

Defendants-Appellees,

No. 21-16441

D.C. No. 2:20-cv-02014-GMS
District of Arizona,
Phoenix

ORDER

Before: O'SCANNLAIN, THOMAS, and TALLMAN, Circuit Judges.

Upon a review of the record and the response to the court's October 10, 2021 order, we conclude this appeal is frivolous. We therefore dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

DISMISSED.

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UNITED STATES COURT OF APPEALS

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OCT 21 2021

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JACQUELINE M. TAUSCHER, Mother of Minor Children Z.H. and A.H.,

Plaintiff-Appellant,

v.

PAMELA DONISON; et al.,

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CATHERINE A. BRUNNER; et al.,

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and

BRIAN SKOW,

Defendant.

No. 21-16441

D.C. No. 2:20-cv-02014-GMS
District of Arizona,
Phoenix

ORDER

A review of the district court's docket reflects that the district court has certified that this appeal is frivolous and not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

(1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or

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(2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

(1) file in this court a motion to proceed in forma pauperis, OR

(2) pay to the district court $505.00 for the filing and docketing fees for this appeal AND file in this court proof that the $505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

If appellant files a statement that the appeal should go forward, appellees may file a response within 10 days after service of appellant's statement.

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to

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dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Joseph Williams
Deputy Clerk
Ninth Circuit Rule 27-7

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APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jacqueline M Tauscher,

Plaintiff,

v.

Pamela Donison, et al.,

Defendants.

No. CV-20-02014-PHX-GMS

ORDER

Pending before the Court is Plaintiff's Request for Extension of Time Pursuant to Fed. R. Civ. P. 4(m) and request for assistance in serving Defendant Gerald Porter (Doc. 15). The Court interprets the request for assistance as a Motion for Service by U.S. Marshals' Office. After consideration,

IT IS HEREBY ORDERED granting Plaintiff's Request for Extension (Doc. 15). The time for service of process shall be extended to **March 31, 2021**.

IT IS FURTHER ORDERED granting the Motion for Service by U.S. Marshal's Office as to Defendant Gerald Porter (Doc. 15) and directing the Clerk of Court to send Plaintiff a service packet including this Order, and a copy of the Marshal's Process Receipt & Return form (USM-285) and Notice of Lawsuit & Request for Waiver of Service of Summons form for Defendant(s).

1. Plaintiff must complete and return the service packet to the Clerk of Court within 21 days of the date of filing of this Order. The United States Marshal will not

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provide service of process if Plaintiff fails to comply with this Order.

2. If Plaintiff does not either obtain a waiver of service of the summons or complete service of the Summons and Complaint on a Defendant within 90 days of the filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(i).

3. The United States Marshal must retain the Summons, a copy of the Complaint, and a copy of this Order for future use.

4. The United States Marshal must notify Defendant(s) of the commencement of this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice to Defendant(s) must include a copy of this Order. **The Marshal must immediately file signed waivers of service of the summons. If a waiver of service of summons is returned as undeliverable or is not returned by a Defendant within 30 days from the date the request for waiver was sent by the Marshal, the Marshal must**:

(a) personally serve copies of the Summons, Complaint, and this Order upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure; and

(b) within 10 days after personal service is effected, file the return of service for Defendant, along with evidence of the attempt to secure a waiver of service of the summons and of the costs subsequently incurred in effecting service upon Defendant. The costs of service must be enumerated on the return of service form (USM-285) and must include the costs incurred by the Marshal for photocopying additional copies of the Summons, First Amended Complaint, or this Order and for preparing new process receipt and return forms (USM-285), if required. Costs of service will be taxed against the personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

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5. **A Defendant who agrees to waive service of the Summons and Complaint must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

6. Defendant must answer the Complaint or otherwise respond by appropriate motion within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

Dated this 12th day of February, 2021.

G. Murray Snow
Chief United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jacqueline M Tauscher,

Plaintiff,

v.

Pamela Donison, et al.,

Defendants.

No. CV-20-02014-PHX-GMS

ORDER

Pending before the Court is Defendants State Bar of Arizona, Maret Vessella, Stephen P. Little and Matt McGregor (collectively Defendants)' Motion for Statutory Screening of Plaintiff's First Amended Complaint and Second Amended Complaint (Doc. 19). For the Following reasons, the motion is granted. Pursuant to that screening, Plaintiff's Second Amended Complaint (Doc. 18) is dismissed with leave to amend.

DISCUSSION

I. Legal Standard

In *in forma pauperis* ("IFP") proceedings, a district court "shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief can be granted[.]" 28 U.S.C. § 1915(e)(2). Although most IFP applications under § 1915 concern prisoner litigation, § 1915(e)(2) applies to all IFP proceedings. *See Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (en banc). Section 1915(e)(2) "allows a district court to dismiss[ ] sua sponte . . . a complaint that fails to state a claim[.]" *Id.* at 1130.

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Indeed, § 1915(e)(2) "not only permits but requires a district court to dismiss an [IFP] complaint that fails to state a claim." *Id.* at 1127. A district court dismissing under § 1915(e)(2) "should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *See Lopez*, 203 F.3d at 1127–29.

A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While Rule 8 does not require detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

II. Plaintiff's Third Amended Complaint

Plaintiff filed a Second Amended Complaint on November 30, 2020, (Doc. 18), which is now the operative complaint in this matter. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992) ("[A]fter amendment the original pleading no longer performs any function and is treated thereafter as non-existent[.]") (citation and quotation omitted).

Plaintiff's first complaint was dismissed in part because, although she alleged various violations of the law, she did not allege which defendants violated those laws. Judge Humetewa explained:

> The Complaint alleges violations of various laws, but it does not allege with specificity which Defendants violated those laws. Simply listing laws and alleging that they were violated does not draw an inference that a particular defendant violated the law. Plaintiff must understand that, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." . . .

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> **Plaintiff's amended complaint "must articulate the exact legal theory of relief for each cause of action [she is] asserting by explaining: (1) the law or constitutional right [Plaintiff] believe was violated; (2) the name of the party who violated that law or right; (3) exactly what that party did or failed to do; (4) how that action or inaction is connected to the violation of the law or any constitutional right; and (5) the exact injury [Plaintiff] suffered as a result of that conduct.**

(Doc. 5 at 3, 5.)

Plaintiff's Second Amended Complaint contains the same deficiencies. In her pleading, Plaintiff names 67 Defendants. (Doc. 18 at 1–6.) She does not allege, however, which of these defendants committed which legal wrongs she alleges. Nor does she allege specific actions taken by the Defendants. Conclusory allegations of wrongdoing are insufficient to show that Defendants have violated Plaintiff's rights. To prevail in her claim, Plaintiff must allege an affirmative link between her injury and the conduct of a particular Defendant. *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976).

III. Leave to Amend

Plaintiff may amend her complaint if she chooses. In the amended complaint, Plaintiff must state what rights she believes were violated. *See id.* Each claim of an alleged violation must be set forth in a separate count. The amended complaint must also state the name of the party who violated each law or right alleged and what that party did or failed to do to violate that right. Any amended complaint filed by Plaintiff must conform to the requirements of Rule 8(a) and (d)(1) of the Federal Rules of Civil Procedure.

Plaintiff is advised that if she elects to file a third amended complaint and if she fails to comply with the Court's instructions explained in this Order, the action will be dismissed pursuant to section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil Procedure. *See McHenry v. Renne*, 84 F.3d 1172, 1179–80 (9th Cir. 1996) (affirming dismissal with prejudice of amended complaint that did not comply with Rule 8(a)); *Corcoran v. Yorty*, 347 F.2d 222, 223 (9th Cir. 1965) (affirming dismissal without leave to amend second complaint that was "so verbose, confused and redundant that its true substance, if any [was] well disguised").

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IT IS THEREFORE ORDERED that Defendants' Motion to Screen (Doc. 19) is **GRANTED.**

IT IS FURTHER ORDERED that pursuant to 28 U.S.C. § 1915(e)(2) Second Amended Complaint (Doc. 18) is dismissed for failure to comply with Rule 8, with leave to file an amended complaint **within 30 days** of the date of this Order.

IT IS FURTHER ORDERED that if Plaintiff elects not to file a third amended complaint **within 30 days** of the date of this Order, the Clerk of Court shall dismiss without prejudice and terminate this action without further order of the Court.

IT IS FURTHER ORDERED that if Plaintiff elects to file a third amended complaint, the complaint may not be served until and unless the Court screens the third amended complaint pursuant to 18 U.S.C. § 1915(e)(2).

IT IS FURTHER ORDERED that, in light of the dismissal of the Second Amended Complaint (Doc. 18) the Motion for Extension of Time to Answer (Doc. 21) is **DENIED** as **moot.**

IT IS FURTHER ORDERED that Defendants Maricopa County Board of Supervisors, Montgomery, Mitchell, and Adel's Motion to Dismiss Plaintiff's First Amended Complaint (Doc. 27) is **DENIED** as **moot.**

IT IS FURTHER ORDERED that Plaintiff's Motion for Service by U.S. Marshal-All Defendants (Doc. 28) is **DENIED** as **moot.**

IT IS FURTHER ORDERED that State Defendants' Request for Extension of Time to Respond to Plaintiff's Complaint Until the Court Issues its 28 U.S.C. § 1915(E)(2)(B) Screening Order (Doc. 31) is **DENIED** as **moot.**

IT IS FURTHER ORDERED that Defendant Bill Morin's Joinder to State Bar Defendants' Motion for Statutory Screening Of Plaintiff's First Amended Complaint (Doc. 13) and Second Amended Complaint (Doc. 16), (Doc. 33), is **GRANTED.**

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IT IS FURTHER ORDERED that Defendant Bill Morin's Motion to Dismiss the Second Amended Complaint (Doc. 34) is **DENIED** as **moot.**

Dated this 14th day of April, 2021.

G. Murray Snow
Chief United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jacqueline M Tauscher,

Plaintiff,

v.

Pamela Donison, et al.,

Defendants.

No. CV-20-02014-PHX-GMS

ORDER

Before the Court is Plaintiffs' Motion for Appointment of Counsel (Doc. 37). There is no constitutional right to appointed counsel in a civil case. *See Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). The Court, however, does have the discretion to appoint counsel in "exceptional circumstances." See 28 U.S.C. § 1915(e)(1); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d 1089, 1093 (9th Cir. 1980). "A finding of exceptional circumstances requires an evaluation of both 'the likelihood of success on the merits and the ability of the petitioner to articulate his or her claim pro se in light of the complexity of the legal issues involved.'" *Wilborn*, 789 F.2d at 1331(quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)); see *Richards v. Harper*, 864 F.2d 85, 87 (9th Cir. 1988). "Neither of these factors is dispositive and both must be viewed together before reaching a decision on request of counsel" under section 1915(e)(1). *Wilborn*, 789 F.2d at 1331.

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Having considered both factors, the Court finds that Plaintiffs have not demonstrated a likelihood of success on the merits or that any difficulty they are experiencing in attempting to litigate their case is due to the complexity of the issues involved. While Plaintiffs have pointed to financial difficulties that they are experiencing, such difficulties do not make their case exceptional. Accordingly, at the present time, this case does not present "exceptional circumstances" justifying the appointment of counsel.

IT IS HEREBY ORDERED denying Plaintiffs' Motion to Appoint Counsel (Doc. 37).

Dated this 21st day of June, 2021.

G. Murray Snow
Chief United States District Judge

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APPENDIX C

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

In re the Marriage of:

JACQUELINE M. TAUSCHER (fka HANSHEW), *Petitioner/Appellant,*

v.

ERIC A. HANSHEW, *Respondent/Appellee.*

No. 1 CA-CV 15-0661 FC
FILED 4-13-2017

Appeal from the Superior Court in Maricopa County
No. FC2013-053238
The Honorable Jerry Porter, Judge (Retired)

AFFIRMED

COUNSEL

Jones, Skelton & Hochuli PLC, Phoenix
By Lori L. Voepel
Counsel for Petitioner/Appellant

Burt Feldman & Grenier, Scottsdale
By Elizabeth Feldman
Co-Counsel for Respondent/Appellee

Melinda K. Cekander, Heron, Montana
Co-Counsel for Respondent/Appellee

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MEMORANDUM DECISION

Judge Maurice Portley[1] delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Chief Judge Michael J. Brown joined.

P O R T L E Y, Judge:

¶1 Jacqueline M. Tauscher ("Mother") appeals from a decree of dissolution entered after the parties disputed the terms of a handwritten settlement agreement. For the reasons stated below, we affirm the decree.

BACKGROUND

¶2 Mother filed a petition to dissolve her marriage to Eric A. Hanshew ("Father") in July 2013. On the scheduled trial date, and in lieu of a trial, the parties resolved their dispute and presented the family court a handwritten agreement, prepared by Father's attorney, which represented their agreements. The court then placed the parties under oath, asked them questions, and both parties confirmed on the record that (1) the handwritten document represented their agreements and (2) they understood the document and entered into the agreements freely, without duress. The court accepted the handwritten document, as well as two other provisions regarding parental communication and summer vacation time as a "Rule 69 Agreement." *See* Ariz. R. Fam. Law P. 69 ("ARFLP") ("Rule 69").[2] The court further found the agreement was fair and reasonable, and ordered Father's attorney to prepare a final decree.

¶3 Father's attorney prepared a proposed consent decree, which Mother refused to sign. Her attorney withdrew from the case and Father's attorney filed the unsigned proposed consent decree with the court. Mother retained another attorney, objected to Father's proposed consent decree, and submitted her own proposed consent decree, which she

[1] The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

[2] Absent material revision after the relevant date, we cite the current version of court rules and statutes.

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claimed accurately represented the parties' agreements. Without noting that there were competing decrees, the court signed Mother's proposed decree. Father then moved to set aside the decree, and the court held a status conference.

¶4 At the conference, the family court referred to the handwritten agreement, and considered the parties' statements to the court confirming they had entered into the agreement. It also considered argument from counsel as well as exhibits attached to Mother's pleadings supporting her position. The court reviewed the handwritten statement against the signed decree and Father's proposed decree.

¶5 Father submitted another proposed decree following the status conference and Mother filed her objections. The court signed Father's proposed decree (the "Final Decree"), thereby implicitly overruling Mother's objections. She filed her notice of appeal, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(A)(1).

DISCUSSION

I. The Family Court Satisfied its Obligation to Ensure the Rule 69 Agreement and Final Decree were Fair and Equitable.

¶6 Mother contends the family court abused its discretion by denying her the opportunity to establish that the Rule 69 Agreement contained errors, resulting in a Final Decree that was not fair and equitable.

¶7 Section 25-317 states that parties to a dissolution proceeding may enter into a written agreement regarding, among other things, the disposition of property, spousal maintenance, and child custody matters. Moreover, the statute provides that the court retains discretion to reject the parties' agreement if it finds the terms are not fair and equitable. *See* A.R.S. § 25-317(B).

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¶8 Rule 69 also allows the parties to enter into an agreement in a family court matter.[3] Rule 69(A) provides that "[a]n Agreement between the parties shall be valid and binding if . . . the agreement is in writing, or [if] the terms of the agreement are set forth on the record before a judge. . . ." ARFLP 69(A) (1)-(2).

¶9 The plain language of Rule 69 does not require the parties to sign the agreement for it to be enforceable, especially where the parties enter the written agreement into the record, and tell the court, under oath, they have freely and voluntarily made the agreement. And because Rule 69 was adapted from Arizona Rule of Civil Procedure 80(d), we look to the cases interpreting Rule 80(d) for guidance. ARFLP 69, comm. cmt.; *see also* Ariz. R. Civ. P. 80(d). The plain language of both Rule 80(d) and Rule 69(A)(1) require a settlement agreement to be in writing.; namely, as we said in *Canyon Contracting Co. v. Tohono O'Odham Housing Authority*, the material terms of the agreement had to be in writing. 172 Ariz. 389, 392–93 (App. 1992). Similarly, Rule 69(B) provides that the parties' written agreement is presumed valid, but the court retains discretion to reject the agreement pursuant to A.R.S. § 25-317. And the rule places the burden of proof on the party challenging the validity of the agreement.

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[3] Rule 69 provides that:

> A. An Agreement between the parties shall be valid and binding if
> 1. the agreement is in writing, or
> 2. the terms of the agreement are set forth on the record before a judge, commissioner, judge pro tempore, court reporter, or other person authorized by local rule or Administrative Order to accept such agreements, or
> 3. the terms of the agreement are set forth on any audio recording device before a mediator or settlement conference officer appointed by the court pursuant to Rule 67.
> B. Any agreement entered into by the parties under this rule shall be presumed to be valid and binding, and it shall be the burden of the party challenging the validity of the agreement to prove any defect in the agreement, except that nothing herein shall preclude the court from exercising its independent discretion pursuant to A.R.S. § 25-317. Pursuant to A.R.S. § 25-324, the court may award a party the cost and expenses of maintaining or defending a proceeding to challenge the validity of an agreement made in accordance with this rule.

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¶10 Mother argues the family court erred in concluding she had the burden of proving the Rule 69 Agreement was invalid. Citing *Sharp v. Sharp*, 179 Ariz. 205, 210 (App. 1994), Mother contends Father bore the burden of proving the agreement was valid. Father argues Rule 69(B) places the burden of proof on Mother. The appropriate burden of proof is a question of law which this court reviews de novo. *Am. Pepper Supply Co. v. Fed. Ins. Co.*, 208 Ariz. 307, 309, ¶ 8 (2004).

¶11 In *Sharp*, wife signed a settlement agreement presented to her by husband. 179 Ariz. at 207. Although both parties were initially represented by counsel, after husband's counsel withdrew, husband began to negotiate directly with wife. *Id.* After wife's attorney refused to accept the agreement, husband moved to enforce it in a motion to enforce/motion for summary judgment. *Id.* at 207-08. In response, wife alleged the agreement was invalid because it was unfair and she was under duress when she signed it. *Id.* Thus, *Sharp* did not involve a presumptively valid Rule 69 Agreement; instead, it was decided on summary judgment where the moving party bears the burden of proof. *See Nat'l Bank of Ariz. v. Thruston*, 218 Ariz. 112, 119, ¶ 26 (App. 2008). And because there was a factual dispute about both whether it was fair and entered into freely, husband was not entitled to summary judgment. *Sharp*, 179 Ariz. at 210-11. Here, given the court's prior determination that the parties had freely entered into the Rule 69 Agreement, and it was fair and reasonable, Mother, as the party challenging the agreement, bore the burden of proof.

¶12 Mother also argues she was entitled to an evidentiary hearing once she challenged the validity of the agreement and the court failed to determine the extent of the community assets. *Sharp* explained when the need for an evidentiary hearing might arise:

> While it is possible for the trial court to decide by summary judgment whether an agreement is equitable, in this case there were plainly disputed facts on the question of the fairness of the agreement, and the court was presented no evidence as to the extent of the community assets. Although the dissolution decree states that the parties' agreements are not unfair, neither the decree nor the court's minute entry granting summary judgment contains any basis on which the court could have made such a determination and, indeed, there is no such evidence in the record on which such a conclusion could be based.

179 Ariz. at 210.

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¶13 Unlike *Sharp*, here, both parties met with counsel, negotiated an agreement, presented it to the family court, testified under oath they were familiar with and understood the agreement, and entered into the agreement freely without coercion or duress. Additionally, when the court accepted the parties' handwritten agreement, the record contained (1) Mother's proposed resolution statement and (2) the parties' joint pretrial statement detailing, among other things, the community assets and personal property, as well as a stipulation that no outstanding discovery issues existed. After Mother challenged the handwritten agreement, the court held a hearing and went through each disputed term. The court did not need to conduct a formal evidentiary hearing because it had other evidence in the record and heard from the parties and their attorneys. Under these circumstances, the court properly exercised its discretion to determine the Rule 69 Agreement, and resulting Final Decree, were fair and equitable. Mother has shown no abuse of discretion.

II. The Court's Determination that Rule 69 Agreement and Final Decree Were Fair and Equitable is Supported by the Record.[4]

¶14 Mother claims the Rule 69 Agreement and resulting Final Decree were incorrect, unfair, or inequitable, specifically as to payments Father allegedly made from the home equity line of credit ("HELOC") and the value of the firearms. However, this claim is contrary to Mother's sworn statement at trial where she stated on the record that the handwritten agreement reflected her understanding of the terms agreed to by the parties.

¶15 The Rule 69 Agreement stated the parties would split the HELOC debt equally, and did not indicate the parties agreed Father would use his separate property to pay the civil attorneys' fees and fund the children's education accounts. By testifying that the handwritten agreement correctly reflected her understanding of the parties' agreement, Mother cannot now argue the parties actually agreed Father would use his separate property to pay these obligations. Neither Mother nor her attorney attempted to clarify the source of the payments to the children's education accounts and Father's civil attorneys' fees until after the agreement was

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[4] For the first time in her reply brief, Mother contends the handwritten agreement did not meet the requirements of Rule 69 and is not enforceable because it was not signed. Issues raised for the first time in reply on appeal will not be considered. *See Dawson v. Withycombe*, 216 Ariz. 84, 111, ¶ 91 (App. 2007).

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entered into and placed into the record, and Father had provided her with his initial proposed consent decree.

¶16 Contrary to her argument on appeal, at the status conference, Mother agreed to split the HELOC debt equally as of August 6, 2014. This concession was after Mother had reason to know Father used the HELOC funds to pay the civil attorneys' fees, education funds, and possibly a $10,000 advance payment made to Mother. Thus, Mother cannot now argue on appeal that the division of the HELOC was unfair.[5]

¶17 Mother argued the agreement to pay their own attorneys' fees included the $8,000 civil attorneys' fees. The evidence showed Father paid these fees from the HELOC before the petition for dissolution was served. Thus, Mother was aware, or had the ability to discover, that Father made this payment from the HELOC *before* she agreed to pay one-half of the HELOC balance.[6] Nothing in the record established that the fees were Father's separate obligation, or that the Rule 69 Agreement applied to the civil fees as well as the divorce attorneys' fees. Regardless, Father agreed to offset the civil attorneys' fees by paying the higher AMEX credit card debt.

¶18 Father charged $5,000 of his divorce attorneys' fees to a Cabela's Visa credit card just before the dissolution petition was served. The Rule 69 Agreement did not address the Cabela's Visa, but the Final Decree assigned that debt to Father, with Mother's agreement. As to the firearms, Mother agreed to an equalization payment of $10,894.50 based on the valuation in the personal property inventory attached to the Rule 69 Agreement. The inventory specifically valued the firearms at $4,554.50. Mother was represented by counsel, and she signed the first page of the inventory. Because she testified that the inventory correctly reflected her understanding of the terms of the parties' agreement, Mother cannot now argue that the firearms are worth more than the value stated in the inventory.

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[5] Mother argues she did not waive this argument because it was raised in her objections with the family court and addressed at the status conference. The issue was raised, but *then* Mother's attorney agreed to pay half the HELOC debt at the status conference.

[6] This same reasoning applies to the children's education accounts, which appear to have been funded, at least in part, by HELOC funds in early 2013, several months before the petition for dissolution was filed.

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¶19 Mother also contends Father should be estopped from arguing that she failed to establish the Rule 69 Agreement and Final Decree were unfair and inequitable because he objected when Mother attempted to introduce evidence. She asks us to disregard Father's attempt to support the Final Decree by "show[ing] his math" because his attorney refused to disclose the source of the $10,000 advance payment and the education accounts. However, Father's argument as to why the Rule 69 Agreement and Final Decree are fair remains the same as the argument made to the family court. Consequently, and without considering any new arguments he makes, we find that the family court did not abuse its discretion by finding the Rule 69 Agreement was fair and reasonable.

III. Custody Evaluator

¶20 Mother argues the Final Decree included language regarding the custody evaluator's report to which the parties did not agree. The Final Decree included the following language to which Mother objected:

> Mother has alleged the existence of domestic violence during the marriage, which Father denies. The parties accept the conclusion and recommendation of the custody evaluator, John Moran, Ph.D., who found that an award of joint legal decision making and an equal parenting time schedule was appropriate and in the children's best interests.

Mother argues the parties did not accept Dr. Moran's report without qualification; thus, the language should be deleted from the Final Decree.

¶21 On the record before the family court, the parties agreed to two specific terms in Dr. Moran's report regarding parental communication and summer parenting time. Language similar to that quoted above first appeared in Father's proposed consent decree. Mother's proposed decree added the following italicized language: "The parties accept the conclusion and recommendations of the custody evaluator, John Moran, Ph.D. *(incorporating the report of Jill Messing, MSW, Ph.D., Domestic Violence Expert Witness)* who found that an award of joint legal decision making and an equal parenting time schedule was appropriate and in the children's best interests." Mother argues she did not accept Dr. Moran's report without this qualification. The record on appeal does not include the report from Dr. Moran or Dr. Messing. Accordingly, we cannot ascertain how Mother was prejudiced by the deleted reference to Dr. Messing's report and cannot conclude the court abused its discretion by deleting this language.

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IV. Attorneys' Fees and Costs on Appeal

¶22 Both parties request an award of attorneys' fees and costs on appeal pursuant to A.R.S. § 25-324 and Rule 69. The record contains no current information regarding the parties' financial resources. After considering the reasonableness of the positions taken by the parties on appeal, we decline to award attorneys' fees to either party. As the successful party, Father is entitled to an award of costs on appeal upon compliance with ARCAP 21.

CONCLUSION

¶23 We affirm the Final Decree of dissolution.

AMY M. WOOD • Clerk of the Court
FILED: AA

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APPENDIX D

COPY FOR CERTIFICATION

FILED
1-23-15 2:50 pm
MICHAEL K. JEANES, Clerk
By T Ross
Deputy

MARICOPA COUNTY SUPERIOR COURT

STATE OF ARIZONA

In Re the Marriage of: JACQUELINE M. TAUSCHER (fka HANSHEW), Petitioner, and ERIC A. HANSHEW, Respondent.	Case No.: FC2013-053238 Consent **DECREE OF DISSOLUTION OF MARRIAGE WITH MINOR CHILDREN** (Assigned to the Hon. Gerald Porter)

Petitioner, JACQUELINE M. TAUSCHER, hereinafter referred to as "MOTHER", having filed a Petition for Dissolution of Marriage on or about July 1, 2013, invoking the jurisdiction of this Court, and Respondent/Father, ERIC A. HANSHEW, hereinafter referred to as "FATHER", having filed his Acceptance of Service on or about July 18, 2013; both parties having paid applicable appearance fees with the Clerk of the Maricopa County Superior Court; and the Court being fully advised in the premises:

THE COURT FINDS AS FOLLOWS:

A. At the time this action was commenced, at least one of the parties was domiciled in the State of Arizona and said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.

B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.

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C. By operation of law, the marital community is deemed to have terminated on July 18, 2013.

D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.

E. That this marriage is not a covenant marriage.

F. That both parties have lodged their preferred form of Decree of Dissolution of Marriage, Orders Re: Joint Legal Decision-Making and Parenting Time, and Orders Re: Marital Property for entry by the Court without hearing.

G. That neither party was under duress or coercion to enter into the terms of their agreements.

H. The parties both waive their right to trial. The parties appeared before the Court on August 26, 2014, at which time they declared on the record the terms of their settlement agreements. Those agreements are memorialized herein.

I. That there are two minor children common to the parties, namely, [redacted] and [redacted]

J. That the parties' agreements regarding Joint Legal Decision Making and Parenting Time ("Parenting Plan"), attached hereto as **Exhibit A**, properly provides for the custody of the minor children. The Court hereby adopts the findings contained in **Exhibit A** and finds that it is in the best interests of the minor children. The Court finds the terms as to legal decision making and parenting time of the children is reasonable.

K. That the Parenting Plan is in the best interests of the minor children.

L. MOTHER is not pregnant.

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M. The parties have each successfully completed the parent education class as required by A.R.S. § 25-351 as evidenced by the Certificate of Completion filed by each party.

N. That there are no protective orders in place. Mother has alleged the existence of domestic violence during the marriage, which Father denies. The parties accept the conclusion and recommendation of the custody evaluator, John Moran, Ph.D. (incorporating the report of Jill Messing, MSW, Ph.D., Domestic Violence Expert Witness), who found that an award of joint legal decision making and an equal parenting time schedule was appropriate and in the children's best interests.

O. That to the extent that it has jurisdiction to do so, the Court has considered, approved and made orders relating to the issues of legal decision making of the children, parent access, child support, maintenance of either spouse and the division of property and debts.

P. The parties stated the terms of their Marital Property Settlement Agreement on the record, the memorialization of which is attached hereto as **Exhibit B**, and which fully, equitably and completely disposes of all community, joint and common property and obligations of the parties.

Q. That the Court finds the terms of the property disposition, maintenance and child support is consistent with Arizona statutes, and is fair and equitable in the circumstances.

R. That each party has had the opportunity to seek the advice of separate counsel and warrants that he or she fully understands the nature and effect of all recitals and covenants prior to execution of these agreements.

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IT IS NOW, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. **Disposition of Property and Debts:**

The attached Orders Re: Marital Property ("Agreement") is incorporated and merged into this Consent Decree of Dissolution of Marriage and made a part hereof, the Court finding that said Agreement is fair and equitable to both parties and that said Agreement fairly and equitably divides the community, joint and common property and obligations of the parties.

2. **Income Taxes:**

The Maricopa County Superior Court retains continuing jurisdiction to enforce the provisions set forth in the section entitled INCOME TAXES in the Agreement.

3. **Legal Decision Making of Children:**

The parties are awarded joint legal decision-making over the minor children, [redacted] with neither party being designated as primary residential parent. The Court has reviewed the Parenting Plan and finds that the terms set forth therein are in the best interests of the minor children and that the statutory requirements for joint legal decision making, pursuant to A.R.S. § 25-403 have been met. The Court adopts the terms set forth in the Parenting Plan as its order and incorporates the same by reference as if said terms were fully set forth herein.

4. **Child Support:**

a. Commencing October 1, 2014, and continuing on the first day of each month thereafter Father shall pay to Mother child support in the sum of $400.00 per month, which represents an upward deviation from the Arizona Child Support Guidelines, pursuant to the Child Support Worksheet submitted concurrently herewith as **Exhibit C**. All payments for

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child support shall be made through the Support Payment Clearinghouse via a separate Order of Assignment to Father's employer.

b. All obligations for child support for a child shall terminate when the child attains the age of 18 years, is otherwise emancipated, or dies, but in the event the child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which said child is actually attending high school but only until the child(ren) reaches 19 years of age unless the Court enters an order pursuant to A.R.S. § 25-320(E). The presumptive termination date for child support is May 31, 2024.

c. Provisions for health insurance and non-insured health expenses for the children, as provided for in the Parenting Plan, shall be deemed to be additional child support and shall be enforceable as such.

d. Nothwithstanding any other provision of law, a parent paying support for a child over the age of majority pursuant to this order is entitled to obtain all records related to the attendance of the child in the high school or equivalency program in accordance with A.R.S. § 25-320(F).

e. Pursuant to A.R.S. § 25-503(K), the right of a party entitled to receive support or the department to receive child support payments as provided in the court order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law. The department or its agent or a party entitled to receive support may also file a request for written judgment for support arrearages.

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5. Child Support Worksheet:

At the time of this Decree, Mother's income was zero and, therefore, income was imputed to Mother based on a vocational evaluation of Mother's ability to earn. The Court hereby adopts the Child Support Worksheet attached hereto as **Exhibit C** as to the findings of the gross income, adjusted gross income, imputed income, basic child support obligation, each parent's proportionate share of the total child support obligation, and the child support award.

6. Medical and Dental Insurance Payments and Expenses

Father is ordered to provide medical and dental insurance for the minor children. Medical and dental insurance, payments and expenses are based on the information in the Child Support Worksheet attached hereto and incorporated by reference. The party ordered to pay must keep the other party informed of the insurance company name, address and telephone number, and must give the other party the documents necessary to submit insurance claims.

If Father's employment-based medical insurance terminates for any reason, Father shall obtain COBRA coverage or other private-pay health insurance substantially similar to the existing policy no later than the first day of the month after the coverage ceases.

Non-Covered Expenses: Father and Mother are ordered to pay their share of reasonable uncovered and/or uninsured medical, dental, prescription, and other health care costs incurred for the minor children, including co-payments, as well as agreed upon extracurricular activities, in a percentage proportional to each of their income. As of the date of this Order, the income proportions were approximately **60% Father** and **40% Mother**. Said percentage responsibility for unreimbursed expenses shall be modified at the time of any child support modification.

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Additional material from this filing is available in the Clerk's Office.