APPENDIX

Supreme Court of Arizona
Case No. CV-24-0203-PR

- Filed March 28, 2025 – Order denying Appellant's Motion for Reconsideration and Motion to Vacate.
- Filed February 27, 2025 – Petition for Review denied.

Arizona Court of Appeals, Division One
Case No. CA-CV 23-0392

- August 20, 2024 – Motion for Clarification denied.
- August 13, 2024 – Motion for Reconsideration and Motion under Rule 60 denied.
- July 18, 2024 – Decision affirmed.

United States District Court for the District of Arizona
Case No. 2:18-CV-00414-JJT

- August 16, 2018 – Order entered (District Court Docket No. 59)

Maricopa County Superior Court
Case No. LC2017-000316-001-DT

- October 27, 2017 – Higher court ruling: Reversed and remanded.

SUPREME COURT OF ARIZONA

RICHARD RYNN, et al., Plaintiffs/Appellants, v. UHS OF PHOENIX, LLC, et al., Defendants/Appellees.	Arizona Supreme Court No. CV-24-0203-PR Court of Appeals Division One No. 1 CA-CV 23-0392 Maricopa County Superior Court No. CV2020-094244

FILED 03/28/2025

O R D E R

On February 27, 2025, a Panel consisting of Chief Justice Timmer, Justice Montgomery, Justice King and Justice Cruz denied Petitioners/Plaintiffs/Appellants Petition for Review.

Pursuant to Rule 22(f) of the Arizona Rules of Civil Appellate Procedure, "Unless permitted by specific appellate court order, no party may file a motion for reconsideration of ... an order denying a petition for review." And no rule authorizes en banc review, and therefore, in the Court's discretion, and upon consideration of Appellants' pending motions, all three filed March 14, 2025,

IT IS ORDERED denying Appellants' "Request Enbanc Review" of the three motions.

IT IS FURTHER ORDERED denying "Appellants Motion to Reconsider Petition for Review."

IT IS FURTHER ORDERED denying "Revised Appellants Motion to Reconsider Petition for Review."

IT IS FURTHER ORDERED denying "Appellants Motion to Vacate Based

on Newly Discovered Evidence Resjudicata and Fraud on the Court."

IT IS FURTHER ORDERED directing the Clerk to close this file and accept no further pleadings.

DATED this 28th day of March, 2025.

/s/
ANN A. SCOTT TIMMER
Chief Justice

TO:
Gelliana David-Rynn
Marcella Rynn
Richard Rynn
Carolyn (DeeDee) Armer Holden
Michael J Ryan
Nathan S Ryan
Megan E Gailey
Kelley M Jancaitis
Rebecca Banes
Stephanie Elliott
Larry J Cohen
Ian Neale
Matthew J Skelly
Jeffrey S Hunter
William H Doyle
Brandon D Millam
Nathan Andrews
Debra Hill
Paul Hill
Elizabeth A Petersen
Matthew J Martin

Supreme Court
STATE OF ARIZONA

ANN A. SCOTT TIMMER
Chief Justice

ARIZONA STATE COURTS BUILDING
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TRACIE K. LINDEMAN
Clerk of the Court

February 27, 2025

RE: **RYNN et al v UHS et al**
Arizona Supreme Court No. CV-24-0203-PR
Court of Appeals, Division One No. 1 CA-CV 23-0392
Maricopa County Superior Court No. CV2020-094244

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on February 27, 2025, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Chief Justice Timmer, Justice Montgomery, Justice King and Justice Cruz participated in the determination of this matter.

Tracie K. Lindeman, Clerk

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 08/20/2024
AMY M. WOOD,
CLERK
BY: AMI

RICHARD RYNN, et al., Plaintiffs/Appellants, v. UHS OF PHOENIX, LLC, et al., Defendants/Appellees.	Court of Appeals Division One No. 1 CA-CV 23-0392 Maricopa County Superior Court No. CV2020-094244

ORDER DENYING MOTION FOR CLARIFICATION

The Court, Presiding Judge Daniel J. Kiley, Judge Kent E. Cattani, and Judge D. Steven Williams, has considered Plaintiffs/Appellants' motion for clarification and notice of errata. After consideration,

IT IS ORDERED denying the motion for clarification.

/s/
Kent E. Cattani, Judge

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

DIVISION ONE
FILED: 08/13/2024
AMY M. WOOD,
CLERK
BY: AMI

RICHARD RYNN, et al.,	)	Court of Appeals
	)	Division One
Plaintiffs/Appellants,	)	No. 1 CA-CV 23-0392
	)	
v.	)	Maricopa County
	)	Superior Court
UHS OF PHOENIX, LLC, et al.,	)	No. CV2020-094244
	)	
Defendants/Appellees.	)	
	)	

ORDER RE: MOTIONS

The Court, Presiding Judge Daniel J. Kiley, Judge Kent E. Cattani, and Judge D. Steven Williams, has considered Plaintiffs/Appellants' "Motion Under Rule 60," which the court construes as a motion for reconsideration, as well as their motion to reconsider and request to exceed word limit. After consideration,

IT IS ORDERED granting the motion to exceed word limit and accepting the motion to reconsider as filed.

IT IS FURTHER ORDERED denying Plaintiffs/Appellants' motion to reconsider.

IT IS FURTHER ORDERED denying Plaintiffs/Appellants' "Motion Under Rule 60."

/s/
Kent E. Cattani, Judge

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

RICHARD RYNN, *et al.*, *Plaintiffs/Appellants*,

v.

UHS OF PHOENIX, LLC, *et al.*, *Defendants/Appellees*.

No. 1 CA-CV 23-0392
FILED 07-18-2024

Appeal from the Superior Court in Maricopa County
No. CV2020-094244
The Honorable Peter A. Thompson, Judge

AFFIRMED

COUNSEL

Richard Rynn, Gelliana David-Rynn, Mathew Rynn,
Marcella Rynn, Chandler
Plaintiffs/Appellants

Holden & Armer, PC, Phoenix
By Carolyn Armer, Michael J. Ryan, Nathan S. Ryan
Counsel for Defendant/Appellee UHS of Phoenix, LLC dba Quail Run Behavior Health

Broening Oberg Woods & Wilson, PC, Phoenix
By Megan E. Gailey, Kelley M. Jancaitis
Counsel for Defendant/Appellee La Frontera Empact-SPC

Cohen Law Firm, Phoenix
By Larry J. Cohen
Counsel for Defendant/Appellee Devereux

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, Phoenix
By Jeffrey S. Hunter
Counsel for Defendant/Appellee Aurora Behavioral Healthcare Tempe, LLC

Doyle Hernandez Millam, Phoenix
By William H. Doyle, Brandon D. Millam, Nathan Andrews
Counsel for Defendant/Appellee Day Starz Group Home and Tamla Alexander

Slattery Petersen, PLLC, Phoenix
By Elizabeth A. Petersen, Gabriel O'Quin
Counsel for Defendants/Appellees Maricopa County Special Healthcare District dba Maricopa Integrated Health Systems and Desert Vista

Arizona Attorney General's Office, Phoenix
By Rebecca Banes, Stephanie Elliott
Counsel for Defendant/Appellee Department of Child Safety and Department of Health Services

Burch & Cracchiolo, PA, Phoenix
By Ian Neale, Matthew J. Skelly
Counsel for Defendant/Appellee Maricopa County Unified School District

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MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Daniel J. Kiley and Judge D. Steven Williams joined.

C A T T A N I, Judge:

¶1 Richard Rynn, Gelliana David-Rynn, and their children Mathew and Marcella Rynn (collectively, "Rynn") appeal the superior court's judgments dismissing their complaint against the following Appellees: Day Starz Group Home and Tamla Alexander (collectively, "Day Starz"); Aurora Behavioral Health ("Aurora"); La Frontera-Empact SPC ("Empact"); the State of Arizona and the governor, Arizona Department of Health Services ("DHS") and its director, and Arizona Department of Child Safety ("DCS") and its director (collectively, the "State

Defendants"); UHS of Phoenix, L.L.C., d/b/a Quail Run Behavioral Health ("Quail Run"); Devereux; and Maricopa County Special Healthcare District d/b/a Maricopa Integrated Health System and Desert Vista (collectively, "the District"). We affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 This case is Rynn's second lawsuit arising from treatment Marcella[1] received from inpatient behavioral health facilities, including treatment rendered during a dependency proceeding while Marcella was in DCS's care.[2] The dependency proceedings were initiated after Marcella and her mother voluntarily checked Marcella into a behavioral health center for mental health treatment. DCS subsequently received reports that Richard had been interfering with Marcella's treatment, intended to remove her from the facility, and threatened to "kill everyone at the hospital," including the therapist Richard blamed for contacting DCS. Following contested dependency proceedings, the superior court adjudicated Marcella dependent, finding that Richard had failed to provide Marcella adequate mental health treatment prior to 2017 despite her serious symptoms, that he attempted to remove her from a treatment facility despite being warned it was not safe for her to leave, and that he prevented Marcella from taking appropriate medications. This court affirmed the superior court's dependency order in February 2018. *Richard R. v. Dep't of Child Safety*, 2 CA-JV 2017-0165, 2018 WL 718932 (Ariz. App. Feb. 6, 2018) (mem. decision). The dependency proceedings ended in October 2018, and Marcella turned 18 the next month.

¶3 Richard and Marcella first sued the State Defendants and others in January 2018. The lawsuit was removed to federal district court, and Marcella was dismissed as a plaintiff. Asserting malfeasance relating to Marcella's 2017 mental health treatment and involvement with DCS, Rynn sought damages for interference with the parent-child relationship, intentional infliction of emotional distress, wrongful imprisonment, and due process violations. The district court ultimately dismissed the case with prejudice as to all defendants, including the State Defendants, Quail Run, and Empact (the "2018 litigation"). *See Rynn v. McKay*, CV-18-00414-

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1 For clarity, we respectfully refer to parties who share a last name by their first names.

2 The superior court's dismissal of a third case was recently affirmed in *Rynn v. UHS of Phoenix, LLC*, 2 CA-CV 2022-0175, 2023 WL 4173803 (Ariz. App. June 26, 2023) (mem. decision).

PHX-JJT, 2018 WL 5807082 (D. Ariz. Nov. 6, 2018) (order dismissing with prejudice); *see also Rynn v. McKay*, 793 Fed. Appx. 559 (9th Cir. 2020) (affirming the dismissal).

¶4 Rynn filed this lawsuit in July 2020 based on the same nucleus of facts, seeking compensatory and punitive damages and bringing claims for relief that included defamation, false light, assault and battery, involuntary treatment, child abuse and neglect, emotional distress, abduction of child, racketeering, negligence, and sexual abuse. In October 2020, Rynn filed a second amended complaint ("SAC"), which did not allege new claims but included new parties Aurora, Day Starz Group Home, Devereux, and others. In November 2020, Rynn filed a motion to amend the complaint and add additional parties. Rynn re-filed the SAC in January 2021, including the additional parties.

¶5 In April 2021, the court dismissed the claims against Empact, Quail Run, and the State Defendants on res judicata and statute of limitations grounds—as well as on several other grounds for the State Defendants. In May 2021, the court dismissed the claims against Devereux due to insufficient process and insufficient service of process. In May and June of 2021, the court entered Rule 54(b) final judgments for Empact, Quail Run, the State Defendants, and Devereux.

¶6 Rynn filed a third amended complaint ("TAC") in May 2021, without seeking the required permission from the court. *See* Ariz. R. Civ. P. 15(a)(2). Rynn alleged the same claims raised in the SAC, but also added claims for fraud, abuse of process, and breach of contract. In July 2021, the court granted Rynn permission to file the TAC, noting that it had already been filed. The court later noted in a September 2021 order that the TAC did not "revive[]" the claims against the previously dismissed parties for whom Rule 54(b) judgments had been entered. The TAC added Arizona Governor Doug Ducey, DHS Director Cara Christ, and DCS Director Gregory McKay as defendants, but those defendants were never served.

¶7 Rynn filed several motions for leave to file additional amended complaints between July 2021 and December 2021. The court rejected all of those motions.

¶8 In March 2022, the superior court stayed the proceedings pending a ruling by this court on the 54(b) judgments. After this court affirmed the Rule 54(b) judgments, *see David-Rynn v. UHS of Phx., LLC*, 1 CA-CV 21-0605, 2022 WL 4242261 (Ariz. App. Sept. 15, 2022) (mem. decision), *cert. denied sub nom. Rynn v. UHS of Phx., LLC*, 144 S. Ct. 329 (2023),

the superior court clarified that the TAC was the operative complaint and noted that Empact, Quail Run, the State Defendants, and Devereux were no longer parties.

¶9 In April 2023, the superior court designated the Rynn plaintiffs as vexatious litigants and ordered that they not file any new pleading, motion, or other document without authorization from the court. The court explained that Rynn's "many and voluminous, repetitive and redundant filings [] have unreasonably expanded and delayed court proceedings. They have brought the same causes of action multiple times against the same defendants without substantial justification."

¶10 The court subsequently dismissed all claims against all defendants and directed the defendants to submit proposed forms of judgment using Rule 54(b) language. The court issued 54(b) judgments for all defendants, and Rynn timely appealed. We have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶11 As a preliminary matter, Appellees contend Rynn abandoned or waived the issues raised in this appeal by failing to articulate coherent arguments relevant to the issues. We agree.

¶12 "This court has a responsibility to see that [litigants] conform to an acceptable, minimal level of competency and performance." *Ramos v. Nichols*, 252 Ariz. 519, 522, ¶ 8 (App. 2022) (citation omitted). Rynn does not meet this standard. Although Rynn's opening brief asserts "fraud," "lies," and "violations of parental rights," it fails to present substantive arguments with supporting reasons or citations to the record or case law. *See* ARCAP 13(a)(7)(A). The deficiencies in Rynn's briefing warrant denying relief. *J.W. v. Dep't of Child Safety*, 252 Ariz. 184, 188, ¶ 11 (App. 2021) (concluding a "lack of proper and meaningful argument alone" warrants denial of relief on appeal); *Schabel v. Deer Valley Unified Sch. Dist. No. 97*, 186 Ariz. 161, 167 (App. 1996) (noting that arguments not clearly raised in a party's appellate brief are waived on appeal).

¶13 Waiver notwithstanding, Rynn's arguments also fail on the merits based on claim preclusion and on Rynn's failure to support claims with specific facts or arguments warranting relief.

I. Claim Preclusion.

¶14 Claim preclusion bars Rynn's claims against Empact, the State Defendants, Quail Run, Devereux, and the District. This court's 2022 decision rejected Rynn's appeal from dismissal of the SAC based on claim preclusion resulting from Rynn's first lawsuit in federal court. *David-Rynn*, 1 CA-CV 21-0605, at *3, ¶ 18. This court applied claim preclusion because the prior federal litigation "(1) involved the same 'claim' or cause of action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical parties or privies." *Id.* at *2, ¶ 10 (citing *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005)).

¶15 Rynn's TAC is similarly barred by claim preclusion. Rynn argues that the previous judgments are not preclusive due to "new evidence discovered in year 2022," asserting that the "new evidence" shows deficiencies in the underlying dependency action in 2017. But the underlying dependency action was already affirmed on appeal, as were Rynn's federal and state court lawsuits relating to the dependency. *See Richard R.*, 2 CA-JV 2017-0165, at *2, ¶ 7; *Richard R. v. Dep't of Child Safety*, 2 CA-JV 2021-0141, 2022 WL 1087332, at *2, ¶ 6 (Ariz. App. Apr. 12, 2022). Moreover, claim preclusion

> bars relitigation of all grounds of recovery that were asserted, or *could have been asserted*, in a previous action between the parties, where the previous action was resolved on the merits. *It is immaterial whether the claims asserted subsequent to the judgment were actually pursued in the action that led to the judgment; rather the relevant inquiry is whether they could have been brought.*

Howell v. Hodap, 221 Ariz. 543, 547, ¶ 20 (quoting *United States ex rel. Barajas v. Northrop Corp.*, 147 F.3d 905, 909 (9th Cir. 1998)). Rynn does not proffer a reasoned basis why the alleged new evidence could not have been discovered or asserted in the previous proceedings; thus, Rynn has not overcome claim preclusion. Accordingly, we affirm the superior court's order dismissing Rynn's claims against Empact, the State Defendants, Quail Run, Devereux, and the District.

II. Remaining Defendants.

¶16 Rynn also appeals the superior court's dismissals as to Day Starz and Aurora. Under ARCAP 13, an appellant must articulate how the court erred and provide supporting reasons for the arguments on appeal. ARCAP 13(a)(7)(A). Here, however, Rynn has not alleged any act by any

of these defendants which, if true, establishes a basis for liability. Nor has Rynn provided any reasoning as to how the court erred by dismissing these defendants. Without specific arguments or facts alleged as to these defendants, Rynn has waived his claims against them. *See J.W.*, 252 Ariz. at 188, ¶ 11. Therefore, we affirm the superior court's order dismissing Rynn's claims against Day Starz and Aurora.

III. Attorney's Fees and Costs on Appeal.

¶17 Appellees (other than the State Defendants) argue this appeal is frivolous and ask that we award attorney's fees as a sanction under ARCAP 25. They note that the current appeal "is just the latest example of Rynn's unwillingness to accept judicial rulings" and "has been pursued without substantial justification." Notwithstanding Rynn's history of repetitive litigation, we decline to impose sanctions under ARCAP 25. *See Ariz. Tax Rsch. Ass'n v. Dep't of Revenue*, 163 Ariz. 255, 257–58 (1989) (noting that sanctions under ARCAP 25 are discretionary). However, as the successful parties, Appellees are entitled to their costs on appeal upon compliance with ARCAP 21. *See* A.R.S. §§ 12-341, -342.

CONCLUSION

¶18 We affirm.

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

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Richard Rynn,

Plaintiff,

V.

Gregory A. McKay, *et al.*,

Defendants.

No. CV-18-00414-PHX-JJT

ORDER

At issue are four Motions to Dismiss (Does. 9, 12, 15, 52) and a Joinder (Doc. 21) filed by Defendants in this matter, to which Plaintiffs filed two Responses (Does. 36, 56) and the moving Defendants filed Replies (Does. 41, 43, 44, 57). The Court resolves the Motions without oral argument. *See* LRCiv 7.2(f).

I. BACKGROUND

According to the Complaint (Doc. 1-1 at 6-18, Compl.), Plaintiff Richard Rynn appears *pro se* in this matter on behalf of both himself and M.R., his minor daughter. Rynn names 14 Defendants in the Complaint: Arizona Department of Economic Security ("DES"); Arizona Department of Child Safety ("DCS"); DES Director Can Christ; DCS Director Gregory A. McKay; employees of these agencies Cathee Coffee, Maria Rojas, Sarah Ferrell, Candy Zarrunit,[1] and Christine Miles; La Frontera Arizona EMPACT-SPC ("EMPACT"); EMPACT's employees Renee Miller and Nathan Thorpe; UHS of

[1] Defendants contend that Zammit is not an employee of these agencies, but rather an employee of UHS of Phoenix, LLC d/b/a Quail Run Behavioral Health. (*E.g.*, Does.

Phoenix, LLC d/b/a Quail Run Behavioral Health; and Desert Vista Behavioral Health Center.[2]

In the Complaint, Rynn alleges that, on an unspecified date, he and his wife checked their daughter M.R. into Quail Run for treatment of an anxiety disorder. After between seven and ten days passed, they went to retrieve M.R., who was under an order from her doctor to be discharged. At the discharge meeting, Quail Run employees asked to keep M.R. for three more days, to which Rynn's wife agreed but he did not. Quail Run did not discharge M.R.

When Rynn and his wife went downstairs to inquire about M.R.'s extended stay, Zammit said she was calling the police and DCS. When DCS arrived, Zammit reported that Rynn "threatened to kill them all," which Rynn denied. DCS took custody of M.R. and did not return her to her parents.

Rynn, on behalf of himself and M.R., sued Defendants in state court, and Defendants removed the action to this Court. Rynn raises six claims against all Defendants grouped together: (1) interference with parent/child relational interest; (2) intentional infliction of emotional distress; (3) wrongful imprisonment; (4) violation of civil rights under 42 U.S.C. § 1983 ("§ 1983"); and (5) and (6) negligence. The moving Defendants now ask the Court to dismiss all of the claims against them by way of four Motions: Quail Run joined by Zammit (collectively, "Quail Run") (Doc. 9, QR MTD; *see also* Doc. 21); Desert Vista (Doc. 12, DV MTD); and two Motions by EMPACT, Miller and Thorpe (collectively, "EMPACT") (Doc. 15, EMPACT 1st MTD; Doc. 52, EMPACT 2d MTD).

II. LEGAL STANDARD

A complaint must include "only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.' *Bell Atl Corp. v. Twombly*, 550 U.S.

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[2] Rynn also names as Defendants the spouses of the individual Defendants listed here, to reach the marital property.

544, 555 (2007) (quoting ***Conley v. Gibson,*** 355 U.S. 41, 47 (1957)); ***see also*** Fed. R. Civ. P. 8(a). A dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim can be based on either (1) the lack of a cognizable legal theory or (2) insufficient facts to support a cognizable legal claim. ***Balistreri v. Pacifica Police Dep't,*** 901 F.2d 696, 699 (9th Cir. 1990). "While a complaint attacked by a Rule 12(b)(6) motion does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." ***Twombly,*** 550 U.S. at 555 (citations omitted). The complaint must thus contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face." ***Ashcroft v. Iqbal,*** 556 U.S. 662, 678 (2009) (quoting ***Twombly,*** 550 U.S. at 570). "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that 'recovery is very remote and unlikely." ***Twombly,*** 550 U.S. at 556 (quoting ***Scheuer v. Rhodes,*** 416 U.S. 232, 236 (1974)).

III. ANALYSIS

A. Ryan's *Pro Se* Appearance

All moving Defendants argue that Rynn cannot act as lawyer for his daughter, M.R., and the Court agrees. (***E.g.,*** QR MID at 9-10.) A party may represent himself in federal court, even if he is not a licensed attorney. 28 U.S.C. § 1654. And, as Rynn argues, a parent may act as a "next friend" to sue on behalf of a minor child. Fed. R. Civ. P. 17(c)(2). But a non-attorney parent cannot act as an attorney for his child, even if the parent is appearing on behalf of the child as "next friend." ***Johns v. Cty. of San Diego,*** 114 F.3d 874, 876 (9th Cir. 1997) (holding "a non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child" (quoting ***Meeker v. Kercher,*** 782 F.2d 153, 154 (10th Cir. 1986))). The Court will thus require Rynn to obtain licensed counsel to proceed with the claims of his daughter in this Court. if Rynn does not obtain counsel, he may proceed in this action only on behalf of himself and his own claims, not those of M.R.

B. Failure to Plead with Requisite Particularity

To begin with, Rynn's Complaint is deficient under Federal Rule of Civil Procedure 8, because it does not adequately distinguish between the 14 Defendants in terms of their alleged conduct; indeed, the only specific conduct alleged in the Complaint is that of Quail Run and Zammit—who allegedly reported to DCS that Rynn "threatened to kill them all"—and DCS—who allegedly did not return M.R. to her parents. A plaintiff may not collectively accuse multiple defendants of committing misdeeds through the expedience of the title "Defendants." Such group pleading fails to comply with Rule 8(a)(2) because it does not give fair notice of the claims against each Defendant with the requisite specificity. *Richle v. Bank of America, N. A.*, No. CV-12-00251-PHX-NVW, 2013 WL 1694442, at *2 (D. Ariz. Apr. 18, 2013). For this initial reason, the Court will dismiss the entire Complaint.

The Court also notes that Count 6, for negligence, appears to be duplicative, because it is a copy of Count 5, also for negligence.

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

Arizona law provides that a person who reasonably believes that a minor has been the subject of physical abuse or neglect must report the abuse to DCS, and the person is "immune from any civil or criminal liability by reason of such action, unless such person acted with malice or unless such person has been charged with or is suspected of abusing, abandoning or neglecting the child or children in question." A.R.S. § 13-3620(A), (J). The Court agrees with the moving Defendants that Rynn's allegations are insufficient to show that Quail Run is not immune from Rynn's claims.[3] (*E.g.*, QR MTD at 2-4.) To state a claim, Rynn must allege sufficient facts from which the Court can plausibly infer that Quail Run acted with malice or is suspected of abusing M.R. itself. *See* A.R.S. §§ 133620(J); 8-805. For this reason, the Court will dismiss Rynn's claims against Quail Run.

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[3] As the Court already noted, Rynn alleges only that Quail Run reported him to DCS. The Complaint contains no factual allegations forming the basis of any claims against the other Defendants, except against DCS for refusing to return M.R. to her parents, so no claims even exist against the other Defendants.

Because it is possible that Rytm can cure this defect by amendment, the Court will give Rynn an opportunity to amend the Complaint. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

D. Claim Under § 1983

"To sustain an action under § 1983, a plaintiff must show (1) that the conduct complained of was committed by a person acting under color of state law; and (2) that the conduct deprived the plaintiff of a constitutional right." *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988). The Court agrees with the moving Defendants, (*e.g.*, QR MTD at 5-6), that Rynn's allegations are insufficient to show that Quail Run and EMPACT were state actors, as required to sustain a § 1983 claim against them. *See Florer v. Congregation Pidyon Shevuyim, NA*, 639 F.3d 916, 926-27 (9th Cir. 2011). Indeed, there are no allegations whatsoever of actions taken by EMPACT. The Court will thus dismiss Rynn's § 1983 claim against Quail Run and EMPACT with leave to amend. *See Lopez*, 203 F.3d at 1130.

E. Punitive Damages

The moving Defendants also argue that the Complaint fails to adequately state a prayer for punitive damages. (*E.g.*, QR MTD at 6-9.) Under Arizona law, punitive damages are awardable if "a reasonable jury could find the requisite evil mind by clear and convincing evidence." *Thompson v. Better-Bilt Aluminum Prods. Co.*, 832 P.2d 203, 211 (Ariz. 1992). In determining whether a defendant exhibited an "evil mind," courts consider "the nature of the defendant's conduct, including the reprehensibility of the conduct and the severity of the harm likely to result, as well as the harm that has occurred [in addition to] [t]he duration of the misconduct, the degree of defendant's awareness of the harm or risk of harm, and any concealment of it." *Id.* at 556. The primary question where punitive damages are concerned is motive, because gross negligence and reckless disregard are not enough. *Volz v. Coleman Co., Inc.*, 748 P.2d 1191, 1194 (Ariz. 1987).

With regard to a § 1983 claim, "a jury may be permitted to assess punitive damages in an action under § 1983 when the defendant's conduct is shown to be

motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Smith v. Wade*, 461 U.S. 30, 56 (1983).

Like the other claims in the Complaint, the allegations pertaining to a prayer for punitive damages are entirely inadequate. There are no factual allegations from which the Court could plausibly infer that Defendants acted with the requisite evil mind in this case; indeed, as the Court has repeatedly pointed out, there are no factual allegations whatsoever regarding actions taken by most of the Defendants, let alone actions demonstrating the requisite evil mind. As a result, the Court will dismiss the prayer for punitive damages for this additional reason, with leave to amend. *See Lopez*, 203 F.3d at 1130.

F. Non-Jural Entity

In Arizona, a plaintiff may sue a government entity only if the state legislature has granted that entity the power to sue or be sued. *Schwartz v. Superior Court*, 925 P.2d 1068, 1070 (Ariz. Ct. App. 1996). Desert Vista is a subdivision of the Maricopa County Special Health Care District, A.R.S. § 48-5501 *et seq.*, but no statutory authorization exists to sue Desert Vista. (DV MTD at 5-6.) Because Desert Vista is a non-jural entity, the Court will dismiss Rynn's claims against it with prejudice. Thus, the Court need not address Desert Vista's alternative argument that Rynn did not meet the requirements of submitting a Notice of Claim to it under A.R.S. § 12-821.01. (DV MTD at 6-8.)

G. Failure to Serve Miller and Thorpe

In its Motion and first responsive pleading, EMPACT states that Rynn failed to serve its employees, Miller and Thorpe, with the Complaint and Summons. (EMPACT 1st MTD at 3; Doc. 19, EMPACT Answer ¶ 17.) In his Response, Rynn concedes as much, stating that the process server "was turned away with a denial of all information." (Doc. 36 at 8 n.1.) Rynn asks for an additional 60 days to ascertain the home addresses of Miller and Thorpe.

In an Order dated February 7, 2018 (Doc. 8), the Court warned Rynn that any Defendant not served with the Complaint and Summons by April 4, 2018, as required by

Federal Rule of Civil Procedure 4(m), would be terminated from this action. Rynn never filed a motion for an alternative means of service or an extension of time before the April 4, 2018 deadline, and only conceded the service defect as to Miller and Thorpe in his Response, dated April 17, 2018 (Doc. 36), which was untimely.[4] While the Court affords the benefit of the doubt to *pro se* parties, they must still follow the Court's rules and Orders. *Faretta v. California*, 422 U.S. 806, 834 & n.46 (1975) (noting that self-representation is not "a license not to comply with relevant rules of procedural and substantive law"); *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1107-08 (9th Cir. 2000) (disabusing a *pro se* defendant of the notion that he was excused from complying with the procedural rules because they were "not something a *pro se* defendant can be expected to know," and concluding that, because defendant caused the default, he was not entitled to have the court set it aside). Accordingly, the Court must terminate Miller and Thorpe from this action, as the Court warned in its previous Order (Doc. 8).

H. Failure to Serve Preliminary Expert Affidavits

The moving Defendants join together to ask the Court to dismiss Rynn's claims for an additional reason, namely, failure to timely serve preliminary expert affidavits. In an Order dated May 23, 2018, the Court required Rynn to serve preliminary expert reports by May 27, 2018, pursuant to A.R.S. § 12-2603. (Doc. 50.) Although a state law requirement, A.R.S. § 12-2603 has been deemed substantive and thus applicable in federal court. *Kaufman v. Jesser*, 884 F. Supp. 2d 943, 949 (D. Ariz. 2012).

In response, Rynn argues that no such expert reports are necessary, because he is not alleging medical malpractice, but rather liability in connection with telling DCS that he "threatened to kill them all." (Doc. 56 at 4.) The moving Defendants argue that such reports are required under Arizona law any time a plaintiff brings suit against a medical

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[4] Rynn's statement in his Notice of Filing Affidavits of Service (Doc. 24) that "Miller and Thorp[e] appeared as movants in the motion to dismiss" is true, but is not a substitute for adequate service. Miller and Thorpe's apparance in the motion to dismiss was to argue that they had not been properly served. (EMPACT 1st MTD at 3.)

care provider for breach of the standard of care. (Doc. 57.) The Court agrees with the latter point, and finds that any claim Rynn has tried to state against the moving Defendants for breach of a duty of care—including the negligence claims in Count 5, as repeated in Count 6—must be dismissed for failure to timely provide the required preliminary expert report. *See* A.R.S. § 12-2603(F).

III. CONCLUSIONS

With regard to the claims of M.R., a minor, she must obtain licensed legal counsel. Accordingly, M.R. shall retain legal counsel who shall file a notice of appearance by September 7, 2018. In the absence of the timely appearance of counsel on behalf of M.R., Rynn may only proceed with his own claims in this action, if he chooses to file an Amended Complaint.

The Court dismisses Rynn's claims against Defendant Desert Vista Behavioral Health Center with prejudice, because it is not a jural entity under Arizona law. The Court also terminates Renee Miller and Nathan Thorpe as Defendants in this action, because Rynn failed to timely serve them with the Complaint and Summons under Rule 4. In addition, Rynn may not bring claims against any of the remaining moving Defendants—UHS of Phoenix, LLC d/b/a Quail Run Behavioral Health, Candy Zammit, and EM.PACT—alleging medical malpractice or negligence, because he failed to comply with Arizona law and the Court's Order to timely serve preliminary expert reports.

The Court dismisses the balance of the Complaint with leave to amend, for all of the following reasons:

- Under Rule 8, the Complaint fails to adequately distinguish between the 14 Defendants in terms of their alleged conduct, and indeed alleges no conduct whatsoever of most of the named Defendants.
- Under A.R.S. §§ 13-3620(J) and 8-805, the Complaint fails to allege sufficient facts from which the Court can plausibly infer that any Defendant acted with malice or is suspected of abusing M.R. itself

- Under 42 U.S.C. § 1983, the Complaint's allegations are insufficient to show that Quail Run and EMPACT were state actors, as required to sustain a § 1983 claim against them.
- Regarding the punitive damages prayer, the Complaint contains no factual allegations from which the Court could plausibly infer that Defendants acted with the requisite evil mind in this case.

IT IS THEREFORE ORDERED granting Quail Run Behavioral Health's Motion to Dismiss (Doc. 9).

IT IS FURTHER ORDERED granting Defendant Desert Vista Behavioral Health Center's Motion to Dismiss (Doc. 12).

IT IS FURTHER ORDERED granting Defendant EMPACT-Suicide Prevention Center, an Arizona Nonprofit Corporation, Miller and Thorpe's Motion to Dismiss (Doc. 15).

IT IS FURTHER ORDERED granting Defendants EMPACT-Suicide Prevention Center, an Arizona Nonprofit Corporation, Miller, Thorpe, UHS of Phoenix, LLC d/b/a Quail Run Behavioral Health, Candy Zammit, and Desert Vista Behavioral Health Center's Motion to Dismiss Pursuant to A.R.S. § 12-2603(F) (Doc. 52).

IT IS FURTHER ORDERED that Plaintiff M.R. shall retain legal counsel who shall file a notice of appearance by September 7, 2018.

IT IS FURTHER ORDERED that Plaintiffs may file an Amended Complaint that complies with this Order and all applicable rules on or before September 14, 2018.

IT IS FURTHER ORDERED directing the Clerk of Court to close this case without further Order if Plaintiffs fail to timely file an Amended Complaint.

Dated this 16th day of August, 2018.

Honorable John J. Tuchi
United States District Judge

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

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2017-000316-001 DT

10/23/2017

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT
T. DeRaddo
Deputy

QUAIL RUN BEHAVIORAL HEALTH HOSPITAL

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

v.

RICHARD RYNN (001)

RICHARD RYNN
44997 W SAGE BRUSH DR
MARICOPA AZ 85139

GLENDALE MUNICIPAL COURT
REMAND DESK-LCA-CCC

HIGHER COURT RULING/REMAND

Lower Court Case No. CV 2017009585

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

I. FACTUAL BACKGROUND.

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

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

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

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

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

Standard of Review

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

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

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

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

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

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

Abuse of Discretion

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

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

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

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

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

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

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

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

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

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

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

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

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[3] A.R.S. § 22–261 states:

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

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

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

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

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

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

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

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

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

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

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

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[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.

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

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

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

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

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

Our Court of Appeals also held:

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

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

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

III. CONCLUSION.

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

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

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

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

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

102520171952

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