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2018 WL 1321498

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Court of Appeals of Arizona,
Division 1.

In re the Matter Of: Slava
KOSTADINOVA, Petitioner,

v.

Bryan M. STEPHENS, Respondent/Appellee.
Kristin Roebuck-Bethell, Appellant.

No. 1 CA-CV 17-0099 FC

|
FILED 3/15/2018

Appeal from the Superior Court in Maricopa County;
No. FC2013-090643; The Honorable Stephen M. Hop-
kins, Judge. **AFFIRMED**

Attorneys and Law Firms

Horne Slaton, PLLC, Scottsdale, By Sandra L. Slaton,
Counsel for Appellant

Ryan Rapp & Underwood, P.L.C., Phoenix, By Terrie S.
Rendler, Counsel for Respondent/Appellee

Judge Paul J. McMurdie delivered the decision of the
Court, in which Presiding Judge Lawrence F. Winthrop
and Judge Jennifer B. Campbell joined.

MEMORANDUM DECISION

McMURDIE, Judge:

¶ 1 Attorney Kristin Roebuck-Bethell (“Counsel”) appeals the superior court’s award of attorney’s fees and costs to Bryan M. Stephens (“Father”) as a sanction for having unreasonably defended against Father’s request to have his address protected from disclosure. For the following reasons, we affirm.

FACTS AND PROCEDURAL BACKGROUND

¶ 2 Several months after Slava Kostadinova (“Mother”) filed her petition for paternity in March 2013, the parties reached a temporary agreement under Arizona Rule of Family Law Procedure 69. The parties agreed, *inter alia*, to joint legal decision-making, initial parenting time, and to exchange their infant child at a police station. No residential addresses were revealed in the agreement, although Father agreed to “exercise his parenting time primarily at his residence.” The parties agreed to communicate exclusively by email, except for texting each other’s cell phones in case of an emergency.

¶ 3 After the temporary agreement was entered, Mother accused Father of sexual misconduct in Texas involving his ex-wife and step-daughter. Mother alleged the incident was investigated by the Texas Department of Family and Protective Services (“DFPS”). A search of DFPS’s records revealed no evidence that Father had been investigated, charged, or arrested for

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any such abuse in Texas. Father's ex-wife submitted a letter, and later an affidavit, stating that Father had never abused her or her daughter. Mother then alleged Father had been arrested in Sweden for touching an under-aged girl. However, no evidence supporting the allegation was found through a record-search by Swedish authorities. Mother hired a private investigator, who reported no criminal records for Father other than speeding tickets. In a Comprehensive Family Assessment report filed with the court in July 2015, Dr. Korsten determined Mother's allegations were unfounded.¹ Mother did not provide any evidence supporting her allegations, and would not change her position when presented with substantial evidence refuting them.

¶ 4 In the spring of 2014, Father relocated his residence. Father did not disclose his new address to Mother allegedly for safety concerns for his new family. After protracted mediation, the parties reached a global Rule 69 settlement agreement in 2015, which provided: "Each parent shall notify the other of a changed address and/or phone number, within ten (10) days of such change." On March 4, 2016, the court

¹ In her report, Dr. Korsten stated: "Ms. Kostadinova has made serious allegations against Mr. Stephens that in conjunction suggest she has intentionally misled the Court to increase the cost of litigation or persuade the Court to give a legal decision-making or parenting time preference to her. . . . If the Court has concerns that Ms. Kostadinova continues to make allegations to punish Mr. Stephens, it may be necessary for Mr. Stephens to be identified as the final decision-maker."

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appointed parenting coordinator, Dr. Weinstock, recommended “both parents share information as to where [their child] will be staying overnight during each parent’s standard parenting time.”

¶ 5 On May 26, 2016, Counsel sent an email to Father’s counsel, in which she requested Father provide his new address to Mother. The next day, Father’s counsel filed a motion arguing that the disclosure of Father’s home address should abide resolution in an upcoming trial. On June 20, 2016, the superior court ordered Father to disclose his address or file a request for protected address under Arizona Rule of Family Law Procedure 7. On June 21, 2016, the court granted Father’s Motion for Partial Summary Judgment, finding the parties’ settlement agreement valid and binding as of December 28, 2015 (“2015 Settlement Agreement”). The court ordered that Mother could file an objection to Father’s request for an award of attorney’s fees and costs based on the unreasonableness of Mother’s position by July 15, 2016.² On July 6, 2016, Father filed for a protected address under Rule 7, stating he feared Mother would reveal his address to his former business associates, who would harm him or his

² In his motion for partial summary judgment, Father requested an award of attorney’s fees based on Mother’s unsupported assertions to Dr. Weinstock and Dr. Korsten that Father was investigated for sexual misconduct involving his step-daughter after Mother possessed substantial evidence refuting her accusations. Father also argued Mother unreasonably failed to initiate equal parenting time and refused to discuss her position after December 2015.

new family. In Mother's response to the motion ("Response"), filed on July 25, 2016, Counsel argued Mother was entitled to know Father's address and would keep Father's address confidential. Mother did not dispute that Father's business associates would potentially harm Father or his family if his address was disclosed to them. Counsel stated, "*Mother has done nothing vindictive in this case.*" (Emphasis added.) On August 5, 2016, the court found "Mother acted unreasonably in the litigation from December 28, 2015," because she "continued to try to impose additional terms after a binding contract was reached between the parties," and awarded Father his reasonable attorney's fees and costs. On August 10, 2016, the superior court granted Father's request for a protected address and suggested Father file a memorandum on sanctioning Counsel for the Response pursuant to Arizona Rule of Family Law Procedure 31 ("August Order"). After the parties briefed the issue, the court sanctioned Counsel and found her positions "objectively unreasonable" on September 28, 2016 ("September Order").

¶ 6 Counsel moved for a new trial, which the court denied. The court then entered a judgment for attorney's fees and costs against Counsel in the total amount of \$5737. Counsel timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) and – 2101(A)(1).

DISCUSSION

¶ 7 Counsel argues the superior court erred by (1) failing to make specific findings regarding elements necessary to sanction Counsel pursuant to Arizona Rule of Family Law Procedure 31 (“Rule 31”); (2) sanctioning Counsel without holding a requested evidentiary hearing; and (3) awarding sanctions unrelated to Counsel’s Response.

¶ 8 We review the superior court’s rulings on a motion for sanctions for abuse of discretion, *Cal X-Tra v. W.V.S.V. Holdings, L.L.C.*, 229 Ariz. 377, 410, ¶ 113 (App. 2012), and “[t]he question is not whether the judges of this court would have made an original like ruling, but whether a judicial mind, in view of the law and circumstances, could have made the ruling without exceeding the bounds of reason,” *Marquez v. Ortega*, 231 Ariz. 437, 441, ¶ 14 (App. 2013) (alteration in original) (quotation omitted). We are bound by the superior court’s findings of fact, “unless they are clearly erroneous or unsupported by any credible evidence.” *Lund v. Donahoe*, 227 Ariz. 572, 578-79, ¶ 19 (App. 2011).

¶ 9 Because Rule 31 is substantially similar to Arizona Rule of Civil Procedure 11 (“Rule 11”), the legal precedents interpreting Rule 11 apply to our analysis under Rule 31. See *In re Marriage of Dougall*, 234 Ariz. 2, 6, ¶ 9, n.5 (App. 2013) (“Wherever the language in [the Arizona Rules of Family Law Procedure] is substantially the same as the language in other statewide rules, the case law interpreting that language will

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apply to these rules.”) (alteration in original) (quoting Ariz. R. Fam. Law P. 1 cmt.); *see also* Ariz. R. Fam. Law P. 31 cmt. (Rule 31 is “based on Rule 11, Arizona Rules of Civil Procedure”).

¶ 10 The purpose of Rule 11, and by extension Rule 31, is “to discourage wasteful, costly litigation battles by *mandatory* sanctions where the position of the lawyer will not support a sound basis in law or fact justifying the position asserted.” *Wells Fargo Credit Corp. v. Smith*, 166 Ariz. 489, 497 (App. 1990) (emphasis added).³ When imposing sanctions, a superior court applies an objective reasonableness standard, *Cal X-Tra*, 229 Ariz. at 410, ¶ 113, of “what a professional, competent attorney would do in similar circumstances,” *Linder v. Brown & Herrick*, 189 Ariz. 398, 407 (App. 1997).

³ Rule 31 authorizes a court to “impose upon the person who signed [a pleading, motion or other paper in violation of this rule] . . . an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney’s fee.” Ariz. R. Fam. Law P. 31(A). Sanctions are appropriate when the signor “knows or should have known, by a reasonable investigation of fact and of law, that [a motion or pleading] is insubstantial, frivolous, groundless or otherwise unjustified.” *James, Cooke & Hobson, Inc. v. Lake Havasu Plumbing & Fire Prot.*, 177 Ariz. 316, 319 (App. 1993); *see* Ariz. R. Civ. P. 11; Ariz. R. Fam. Law P. 31.

A. The Superior Court’s Findings under Rule 31 Were Sufficiently Specific.

¶ 11 Counsel argues the superior court abused its discretion by failing to make specific findings regarding elements necessary to sanction Counsel under Rule 31.

¶ 12 Regarding factual contentions, Rule 31 requires a document certified by counsel be “well grounded in fact,” while Rule 11 requires it to have “evidentiary support.” *See* Ariz. R. Fam. Law P. 31(A); Ariz. R. Civ. P. 11(b)(3). Although we recognize these two propositions may have different meanings in some situations, we find the requirements substantially similar for the purposes of our decision and will apply legal precedent interpreting either rule. *See In re Marriage of Dougall*, 234 Ariz. at 6, ¶ 9, n.5. Both rules equally authorize the court to sanction counsel for certifying a document interposed “for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Ariz. R. Fam. Law P. 31(A); Ariz. R. Civ. P. 11(b)(1).

¶ 13 “The trial court must make specific findings to justify its conclusion that a party’s claims or defenses are frivolous.” *Smith*, 166 Ariz. at 497 (quoting *State v. Richey*, 160 Ariz. 564, 565 (1989)). The reasonableness of a factual inquiry depends on the totality of the circumstances, which may change as the case progresses. *See Boone v. Superior Court*, 145 Ariz. 235, 241 (1985); *Wright v. Hills*, 161 Ariz. 583, 590 (App. 1989) (“An attorney is obligated to review and examine his

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[or her] position as facts of the case are developed, and . . . he [or she] may be obligated to reevaluate his [or her] earlier certification under Rule 11.”), *overruled on other grounds as recognized by James, Cooke & Hobson, Inc.*, 177 Ariz. 316.

¶ 14 The superior court provided several reasons for imposing Rule 31 sanctions for Counsel’s Response. First, the court explained Counsel failed to provide any evidence, or even argue, that Father’s former business associates would *not* harm Father or his family if they were to learn Father’s address. The court not only found Father satisfied the Arizona Rule of Family Law Procedure 7 standard (a party reasonably believes a physical or emotional harm *may* result from the address’s disclosure),⁴ but also that Counsel listed these associates as witnesses against Father’s character.⁵ Counsel’s statement that Mother promised not to

⁴ Rule 7 specifies: “Any person filing an initial or post-judgment petition, motion or response, whose address is not known to the other party and who *reasonably believes* that physical or emotional harm *may* result to the person or a minor child if the person’s address is not protected from disclosure, may request the court to designate that party’s address as protected. . . .” Ariz. R. Fam. Law P. 7(A) (emphasis added). We agree with the superior court that Rule 7 imposes a very minimal standard for obtaining a protected address. Moreover, the issue of whether Father’s Rule 7 request for protected address was properly granted is not before us, as it was not appealed.

⁵ Counsel complained Father’s counsel misrepresented that Father’s former business associates were called to testify about Father’s character. But Mother did, in fact, list Father’s business associates as character witnesses. Counsel’s representations were made for an improper purpose. *See* Ariz. R. Fam. Law P. 31; *see also James, Cooke & Hobson, Inc.*, 177 Ariz. at 319.

disclose Father's address to anyone was not credible given Mother's previously taken positions and allegations. The court found Counsel violated the objective standard of a competent attorney by failing to conduct a "reasonable inquiry into the basis" for her Response. *See Wolfinger v. Cheche*, 206 Ariz. 504, 510, ¶ 29 (App. 2003). Moreover, Counsel represented to the court "Mother has done nothing vindictive in this case," which, on this record, was a groundless, unjustified, and specious position. *See James, Cooke & Hobson, Inc.*, 177 Ariz. at 319; *see also* Ariz. R. Fam. Law P. 31.

¶ 15 Second, the court explained the parties reached a detailed and specific settlement agreement in 2015, without making the disclosure of Father's address "an essential item." Mother presented no other reason why the parties' agreement could not be fulfilled without her knowing Father's address. The court found "entirely pretextual" Mother's claim that she was entitled to know Father's address because it was in the best interests of their child. Moreover, the settlement agreement did not specifically address whether an address could be protected from public disclosure under Rule 7. The court found Mother's need to know the address mooted by the parties' settlement agreement, and therefore Counsel's position, objectively unreasonable. The Response caused "unnecessary delay or needless increase in the cost of litigation." *See* Ariz. R. Fam. Law P. 31; *see also Boone*, 145 Ariz. at 241; *James, Cooke & Hobson, Inc.*, 177 Ariz. at 319.

¶ 16 To further support the imposition of sanctions, the court found: (1) Mother's attack was

personal; (2) she used an inflammatory and old police report; and (3) Mother's filing for a bankruptcy discharge soon after Father requested Mother pay his attorney's fees for prevailing on his motion for partial summary judgment should have prompted Counsel to act with even greater diligence and pursue only meritorious and reasonable legal positions.⁶ *See Lund*, 227 Ariz. at 578-79, ¶ 19 (the superior court's findings are binding on appeal unless clearly erroneous or unsupported by credible evidence).

¶ 17 The court did not fail to make specific findings. *See Smith*, 166 Ariz. at 497. The court's concerns went beyond the fact that Counsel filed a response. The concern was that the content of her Response failed to comport with Rule 31. Considering the history of this case, we cannot say the court abused its discretion by

⁶ Counsel argues on appeal the superior court improperly ruled Counsel "should have known [on July 25] that the Court would find [on August 5] Mother's conduct to be unreasonable[.]" when the court granted Father's request for attorney's fees based on Mother's unreasonable positions taken after December 28, 2015. However, the court's finding seems to illuminate its concern with Mother's timing of her bankruptcy, but even if we disregard this finding entirely, the court had a reasonable basis for sanctioning Counsel's conduct on the record as it existed on July 25. *See Villa De Jardines Ass'n v. Flagstar Bank, FSB*, 227 Ariz. 91, 99, ¶ 25 (App. 2011); *see also Boone*, 145 Ariz. at 241 ("[C]ounsel is required only to make an investigation [of facts and law] which is reasonable under the circumstances that exist at the time of filing the pleading."); *Taliaferro v. Taliaferro*, 188 Ariz. 333, 341 (App. 1996) (the sanctions authorized "are discretionary," but are to be "appropriate" . . . , which means that they are to bear some relationship . . . to the expenses directly caused by the sanctionable conduct").

sanctioning Counsel. *See Marquez*, 231 Ariz. at 441, ¶ 14 (“We do not substitute our discretion for that of the trial court.”); *see also Heuisler v. Phoenix Newspapers, Inc.*, 168 Ariz. 278, 284 (App. 1991) (facts are viewed in the light most favorable to sustaining the sanctions imposed).

B. Counsel’s Due Process Rights Do Not Extend to a Mandatory Evidentiary Hearing on Sanctions.

¶ 18 Counsel argues the superior court erred by sanctioning her pursuant to Rule 31 without first holding an evidentiary hearing, which she requested, and by making *sua sponte* findings unsupported by the record.

¶ 19 “[T]he imposition of sanctions should be preceded by some form of notice and opportunity to be heard on the propriety of imposing the sanctions.” *Lund*, 227 Ariz. at 582, ¶ 37 (alteration in original) (quoting *Precision Components, Inc. v. Harrison, Harper, Christian & Dichter, P.C.*, 179 Ariz. 552, 555 (App. 1993)). In assessing the necessity for a hearing on sanctions, the superior court evaluates: “1) the circumstances in general; 2) the type and severity of the sanctions under consideration; and 3) the judge’s participation in the proceedings, knowledge of the facts, and need for further inquiry.” *Id.* (quotation omitted). “In all cases . . . the accused must be given an opportunity to respond, either orally or in writing, to justify his or her actions.” *Id.* (quotation omitted); *see also*

Robinson v. Higuera, 157 Ariz. 622, 624 (App. 1988) (“[d]ue process does not require that a hearing be held in every case,” even where “sanctions of dismissal or entry of default judgment” are entered); *Montgomery Ward & Co., Inc. v. Superior Court*, 176 Ariz. 619, 622 (App. 1993) (“The heavier the sanction contemplated, the more deliberate the process that is due and the more thorough the findings that should be made.”).

¶ 20 In its August Order, the court invited Father’s counsel to file “a legal memorandum addressing whether Mother and/or her counsel should be sanctioned pursuant to Rule 31 . . . based upon the filing of the Response.” Father filed a memorandum in support of sanctions, to which Mother responded in detail and submitted exhibits. Therefore, Counsel was given notice and an opportunity to be heard.

¶ 21 In its September order, the court considered both legal memoranda, and, having “reviewed the entire Court file with respect to this matter,” denied Mother’s request for an evidentiary hearing. *See Lund*, 227 Ariz. at 582, ¶ 37. Because Rule 31 does not mandate that a hearing be conducted, the total amount of \$5737 was not an excessive sanction, and the court was familiar with the case, we find Counsel was afforded due process. The court did not abuse its discretion by denying her request for an evidentiary hearing. *See Marquez*, 231 Ariz. at 444, ¶ 26.

C. The Amount of Sanctions Was Not Excessive.

¶ 22 Counsel argues the superior court abused its discretion by expanding the sanction for attorney’s fees “not directly related to the sanctionable conduct” and for fees incurred before Father’s request for a protected address.

¶ 23 “When an attorney signs a pleading in violation of [Rule 31], some form of sanction is required.” *In re \$15,379 in U.S. Currency*, 241 Ariz. 462, 470, ¶ 19 (App. 2016); *see also Smith*, 166 Ariz. at 497 (Rule 11 sanctions are “mandatory”). Rule 31 authorizes “an appropriate sanction . . . incurred because of the filing of the pleading,” Ariz. R. Fam. Law P. 31(A), which should “bear some relationship to the expenses directly caused by the sanctionable conduct,” *Taliaferro*, 188 Ariz. at 341. We will affirm the superior court’s discretionary award of attorney’s fees “if there is any reasonable basis for it.” *Villa De Jardines Ass’n v. Flagstar Bank, FSB*, 227 Ariz. 91, 99, ¶ 25 (App. 2011).

¶ 24 The court sanctioned Counsel in the total amount of \$5737. Counsel argues that from the \$5737 awarded to Father, the amount of \$1087 should be subtracted because this amount was incurred *before* Counsel filed the sanctioned Response, and was, thus, not “incurred because of the filing” of the Response. *See* Ariz. R. Fam. Law P. 31(A). The \$1087, however, related to Father’s effort to keep his address protected, initiated by Counsel’s email inquiry in May 2016. The court ruled the issue was mooted by the parties’ December 2015 settlement agreement, and was an issue that “did

not need to be litigated.” The parties initially agreed to exchange their child for parenting time at a police station. The December 2015 settlement agreement did not indicate the arrangement to exchange the child at a location other than their homes was not functioning, and Mother did not know Father’s address at least since early 2014. It was not until May 2016 that Mother requested to know Father’s address. The court acted within its discretion by determining the \$5737 was the “*appropriate* sanction . . . which *may* include . . . expenses incurred because of the filing of the pleading. . . .” See Ariz. R. Fam. Law P. 31(A) (emphasis added). We will not substitute our discretion for that of the superior court’s, see *Marquez*, 231 Ariz. at 441, ¶ 14, as the court’s sanction bears sufficient relationship to the sanctionable conduct, see *Taliaferro*, 188 Ariz. at 341.

¶ 25 Because the superior court’s sanction in the amount of \$5737 is supported by the record, see *Villa De Jardines Ass’n*, 227 Ariz. at 99, ¶ 25, the court did not abuse its discretion and we affirm the sanction in its entirety.

D. Attorney’s Fees on Appeal.

¶ 26 Father requests we award him reasonable attorney’s fees and costs incurred in defending this appeal pursuant to A.R.S. §§ 25-324, 12-349, and Arizona Rule of Civil Appellate Procedure 25. In our discretion, we award Father his reasonable attorney’s fees and

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costs upon compliance with Arizona Rule of Civil Appellate Procedure 21.

CONCLUSION

¶ 27 For the stated reasons, we affirm.

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2013-090643

08/05/2016

HONORABLE
STEPHEN M. HOPKINS

CLERK OF THE COURT
J. Erickson
Deputy

IN RE THE MATTER OF
SLAVA KOSTADINOVA THOMAS C HORNE

AND

BRYAN M STEPHENS TERRIE S RENDLER

MINUTE ENTRY

(Filed Aug. 9, 2016)

The Court has reviewed *Respondent/Father's Motion for Partial Summary Judgment* filed March 14, 2016 (also containing a request for award of fees); *Mother's Objection to Request for an Award of Attorney's Fees and Costs* filed July 15, 2016; and *Respondent/Father's Reply In Support of Request for Attorneys' Fees and Costs* filed July 25, 2016. The Court has also reviewed the Court file and now makes the following rulings.

An award of attorney fees and costs is governed by A.R.S. § 25-324. Section 25-324 provides as follows:

A. The court from time to time, after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings, may order a party to pay a reasonable amount

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to the other party for the costs and expenses of maintaining or defending any proceedings under this chapter or chapter 4, article 1 of this title. On request of a party or another court of competent jurisdiction, the court shall make specific findings concerning the portions of any award of fees and expenses that are based on consideration of financial resources and that are based on consideration of reasonableness of positions. The court may make these findings before, during or after the issuance of a fee award.

B. If the court determines that a party filed a petition under one of the following circumstances, the court shall award reasonable costs and attorney fees to the other party:

1. The petition was not filed in good faith.
2. The petition was not grounded in fact or based on law.
3. The petition was filed for an improper purpose, such as to harass the other party, to cause an unnecessary delay or to increase the cost of litigation to the other party.

C. For the purpose of this section, costs and expenses may include attorney fees, deposition costs and other reasonableness expenses as the court finds necessary to the full and proper presentation of the action, including any appeal.

D. The court may order all amounts paid directly to the attorney, who may enforce the order in the attorney's name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

This Court has already ruled that the parties reached a full, binding agreement on all issues as of December 15, 2015. Part of that Agreement concerned payment of attorney fees, and provided specifically that each party would pay their own attorney fees and expenses. Father may not accept that part of the Agreement that believes benefits him, and ignore the explicit agreement regarding fees.

IT IS ORDERED re-affirming that the parties have already agreed to settle the issue of attorney fees and expenses via their Rule 69 Agreement as of December 28, 2015 and that each party will bear his or her own fees.

Father also requests an award of fees and expenses from December 28, 2015 forward. With respect to this request, the Court finds and rules as follows.

THE COURT FINDS that there is substantial disparity of financial resources between the parties. Because of the disparity, Father has more resources available to contribute toward Mother's attorney fees and costs. However, this Court has the authority to award fees based upon either disparity of income or reasonableness of positions. With respect to reasonableness of positions.

THE COURT FINDS that Mother acted unreasonably in the litigation from December 28, 2015 forward. Specifically, Mother continued to try to impose additional terms after a binding contract was reached between the parties. This Court found that a contract existed as a matter of law. Mother's defenses of fraud, mistake of fact, and lack of authority were devoid of merit legally and tactually. Mother's attempts to avoid enforcement of a contract clearly entered into were patently unreasonable.

THE COURT FURTHER FINDS that the provisions of A.R.S. § 25-324(B) do not apply with respect to proceedings after December 28, 2015.

THE COURT FURTHER FINDS that, at least from December 28, 2015 forward, neither Mother nor Father knowingly presented a false claim, knowingly accused the other parent of making a false claim, or violated a court order compelling disclosure or discovery such that an award of attorney fees and costs is appropriate under A.R.S. § 25-415.

IT IS THEREFORE ORDERED that Mother shall pay Father's reasonable attorney fees and costs incurred from December 28, 2015 forward. Not later than **August 29, 2016**, counsel for Father shall submit all necessary and appropriate documentation to support an application for an award of attorney fees and costs, including a *China Doll* Affidavit and a form of order. By no later than **September 10, 2016**, counsel for Mother shall file any written objection to the amount of fees requested. If Father's counsel fails to

submit the application by August 29, 2016, no fees or costs will be awarded. The Court shall determine the award and enter judgment with respect to the amount of fees to be awarded upon review of the Affidavit as well as any objections.

Mother has requested an evidentiary hearing, contending that this Court has no authority to enter an order for “sanctions” without a hearing. However, this Court is not entering contempt sanctions pursuant to Rules 92-94 of the Arizona Rules of Family Law Procedure. Mother has cited no authority for the proposition that this Court must conduct an evidentiary hearing for a fee request made pursuant to A.R.S. § 25-324. Therefore,

IT IS FURTHER ORDERED denying Mother’s request for an evidentiary hearing.

The Court still must decide the amount of attorney fees and costs to be awarded. Notwithstanding the outstanding attorney fees and costs issue, pursuant to Rule 78(B). Arizona Rules of Family Law Procedure, the Court expressly determines that no just reason for delay exists and directs the entry of this minute entry as a final, appealable order.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

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DATED the 8th day of August, 2016.

/s/ Stephen M. Hopkins
JUDICIAL OFFICER OF
THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2013-090643

08/08/2016

HONORABLE
STEPHEN M. HOPKINS

CLERK OF THE COURT
J. Erickson
Deputy

IN RE THE MATTER OF
SLAVA KOSTADINOVA

THOMAS C HORNE

AND

BRYAN M STEPHENS

TERRIE S RENDLER

DOCKET-FAMILY
COURT-SE FAMILY
SUPPORT SERVICES-CCC

MINUTE ENTRY

(Filed Aug. 10, 2016)

The Court has reviewed and considered *Respondent's Request for Protected Address* filed July 6, 2016, and Mother's Response to Motion for Protected Address filed July 25, 2016. The Court rules as follows:

Rule 7 of the Arizona Rules of Family Law Procedure provides for a very minimal standard for obtaining a protected address. Under Rule 7 a party must demonstrate a reasonable belief that physical **or** emotional harm **may** result if the address is not protected. Here, Mother objects to Father's request based upon her contention that she is entitled to know Father's living circumstances. But, Mother has already entered into a full and binding agreement regarding parenting

time and legal decision making. And, Mother has posited no reason why such facts could not be known without disclosing the address itself. Therefore,

IT IS ORDERED granting Father's request for a protected address. The address of Father, Bryan M. Stephens, shall be kept confidential in the court records.

IT IS FURTHER ORDERED that no later than **August 22, 2016**, counsel for Father may file with this Court a legal memorandum addressing whether Mother and/or her counsel should be sanctioned pursuant to Rule 31 of the Arizona Rules of Family Law Procedure based upon the filing of the Response.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

DATED this 8th day of August, 2016

/s/ Stephen M. Hopkins
JUDICIAL OFFICER OF
THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2013-090643

09/27/2016

HONORABLE
STEPHEN M. HOPKINS

CLERK OF THE COURT
J. Erickson
Deputy

IN RE THE MATTER OF
SLAVA KOSTADINOVA THOMAS C HORNE

AND

BRYAN M STEPHENS TERRIE S RENDLER

MINUTE ENTRY

(Filed Sept. 28, 2016)

The Court has reviewed and considered *Father's Memorandum in Support of Sanctions* filed August 17, 2016. Mother's *Response to Father's Memorandum in Support of Sanctions* filed September 6, 2016, and Father's *Reply in Support of Attorneys' Fees Award and/or Sanctions* filed September 14, 2016. The Court has also reviewed the entire Court file with respect to this matter. After deliberation, the Court now rules as follows.

Rule 31 of the Arizona Rules of Family Law Procedure is based on Rule 11 of the Arizona Rules of Civil Procedure, which in turn is similar but not identical to Rule 11 of the Federal Rules of Civil Procedure. In determining whether sanctions should be assessed, cases involving Rule 11 hold that the standard of conduct is an objective, not a subjective standard. *See, e.g., Villa De Jardines Ass'n v. Flagstar Bank, FSB*, 227 Ariz. 91,

253 3d 288 (App. 2011). When examining whether an attorney has asserted a position and not for some improper purpose, the relevant time period is when the paper was filed. See *James, Cooke & Hobson, Inc. v. Lake Havasu Plumbing & Fire Protection*, 177 Ariz. 316. 869 P.2d 329 (App. 1994). Accordingly, the Court does not consider any new arguments not raised in Mother's objection to the request for protected address.

Here, Mother raised essentially two separate arguments. First, Mother claimed that Father was requesting a protected address to protect him from his own former business associates. But, Mother never provided a shred of evidence, or even argument, that these former business associates would not engage in conduct that might be inappropriate. Of course, one would logically expect that a former business colleague (rather than a stranger) would be likely to have some personal animus. Rather than address this question, Mother simply engaged in a continued personal attack regarding issues that had been made moot by the agreement.

Second, Mother claimed that she was entitled to know Father's address as being reflective of a best interest finding. This claim was entirely pretextual. After years of litigation and arduous and protracted litigation the parties entered into a settlement that was specific and detailed. If Mother had thought Father's physical address was an essential item, the agreement never would have been reached. Again, rather than acknowledge that the agreement made this issue entirely moot, Mother referenced a police report from

three years ago, and even more incredibly requested an award of attorney fees for responding to the request for protected addressed. The positions taken by counsel on Mother's behalf were objectively unreasonable.

Counsel protests that an award of attorney fees as a sanction would have a chilling effect. But, this is exactly what Rule 31 envisions. In discussing Civil Rule 11 our Court of Appeals stated that the rule's unstated premise is that "every lawyer is a debtor not only to the legal profession but to society at large, and this debt cannot be paid by deceptive pleadings, even when filed in the client's best interest. Rule 11 requires the answer to a complaint to reveal an honest, uninflated appraisal of the client's case to the court and to the opposition, even if such an honest revelation hurts the client." *James, Cook & Hobson, supra*, 177 Ariz. at 334-35, 868 P.2d at 321-22.

In this case, the Court granted Father's Motion for Summary Judgment on June 22, 2016, finding as a matter of law that the parties had reached a full settlement. There was a request for an award of attorney fees by Father, maintaining that Mother had taken unreasonable positions. While that request was pending, on August 5, 2016, a Notice of Bankruptcy was filed, indicating that Mother was filing for bankruptcy protection, which would stay enforcement of any attorney fee award.¹

¹ On August 8, 2016, the Court specifically found that Mother had taken unreasonable positions regarding whether a settlement existed, indicating that the Court would award attorney fees

Here, counsel knew or should have known that the Court would find Mother's conduct to be unreasonable. At the same time, Mother was in the process of filing for bankruptcy protection, apparently in the hopes she would not be ordered to pay Father's attorney fees. Given that with Mother's bankruptcy filing she may have felt immune from an award of fees counsel should have been especially diligent to ensure that only meritorious and reasonable legal positions would be taken. Counsel has a responsibility to the legal system to act as an officer of the Court and not merely a shill for the client, continuing in a pattern of unreasonable conduct.

Mother also has requested an evidentiary hearing. But, contrary to Mother's argument Arizona law clearly does not require a hearing in all circumstances and the Court determines an evidentiary hearing is not needed here. *See Himielewski v. Maricopa County*, 192 Ariz. 1, 960 P.2d 47 (App. 1997) (whether an evidentiary hearing on sanctions should be conducted depends on the nature of the case, and the factors to be considered include the general circumstances of the violation, the type and severity of the sanction being considered, the trial court's degree of participation in the proceedings and knowledge of the underlying facts, and the need, if any, for further inquiry).

Based upon all of the foregoing,

IT IS ORDERED granting Father his reasonable attorney fees incurred in connection with the written

against Mother. At that time, the Court had not received the Notice filed a few days previously.

submissions regarding Father's request for protected address and in connection with written submissions regarding whether sanctions should be imposed.

Not later than **October 14, 2016**, counsel for Father shall submit all necessary and appropriate documentation to support an application for an award of attorney fees and costs, including a *China Doll* Affidavit and a form of order. By no later than **October 28, 2016**, counsel for Mother shall file any written objection. If Father's counsel fails to submit the application by October 14, 2016, no fees or costs will be awarded. The Court shall determine the award and enter judgment upon review of the Affidavit as well as any objections.

The Court still must decide the amount of attorney fees and costs to be awarded. Notwithstanding the outstanding attorney fees and costs issue, pursuant to Rule 78(B), Arizona Rules of Family Law Procedure, the Court expressly determines that no just reason for delay exists and directs the entry of this minute entry as a final, appealable order.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

DATED the 27th day of September, 2016.

/s/ Stephen M. Hopkins
JUDICIAL OFFICER OF
THE SUPERIOR COURT

App. 30

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

App. 31

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2013-090643

12/06/2016

HONORABLE
STEPHEN M. HOPKINS

CLERK OF THE COURT
K. Tiero
Deputy

IN RE THE MATTER OF
SLAVA KOSTADINOVA SANDRA L SLATON
AND

BRYAN M STEPHENS TERRIE S RENDLER
DOCKET-FAMILY
COURT-SE

JUDGMENT FOR ATTORNEY'S FEES

(Filed Dec. 14, 2016)

The Court has reviewed and considered Father's Application for Attorney's Fees and Costs filed October 13, 2016; Mother's Objection to Application for Attorney's Fees and Costs filed October 28, 2016; Father's Response to Objection to Application filed November 9, 2016; and Counsel's Reply in Support of Objection to Application for Attorney's Fees and Costs filed November 22, 2016. The Court now rules as follows.

As a preliminary matter, the Court notes that Father is requesting a sanction both pursuant to Rule 31 of the Arizona Rules of Family Law Procedure and A.R.S. § 12-349. But, this Court never granted an award of fees pursuant to A.R.S. § 12-349. The Court's Order was based solely upon the objective standard set

forth in Rule 31, i.e., that the opposition to a request for protected address was not objectively reasonable. This Court has never made specific findings regarding a statutory basis for a fee award. Moreover, the Court's intent was and is to ensure that Father has not incurred attorney fees in connection with an issue that did not need to be litigated. As such, the Court will not impose some statutory penalty beyond the expenses actually and reasonably incurred. In that regard, the Court finds that Father is entitled to an award of fees in connection with this matter in the amount of \$5,684.50 and expenses in the amount of \$52.50. Therefore,

IT IS ORDERED entering judgment against Mother, Slava Kostadinova, and in favor of Father, Bryan Stephens, for an award of attorney's fees in the amount of \$5,684.50 and expenses in the amount of \$52.50 pursuant to Rule 31 of the Arizona Rules of Family Law Procedure.

IT IS FURTHER ORDERED that interest shall accrue on this Order at the rate of 4.5% per annum from entry of this Order until paid.

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81. Arizona Rules of Family Law Procedure.

/s/ Stephen M. Hopkins
JUDICIAL OFFICER OF
THE SUPERIOR COURT

App. 33

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

App. 34

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2013-090643

12/06/2016

HONORABLE
STEPHEN M. HOPKINS

CLERK OF THE COURT
K. Tiero
Deputy

IN RE THE MATTER OF
SLAVA KOSTADINOVA SANDRA L SLATON
AND
BRYAN M STEPHENS TERRIE S RENDLER

MINUTE ENTRY

(Filed Dec. 14, 2016)

The Court has reviewed and considered Petitioner's *Motion for New Trial and/or Amended Judgment Pursuant to Rule 83, A.R.F.L.P. on Behalf of Counsel, Kristin Roebuck Bethell* filed October 13, 2016; Petitioners' *Supplement to Motion for New Trial and/or Amended Judgment Pursuant to Rule 83, A.R.F.L.P. on Behalf of Counsel. Kristin Roebuck Bethell* filed October 20, 2016; *Father's Response to Motion for New Trial* filed November 15, 2016; and *Mother's Reply in Support (sic) Motion for New Trial and/or Amended Judgment Pursuant to Rule 83, A.R.F.L.P. On Behalf of Counsel, Kristin Roebuck Bethell* filed November 28, 2016. The Court now rules as follows.

The Court finds unpersuasive the argument that an evidentiary hearing is required in this matter. Based upon the legal authority previously cited by the

Court such is not the case. Likewise, the Court has reviewed but finds unpersuasive the Affidavit provided on behalf of Petitioner. The Court is very aware of the language and purpose of Rule 7 of the Arizona Rules of Family Law Procedure, and the *legitimate* reasons an opposition to such a request could be made. The Court agrees with Respondent's interpretation of this rule generally, in as much as Rule 7 sets forth a fairly minimal evidentiary standard for such a request. Moreover, this Court is very capable of assessing the reasonableness of conduct relating to Rule 7 requests. The fact that one lawyer has come to the aid of a fellow lawyer in providing a predictably self-serving conclusion does not alter the underlying facts or the legal conclusions that flow from those facts.

The Court intended that Father address the separate issue of whether the parties' Rule 69 Agreement makes the opposition to the protected address request reasonable. As such, the Court disagrees with Father's counsel that the agreement itself is somehow newly discovered evidence. On this issue, counsel for Father correctly points out that the draft settlement agreement does not specifically address whether an address should be protected from public disclosure under Rule 7. Rather, the agreement provides that each parent shall provide *the other* of any *changed* address or phone number. There was no indication in the previous Response to the request for protected address that this part of the agreement was applicable.

For the foregoing reasons, and for the reasons previously articulated,

IT IS ORDERED denying Petitioner's Motion for New Trial.¹

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/ Stephen M. Hopkins
JUDICIAL OFFICER OF
THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

¹ Father's counsel also suggests that the Court can modify its fee award to include Mother, directly, because this matter is "post-bankruptcy." But, the Court has received no evidence that suggests that such is the case other than the statement of counsel. The Court agrees that Mother would also be responsible for the actions of her counsel in this instance but has no competent evidence to indicate such an Order would not be a violation of the automatic stay in bankruptcy.

App. 37

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2013-090643

01/09/2017

HONORABLE
STEPHEN M. HOPKINS

CLERK OF THE COURT
K. Tiero
Deputy

IN RE THE MATTER OF
SLAVA KOSTADINOVA SANDRA L SLATON
AND
BRYAN M STEPHENS TERRIE S RENDLER

**JUDGMENT FOR
ATTORNEY'S FEES *NUNC PRO TUNC***

(Filed Jan. 11, 2017)

The Court has reviewed and considered Father's Motion for Clarification and/or Motion to Correct Mistake filed December 30, 2016. As Father's Motion indicates, the previous Judgment entered by the Court contains a clerical or ministerial error. Accordingly,

IT IS ORDERED amending the Judgment of Attorney's Fees dated December 6, 2016 *nunc pro tunc* as follows.

Page one of the Judgment that currently reads:

"IT IS ORDERED entering judgment against Mother, Slava Kostadinova, and in favor of Father, Bryan Stephens, for an award of attorney's fees in the amount of \$5,684.50 and expenses in the amount of

\$52.50 pursuant to Rule 31 of the Arizona Rules of Family Law Procedure.”

is hereby replaced with:

“IT IS ORDERED entering judgment against counsel, Kristen Roebuck-Bethell, and in favor of Father, Bryan Stephens, for an award of attorney’s fees in the amount of \$5,684.50 and expenses in the amount of \$52.50 pursuant to Rule 31 of the Arizona Rules of Family Law Procedure.”

IT IS FURTHER ORDERED denying any affirmative relief sought before the date of this Order that is not expressly granted above.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/ Stephen M. Hopkins
JUDICIAL OFFICER OF
THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter Of:) Court of Appeals
SLAVA KOSTADINOVA,) Division One
) No. 1 CA-CV 17-0099 FC
Petitioner,) Maricopa County
v.) Superior Court
BRYAN M. STEPHENS,) No. FC2013-090643
Respondent/Appellee.)
_____)
KRISTI ROEBUCK-BETHELL,)
Appellant.)
_____)

**ORDER REGARDING THE GRANTING
OF ATTORNEY'S FEES AND COSTS**

(Filed Apr. 26, 2018)

The court, Presiding Judge Lawrence F. Winthrop, Judge Paul J. McMurdie, and Judge Jennifer B. Campbell, has received and considered Appellee's Application for Attorney's Fees and Costs, Appellant's Objection and Response to the Application, and Appellee's Reply.

In our discretion, we treat Appellant's Objection to Appellee's Application as a motion for reconsideration. See ARCAP 22(b); see also *James v. State*, 215 Ariz. 182, 185, ¶ 13 (App. 2007) ("[I]rrespective of the title of a motion, if its substance shows clearly that it seeks

relief . . . on the grounds set forth in [a] rule,” the motion must be treated as a motion under that rule) (*quoting Hegel v. O’Malley Ins. Co.*, 117 Ariz. 411, 412 (1977)).

In our memorandum decision, we awarded reasonable attorney’s fees and costs to Appellee based on three grounds: A.R.S. §§ 25-324, 12-349, and Arizona Rule of Civil Appellate Procedure (“ARCAP”) 25. *See Kostadinova v. Stephens*, 1 CA-CV 17-0099 FC, 2018 WL 1321498, at *6, 26 (Ariz. App. Mar. 15, 2018) (mem. decision). Based on the objection filed, we agree with Appellant that A.R.S. § 25-324 does not support an attorney’s fees award against Appellant as Appellant is not a party in the underlying family proceeding. We therefore review the propriety of the award under ARCAP 25 and A.R.S. § 12-349.

ARCAP 25 authorizes a fee award as a sanction and “to discourage similar conduct in the future” when an appeal “is frivolous or taken solely for the purpose of delay.” Similarly, § 12-349 authorizes an award of attorney’s fees against an attorney for bringing a claim “without substantial justification,” “primarily for delay or harassment,” and/or for unreasonably expanding or delaying the proceeding. A.R.S. § 12-349(A)(1)-(3). An award of attorney’s fees and costs pursuant to ARCAP 25 rests fully within the court’s discretion. *Ariz. Dep’t of Revenue v. Gen. Motors Acceptance Corp.*, 188 Ariz. 441, 446 (App. 1996). An award under § 12-349 is mandatory. *See City of Casa Grande v. Ariz. Water Co.*, 199 Ariz. 547, 555, ¶ 27 (App. 2001) (noting A.R.S. § 12-349(A) “mandates an award of attorney’s fees if a

party” violates the statute). We “impose sanctions under ARCAP 25 only ‘with great reservation.’” *Villa De Jardines Ass’n v. Flagstar Bank, FSB*, 227 Ariz. 91, 99, ¶ 26 (App. 2011) (quoting *Ariz. Tax Res. Ass’n v. Dep’t of Revenue*, 163 Ariz. 255, 258 (1989)). Because Appellant’s appeal is not a “completely specious appeal[],” *Price v. Price*, 134 Ariz. 112, 114 (App. 1982), as some of Appellant’s arguments on appeal were supported by a legal theory about which reasonable attorneys could differ, we decline to impose ARCAP 25 sanctions, see *Villa De Jardines Ass’n*, 227 Ariz. at 99, ¶ 26 (ARCAP 25 sanction not imposed when “the issues raised are supportable by any reasonable legal theory, or if a colorable legal argument is presented about which reasonable attorneys could differ”). None of the § 12-349 elements were present mandating a fee award. We vacate that portion of the decision awarding attorney’s fees.

Because Appellee complied with ARCAP 21 and prevailed on appeal, we award him \$166.43 in costs. See ARCAP 21.

Good cause appearing,

IT IS ORDERED granting Appellee’s costs in the amount of \$166.43.

/s/

PAUL J. McMURDIE, Judge

App. 42

A copy of the foregoing
was sent to:

Sandra L Slaton
Terrie S Rendler
Stephen M Hopkins

App. 43

[SEAL]

SCOTT BALES
CHIEF JUSTICE

JANET JOHNSON
CLERK OF THE COURT

**SUPREME COURT
STATE OF ARIZONA
ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007-3231**

TELEPHONE: (602) 452-3396

November 19, 2018

**RE: SLAVA KOSTADINOVA v BRYAN STEPHENS
et al**

Arizona Supreme Court No. CV-18-0103-PR
Court of Appeals, Division One No. 1 CA-CV 17-0099
Maricopa County Superior Court No. FC2013-090643

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on November 19, 2018, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees (Appellee Stephens) = DENIED.

Vice Chief Justice Brutinel did not participate in the determination of this matter.

Janet Johnson, Clerk

App. 44

TO:
Terrie S Rendler
Sandra L Slaton
Amy M Wood
kd
