FAMILY LAW SECTION NEWSLETTER

June 2019

In this edition:

Averhealth Information

Interview with Hon. Suzanne Cohen

EDITOR'S COMMENTS

Thank you to our outgoing Judicial Liaison, Hon. Ronee Korbin Steiner for her years of service. Read her farewell letter to the Family Law Section.

Thank you to Daniel Riley of Harrian Law Firm and Gregg R. Woodnick & Ian D. Haney of Woodnick Law, PLLC for their article contributions.

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ANNOUNCEMENTS

Judge Re-Locations Effective Week of May 6, 2019

The following judges have moved from the Central Court Building (CCB) to the Old Court House (OCH):

Blair, Michael moved from CCB 701 to **OCH 201**
Wein, Kevin moved from CCB 702 to **OCH 001**
Blaney, Scott moved from CCB 704 to **OCH 108**
Astrowsky, Brad moved from CCB 401 to **OCH 104**

Rotations Effective June 24, 2019

Judge Rotations Effective June 24, 2019

Judge Rotating	Current Assignment				Assuming Calendar From Judge:	Rotating To			
	Dept	Region	Bldg	Ctrm		Dept	Region	Bldg	Ctrm
Cohen, Bruce	CV	NE	NE	112	Cohen, Suzanne	FC	DT	OCH	103
Brain, Mark	CR	DT	CCB	1201	Korbin Steiner, Ronee	FC	DT	OCH	002
Como, Greg	CR	DT	CCB	801	Cooper, Katherine	FC	DT	CCB	606
Rea, John	CR	DT	SCT	6B	Whitehead, Chuck	FC	NE	NE	104
Starr, Patricia	LCA	DT	ECB	613	Myers, Sam	CR	DT	SCT	5A
Cohen, Suzanne	FC	DT	CCB	703	Kemp, Michael	CR	DT	SCT	5D
Cooper, Katherine	FC	DT	CCB	501	Gerlach, Doug	CR	DT	SCT	7D
Garcia, Jeanne	JUV	DT	OCH	303	Cunanan, David	CR	DT	SCT	8C
Korbin-Steiner, Ronee	FC	DT	CCB	606	Rea, John	CR	DT	SCT	6B
Whitehead, Chuck	FC	NE	NE	104	Brain, Mark	CR	DT	CCB	703
Anderson, Arthur	JUV	SE	SEJ	4	Como, Greg	CR	DT	CCB	801
Myers, Sam	CR	DT	SCT	5A	Flores, Lisa	JV	DT	OCH	202
Cunanan, David	CR	DT	SCT	8C	Garcia, Jeanne	JUV	DT	OCH	301
Culbertson, Kristin	FC	SE	SEF	403	Anderson, Arthur	JUV	SE	SEJ	7
Rueter, Jeffrey	JUV	SE	SEJ	7	(Suite Change Only to 1079-1081)	JUV	SE	SEJ	4
Sp. Assn. Comm Russel	Sp Assn	DT	CCB	1202	Culbertson, Kristin	FC	SE	SEF	403
Kemp, Michael	CR	DT	SCT	5D	Welty, Joseph	CV	DT	ECB	711
Flores, Lisa	JV	DT	OCH	202	Cohen, Bruce	CV	NE	NE	112
Gerlach, Doug	CR	DT	SCT	7D	Starr, Patricia	LCA	DT	ECB	613
Welty, Joseph	APJ/CV	DT	ECB	711	Welty, Joseph*	APJ02	DT	OCH	--
					* Suite 523				

Subject to change
Revised 6-7-19

www.superiorcourt.maricopa.gov/JudicialBiographies

Commissioner Rotations Effective June 24, 2019

Commissioner Rotating	Current Assignment				Assuming Calendar From Commissioner:	Rotating To			
	Dept	Region	Bldg	Ctrm		Dept	Region	Bldg	Ctrm
Bodow, Keelan	FC	DT	CCB	503	Smith, Shellie	JUV	SE	SEJ	5
Miller, Phemonia	FC	DT	CCB	504	Laing, Utiki Spurling	CR	DT	IA	
Laing, Utiki Spurling	CR	DT	IA		Bodow, Keelan	FC	DT	CCB	503
Smith, Shellie	JUV	SE	SEJ	5	Miller, Phemonia	FC	DT	CCB	504
Nothwehr, Rick	CR	DT	SCT	2D	Owens, Bernie	FC	DT	CCB	502
Owens, Bernie	FC	DT	CCB	502	Hoskins, Nic	JUV	DUR	DUR	11
Hoskins, Nic	JUV	DUR	DUR	2D	Nothwehr, Rick	CR	DT	SCT	2D
Mata, Julie*	CR	DT	CCB	1004	Kalman, Amy	PB/MH	DV	DV	DV
Kalman, Amy	PB/MH	DV	DV	DV	Marquoit, Thomas	PB/MH	DT	ECB	512
Marquoit, Thomas	PB/MH	DT	ECB	512	Schwartz, Aryeh	PB/MH	DT	ECB	514
Schwartz, Aryeh	PB/MH	DT	ECB	514	Mata, Julie	CR	DT	CCB	1004

* DV=Desert Vista

Subject to change

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Revised 6-7-19

Additional June/July Rotations

June-July Rotation Matrix

Judge	Current Location					Re-Locating To			
	Dept	Region	Bldg	Ctrm		Dept	Region	Bldg	Ctrm
Judge Kreamer	JUV	DT	OCH	301	Judge Ryan	JUV	DT	OCH	207
Judge Ryan	JUV	SE	SEJ	1043	Judge Harrison	CR	DT	CCB	1101
Judge Harrison	CR	DT	CCB	1101	(Retiring)				
Spec. Assn. L. Ash	Spec Asn	DT	CCB	LL1	Judge Kreamer	JUV	DT	OCH	303
Comm. McLaughlin	Criminal	FAJ			Comm. Rummage	Probate	NE	NE	109
Comm. Rummbag	Probate	NE	NE	109	New Calendars	PB/MH	ANNEX	ASH	
Commissioner Davisor	NEW	--	--	--	Comm. Bernstein	FC	SE	SEF	304
Comm. Bernstein	Family	SE	SEF	304	(Retiring)				
Judge Otis	Criminal	DT	CCB	1104	Judge Reckart	FC	SE	SEF	402
Judge Reckart	FC	SE	SEF	402	Judge Otis	CR	DT	CCB	1104
Rummage* on 7-29-19	PB/MH	ANNEX	ASH		*Additionally Assumes	PB/MH	ANNEX	ASH	MHC02
					Judge Polk MHC02				
					Calendar* on7-29-19				

*Effective 7-29-19

Subject to change

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Revised 5-22-19

Reminder: Family Court Initiatives Committee

The Family Court Initiatives Committee meets once per quarter, typically on the third Wednesday at 12:15 p.m. The new location will be in Judge Julian's Courtroom, 106 at Northeast. The next meeting will be August 21, 2019. Judge Kerstin LeMaire will be taking over as co-chair for Judge Korbin Steiner and the other co-chair is Greg Davis. The call-in number is 602-506-9695 and, when prompted, dial **163622** followed by the # (pound sign). If anyone wants to be added to the email with the agenda and meeting reminder, they should contact Greg Davis at Greg.Davis@dbshlaw.com

This committee was formed for the purpose of improving communication between all the users of the family court and the family court.

Farewell from Outgoing MCBA Family Law Section Judicial Liaison

The Family Law Section will welcome the Hon. Margaret LaBianca as judicial liaison to the Executive Board following the June 2019 judicial rotations. She will assume the position from the Hon. Ronee Korbin Steiner who will be rotating to the criminal department. Judge Korbin Steiner has consistently made herself available to the Family Law Section, serving as an important link to the family court bench. The Executive Board wishes to thank Judge Korbin Steiner for her service. Though she must say "goodbye" for now, she parts us with warm sentiments of her time on the family court bench:

Goodbye is not good riddance.

It is axiomatic that the family court rotation is not a favored rotation for judges. Maybe it has a bad rap. Maybe the issues are daunting. Perhaps the conflict is jarring, and sometimes even frightening. Possibly the stack of pleadings to resolve is unending. Maybe all of these are true.

Unlike most of my colleagues, family law was my practice of choice. Yes my choice. While I was often frustrated at the difficult clients and opposing parties, not to mention the opposing counsel, I often felt great in the outcomes I accomplished for reeling clients. Many of these clients faced mental health issues, substance abuse problems and domestic violence conflicts in their households. There were intellectual challenges and many opportunities to be creative.

When I was appointed to the bench 4 years ago, I was told I would be starting in the family department. I had heard that Governor Ducey felt strongly that I be placed in the family department first because so many had supported placing someone on the bench who knew the area of law. So many family court lawyers and judges supported my appointment. While it was certainly not the Governor's decision, I was relieved and excited to know that the presiding judge decided that such a placement was appropriate.

I was relieved because again, unlike many of my colleagues, I was given the opportunity to learn how to be a judge instead of focusing on a completely new area of law. But more importantly, I was excited. I looked forward to applying my knowledge of family law. I had only spent 4 months as a certified specialist in family law before I was appointed. However, the depth of knowledge I

gained by studying for the exam for 4 months could be so useful. I was motivated to be of help to my friends on the bench whose legal lives had been spent handling civil or criminal issues.

As of June 24, I will be rotating to the criminal department. Having spent 3 years at the public defender's office, criminal practice is not completely foreign to me although certainly a lot of time has passed since I have touched that kind of work. I will be helping pick juries, sentencing defendants, assisting in settlement conferences and so on. I am also looking forward to this rotation and exceptionally eager to learn new things.
In the past 4 years, I hope I have been helpful to my colleagues. I hope I have been able to help shape a new view of the family court for both lawyers and for judges in some way. While certainly there is more bickering than judges like to see, there are amazing quality lawyers doing superb work in the field. I have loved participating in each and every CLE, whether on a panel or teaching.

I have thoroughly enjoyed my role as liaison on the Family Court Executive Board for the MCBA. It has kept me "in the loop" with former colleagues and allowed me to promote the quality work of the MCBA. I will miss the family court bar but please remember, goodbye is not good riddance. It's only hello to a new kind of relationship.

~ Thank you, Judge Korbin Steiner ~

MCBA FAMILY LAW CLEs and EVENTS

Keep your eyes open for upcoming CLEs from the Family Law Section, including presentations on Charts, Graphs and Spreadsheets, Preparing for Evaluations, and Court Appointed Advisors and Best Interests Attorneys. As these program details are finalized, you will receive emails from the MCBA and you can check the master event calendar at the MCBA Website: Maricopa County Bar Association Event List

PRACTICE TIPS

Transition from TASC to Averhealth

Averhealth will now handle all drug testing for Maricopa County Criminal, Family, and Juvenile Court as of May 28, 2019. However, TASC's contract with Maricopa County is in place through the end of June, 2019. TASC is also available to continuing testing should parties so choose.

Information regarding Averhealth's testing for Maricopa County is as follows:

Locations:

- Central Patient Care Center
  2601 N. 3rd St.
  Phoenix, AZ 85004

- East Patient Care Center
  1050 N. University Dr., Suite 6
  Mesa, AZ 85203

- West Patient Care Center (Targeting July 1, 2019 opening date)
  Address not officially secured and build out has not started yet

Hours:

- Monday – Friday 11:00 a.m. to 9:00 p.m. (includes walk-ins)
- Weekends and Holidays 8:00 a.m. to 1:00 p.m. (only for clients ordered to test randomly)

For Maricopa County Clients:

- The drug testing line is 480-787-0973 or login to my.averhealth.com.
- The daily message line hours are Monday – Friday from 5:00 a.m. to 9:00 p.m. and from 5:00 a.m. to 1:00 p.m. on Weekends and Holidays.
- Each client will be provided a Personal Identification Number during orientation (first meeting).
- Clients need to bring their Family Court Order to test of ordered to test.
- Every person ordered to be tested will have to submit to a one-time orientation. Once that is completed, the predicted time from entering the front door to leaving the facility is five (5) minutes. If the person is unable to provide a sample when they arrive, they are given the option to wait in the reception area or come back later that day.
- Averhealth is equipped to deal with non-English speakers. Almost all forms are prepared in English and in Spanish. When there are other languages involved, they have a procedure to facilitate communication with those clients as well. For example, if someone use American Sign

Language (ASL), the facility uses Skype (or similar communication platform) so that an ASL interpreter can help facilitate testing.

Results:

- Lab results will be emailed to everyone involved in a Family Court case as soon as the results are available. (You will want to be sure that your email address as listed with the court is correct and that you are an active party on the case. If you've been relieved and are reappointed, ask the court to make sure there is no end date for your representation in iCIS.)
- The results are password protected and the password is the tester's birthdate. The birthdate should be entered ddmmyyyy (no dashes or other symbols).
- Select court staff will have Averhealth accounts and should be able to access testing information, if necessary.
- Urine tests are generally reported within one (1) – two (2) business days.
- Hair follicle and confirmation test are generally reported in three (3) – five (5) business days.
- Family Court Orders will track the available tests below. Ensure you outlining the specific substances (Standard or Specialty) the Court needs to include in the testing Order.

Pricing:

• 3-Panel Drug Test (2 Standard[1] plus 1 Specialty[2]) plus BAC:	$10
• 6-Panel Drug Test (5 Standard plus 1 Specialty) plus BAC:	$13.50
• A La Carte Standard Drugs as additional to 3 or 6 Panels:	$.50/each
• A La Carte Specialty Drugs as additional to 3 or 6 Panels:	$2.50/each
• BAC standalone test:	$3.00
• Bath Salts (confirmation included):	$35.00
• Spice Test (confirmation included):	$25.00
• Synthetic, designer, and emerging drugs of abuse:	$35.00
• Hair Follicle Testing (anywhere on body):	$145.00
• Confirmation services:	$15.00
• Oral (confirmation):	$19.50
• LSD (confirmation):	$35.00

Anyone familiar with TASC's long history with our court knows that Jeff Gingerich has served us well for years as the court liaison and has been the contact person for general or specific questions. The designated liaison for Averhealth is their Arizona Area Manager, Harold Bermudez. His email address is hbermudez@averhealth.com and his phone number is (602) 635- 7406. Mr. Bermudez will do his best to secure information or answers to questions in a prompt fashion. You can either e-mail or phone him, but unless you need the answer immediately, e-mail may be the better choice. A back-up option is his Area Manager, Tory Meier. She spends significant time in Arizona but her home office in is California. Ms. Meier's e-mail address is tmeier@averhealth.com and her phone number is (559) 549-6526. Additional information can be found at https://averhealth.com/.

[1] Standard Drugs: Amphetamines (amphetamine, ecstasy, methamphetamine); barbiturates; benzodiazepines; cannabinoids (THC); cocaine; methadone; opiates (morphine, heroin, hydrocodone, hydromorphone, oxycodone, oxymorphone; PCP; proproxyphene.

[2] Specialty Drugs: Buprenorphine; carisprodol; dextromethorphan; EtG; fentanyl; gabapentin; ketamine; LSD; meperidine; tramadol; zolpidem. Can test for over 1,500 types of substances.

ARTICLES & CONTRIBUTIONS

When is Domestic Violence "Significant?": An Argument for a More Expansive Interpretation of the Domestic Violence Statute

By Daniel Riley, Esq. of Harrian Law Firm

It is no secret that intrafamilial violence has a profound effect on children. In her landmark work, Trauma and Recovery, Dr. Judith Herman explains that the child who experiences domestic violence, "is left with fundamental problems in basic trust, autonomy, and initiative [and] approaches the task of early adulthood—establishing independence and intimacy—burdened by major impairments in self-care, in cognition and in memory, in identity, and in the capacity to form stable relationships." Youth who are exposed to domestic violence face significantly greater risk of future incarceration, substance abuse, mental illness, and other forms of social dysfunction.

Children who have witnessed or experienced domestic violence are re-traumatized by conflicts between the parents, even when those conflicts amount to nothing more than verbal disagreements. Awarding one parent sole legal decision-making can reduce the potential for disagreement and disarm the parent who might otherwise use legal decision-making as a means to foment conflict. In such cases, the family court should take full advantage of A.R.S. § 25-403.03, which prohibits an award of joint legal decision-making when the court finds that one parent has committed "significant domestic violence" or demonstrated a "significant history of domestic violence." But what does the term *significant* mean in this context?

That term was added in 1993 as part of a broader amendment to the decision-making statute. The 1993 changes are noted below with additions underlined and deletions struck through:

> "Joint custody shall not be awarded if the court makes a finding of the existence of significant domestic violence pursuant to ~~section 13-2101 or 13-1204, spousal abuse or child abuse~~ section 13-3601 or if the court finds by a preponderance of the evidence that there has been a significant history of domestic violence."

Ariz. Sess. L. ch. 164 (1993).

What did the legislature intend when it amended the statute in this way? Prior to 1993, the statute prohibited an award of decision-making only if a parent had committed reckless endangerment (section 13-1201), aggravated assault (section 13-1204), spousal abuse, or child abuse. At that time, *spousal abuse* and *child abuse* were understood to be limited to incidents of physical, sexual, or psychological harm. The 1993 amendment broadens the category of behavior that constitutes

domestic violence by syncing the family court's definition of domestic violence with that contained in the criminal code. Under the criminal code, domestic violence includes twenty-nine specific criminal acts. *See* A.R.S. § 13-3601(A). Many of these acts—including custodial interference, revenge porn, trespass, criminal damage, and harassment—contain no element of physical, sexual, or psychological harm.

The inclusion of the word *significant* appears to be an attempt to temper the 1993 amendment's expanded definition of the types of behavior that constitute domestic violence. While we now understand the rationale behind the addition of the word *significant*, this still has not brought us any closer to a functional definition. The statute itself is conspicuously silent in this regard. In other areas of the law that require discretionary decisions, such as the best interests of children or the appropriate amount and duration of spousal support, the relevant statutes typically contain a list of factors the court must consider. No such list is offered in A.R.S. § 25-403.03, so the trial court's discretion to decide what is and is not significant domestic violence is unduly broad. This has resulted in wildly divergent results. In my own practice, for example, I have seen judges conclude that domestic violence was less-than-significant in cases in which one parent brandished a firearm at a parenting exchange or threw a laptop at the other parent with such force that the other parent required stitches and suffered permanent scarring. In each of those cases, the incident occurred in the presence of the parties' children.

Maricopa County Superior Court has adopted its own list of factors for determining whether domestic violence is significant enough to justify termination of decision-making authority. The following language has become commonplace in parenting plan issued by judges in Maricopa County:

> "Significance is a product of three factors: (1) The seriousness of the particular incident of domestic violence, (2) the frequency or pervasiveness of the domestic violence, (3) and the passage of time and its impact."

The exact origin of this boilerplate language is difficult to trace, but it appears to have been introduced in an effort to achieve better consistency. While that effort is admirable, it is hard to see this approach as anything other than legislation by judicial fiat.

In 1955, the Arizona Supreme Court succinctly explained that the "welfare of the children is the primary consideration of the court." *Schulze v. Schulze*, 79 Ariz. 86, 88 (1955). This public policy is reiterated throughout Title 25 and subsequent caselaw. Does the three-factor test adopted by the Maricopa County Superior Court achieve that policy, or is there another approach that might better serve children's welfare? The problem with Maricopa County Superior Court's definition is that it focuses on the mechanistic aspects of domestic violence without considering the effects of that violence upon the children. The family court could show greater fidelity to its goal of promoting children's welfare if it were to abandon this three-factor test and instead view the question of *significance* from the perspective of the children.

When weighing whether domestic violence is sufficiently significant to justify the removal of one parent's decision-making authority, the first question the family court should ask itself is: *How significant was the impact of this event upon the children?* Family law practitioners should ask the court to consider such information as whether the children witnessed or were themselves the victims of the domestic violence, the age of the children at the time of the events, and whether there is evidence of a lasting impact. Children—especially young children—do not generally tell their parents or teachers, "I am anxious." Instead, they show it by complaining of stomach aches and other vague physical ailments. Family law practitioners may find that attendance records, notes from the school nurse or school social worker, emails between the parents and the child's teachers, pediatric records, and other objective evidence can offer vital clues as to the impact of intrafamilial conflict on the parties' child.

Too often in family court, we see children who have become collateral damage in the conflict between their parents. School events and parenting exchanges become battlegrounds, and children are press-ganged into taking sides. Luckily, the family court has a powerful tool for disarming abusive parents who would turn decision-making into yet another weapon in this interminable war. The decision-making statute prohibits an award of decision-making to a parent who has committed "significant domestic violence" or demonstrated a "significant history of domestic violence." When weighing the significance of the history of domestic violence, the court should approach the issue from the perspective of the children and ask whether the domestic violence has had a significant impact on the children. This approach is an honest interpretation of the statute, and it refocuses the court's attention to where it should be: on the children and their best interests.

The Misnomer of Web-Valuators: Utilizing Experts to Resolve Vehicle Value Disputes in Divorce

By Gregg R. Woodnick & Ian D. Haney of Woodnick Law, PLLC

There is roughly one vehicle for every two Americans.[3] The ubiquity of vehicles makes it difficult to imagine a divorce that doesn't involve a vehicle. Regardless of whether the vehicle is a Honda Odyssey minivan or a vintage Packard that is part of an extensive car collection, utilizing a sound valuation methodology is crucial to both promote settlement and, if necessary, present compelling facts to the court.

However, valuing a car is not easy and the legal community continually fails to recognize its complexity. Rather than employing a principled methodology, lawyers and courts almost *exclusively* rely on web-valuators like Kelley's Blue Book ("KBB") or Edmunds. This could be serious misstep because these web-valuators are not tied to real cars or actual car sales. Consequently, inaccurate vehicle valuations pervade our courts and negotiations, which is a disservice to our clients.

Did you know websites like KBB and Edmunds fail to account for critical valuation factors? For example, they do not analyze used car sales, modifications, nature of operation (highway/city), maintenance regularity, accident history, or the condition of the interior. Instead, web-valuators base their figure on the original listing price of the vehicle, the listed sale price of the vehicle and similar vehicles at used-car dealerships, the self-reported exterior condition, and the mileage. In short, web-valuators don't actually appraise the vehicle in question.

Web-valuators simply aggregate trends and, admittedly, provide a decent assessment for what a consumer would likely pay for a "stock" used car (i.e., without modifications) at a dealership. Considering the stereotype, trusting a used-car dealer's price tag warrants some skepticism.

These days to get a better valuation, you can use web-valuators like carvana.com and autonation.com to get an actual cash offer. This provides a real number and better accounts for vehicle condition. Typically, these sites provide an estimate, but often they greatly underestimate the value of a car because they are trying to buy low. Certainly, caution is needed before adopting their figure. Another web-valuator, cars.com, is helpful for obtaining data on comparable vehicles. However, like most sites it is ripe with scammers, which can manipulate the data set.

[3] Uri Daduch, In Search of the Global Middle Class: A New Index, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (2012).

Still, in cases where there are two basic family vehicles (e.g., a Honda Odyssey minivan and a Toyota Camry sedan) web-valuators are typically close enough to reach a fair result in settlement or at trial.

But what happens when it is more complicated? Imagine a family in Scottsdale with the basic vehicles noted above, plus they have a lifted Jeep Wrangler for weekends and a 1972 Chevelle project car. Here, web-valuators don't get you very far. First, the web-valuators will not account for the lift-kit on the Wrangler, which costs thousands to install and can substantially enhance the value of the vehicle. Additionally, web-valuators are nearly useless to value a classic car like the 72 Chevelle because of the limited collector's market. Also, because it is a project car the manner of restoration greatly affects the value. For example, if the husband restores the Chevelle personally, but doesn't have mechanic experience, the value of the Chevelle would be dramatically less when compared to the same Chevelle that was restored by the realty-tv-star Danny "The Count" Koker.

So, what do you do when you web-valuators are ineffective? We have found that hiring an expert to value the vehicles in whole is a more accurate and cost-effective approach. Considering we often stipulate to appraisers for real-property, it makes sense to do the same for vehicles too. In the future, if you do decide to retain an expert, don't forget about your disclosure obligations. ARFLP R. 49(j).

There are experts in Arizona, who have careers in vehicle valuation and often qualify as experts in diminished value claims. Recently, we spoke to Brian Sinuk of Carsultants, LLC regarding valuation of a multiple vehicle estate. Brian has inspected roughly 3,500 vehicles and has MBA from the University of Arizona, which has qualified him as a vehicle valuation expert pursuant to ARE R. 702. Ultimately, the information Carsultants provided us helped settle the case.

We learned, utilizing an expert will provide a report that is significantly more helpful than a web-valuator because it will highlight the individual variables that affect price. Specifically, experts consider comparable vehicles and conditions, along with the relevant geographic area trends. This individualized and holistic report will provide you with the facts needed to negotiate a fair settlement or convince the court of a vehicle's value.

Still, deciding whether to use an expert must be warranted because of the cost. Typically, a single expert vehicle valuation will cost about $300. If a vehicle is only worth a couple thousand dollars and the value is not likely to be different from that provided by a web-valuator, an expert is unnecessary. However, like our example, when a family has multiple vehicles, experts usually charge a flat rate to inspect numerous vehicles in a single location, which can save clients thousands. More importantly, this qualified opinion tends to promote a global settlement as to vehicles.

Considering we often only receive three (3) hours to try a divorce, arguing over vehicle values is not a wise expenditure of time. Simply put, there are more important things that the court should be considering. Resolving car valuation with the help of a qualified expert will save you the dignity of squabbling over less important issues. And, if you can't get it settled, you now have a qualified expert to explain to the court concisely the value of each of the vehicles.

Shout out to Brian Sinuk at Carsultants, LLC. Brian has kindly offered his two cents on value issues and makes himself available for questions regarding the retail and wholesale automotive industry. He can be reached at brian@carsults.com.

LEGISLATIVE UPDATE

The 54th legislature, regular session, adjourned *sine die* at 12:58a.m. May 28, 2019. The general effective date of all bills passed during this time period is August 27, 2019. The Arizona Revised Statutes have been updated to include the revised sections from the previous legislative session, the 53rd legislature, 2nd regular session. The bills passed from that session which impact our community were outlined in the June 2018 MCBA Newsletter.

Since the time of our last legislative update in June 2018, it appears only one bill has passed which amends our substantive statutes in Title 25. HB2112 was approved on March 22, 2019 by Governor Ducey. HB2112 acts to amend ARS §25-318.02 with respect to division of community property as it relates to convicted persons. The amendment reads as follows:

25-318.02. Convicted spouse; award of community property; definition. A. in an action described in section 25-318, subsection A, the court shall not award any community property to a convicted spouse. B. if one spouse is required to make ongoing installment payments to a convicted spouse pursuant to a division of property as described in section 25-318 ~~and the convicted spouse's conviction occurs after the order to make the installment payments~~, the spouse making the installment payments may petition the court for a modification of that ongoing payment. C. For the purposes of this section, "convicted spouse" means a person who is convicted of an offense and who is sentenced to at least eighty years in prison or to life in prison, with or without the possibility of parole.

TIPS FROM THE BENCH

TIPS FROM THE BENCH
of The Honorable **Suzanne Cohen**

By Ashley Rahaman

With her quick wit, easy-going demeanor, and approachability, outgoing Presiding Family Court Judge, Hon. Suzanne Cohen became a quick favorite of the family bar. Whether presiding over her own cases, conducting settlement conferences, or meeting with lawyers during brown bag lunches at the MCBA office, receptions, and speed networking events, Judge Cohen was an active member of the Family Bench. The Executive Board honored Judge Cohen with its creation of the MCBA Family Law Section "Bridging the Gap" award in 2014, in recognition of her many efforts to connect with lawyers, making the jobs on both sides of the bench a little easier. Before she rotates to the Criminal Division, I sat down with Judge Cohen to get more than just a few tips (though there are plenty here). As she exists, she shares with us her background, some practice tips, and her heartfelt desire to return to the Family Court Bench.

This interview has been lightly edited and condensed for clarity.

Ashley: You didn't go straight to law school.

Judge Cohen: I did not. This is technically my third career. I worked in insurance, and then as a prosecutor.

Ashley: In those intervening years between starting insurance and then going to law school, was it really your mom who convinced you to go?

Judge Cohen: Yep. Well and I worked full time at the insurance company when I went to law school. I didn't stop working, because I didn't really want to be a lawyer. I had zero interest in being a lawyer. I was just bored.

Ashley: And you thought, hey, I'll give law school a try?

Judge Cohen: Yeah. Well, because I wasn't helping anybody other than stockholders which that doesn't float my boat. So, my mom said, "Well, you like to argue." I was like, "All right." So, I took the LSATS and then I got a full ride my first year. I thought, well, I'm only out my time if I don't like it, so no harm, no foul. It worked out, because I was living in the East Bay of San Francisco and my law school was there, so I just took BART. So, other than a BART ticket, didn't cost me anything. Then I got hooked.

Ashley: What part hooked you?

Judge Cohen: All of it. The learning ... because you think differently. Then I only wanted to be a prosecutor. That was it. That was my goal.

Ashley: Did you do a clinic?

Judge Cohen: I did. You shouldn't challenge me; it never works out. Our school had a really good mock trial team. Not moot court but mock trial. You could just as a second year, not sophomore. So, I went to the meeting and the mock trial coach, this wonderful man, Bernie, who was a criminal defense attorney by day and a law professor at night, he said, "No night student has ever been on our mock trial team. You just can't do it." Wrong. That didn't work out. I joined, and I actually competed nationally on the mock trial team, which was a lot of fun. A lot of fun. Ed was really good to me. This wouldn't have worked out. I interned my third summer at the San Francisco DA's office three days a week. Now, I had a full-time career. I mean, I wasn't just waiting tables. Not that there's anything wrong with that, but I mean, I was ... and so what I did was-

Ashley: You were busy.

Judge Cohen: I just worked on weekends. I wasn't in school over the summer, so I just worked on weekends to make sure I got the work done that I needed to get done, and they let me do that. It was amazing. I can't believe they let me do it, because they knew that I wasn't going to stay. It wasn't like I was going to become an insurance defense lawyer. I mean I was-

Ashley: So they really had no incentive to allow you to, other than-

Judge Cohen: None. Other than I worked my butt off for them.

Ashley: So is it fair to say, then, that all those years that you spent at the prosecutor's office compelled you to move our family lawyers into working on their trial skills?

Judge Cohen: Yes. That's what prompted me to start with Nicole [Siqueiros-Stoutner] the Trial [College] program, because I was very involved in the prosecutor trial advocacy program. We had a ... We call it the baby prosecutors, which you're not supposed to do that, but the beginner prosecutors' school. I was an instructor in that almost from day one, because I was a prosecutor in California before coming here, so I didn't start out here. The Arizona Prosecutors Association started an intermediate advocacy program for a week every summer up in Prescott. I was on the forming board, or forming committee, whatever, for that, and then participated in that every year until I was done. I loved doing it. I love the process of it. I mean, it started in mock trial, right? I mean, I had great experience from a great teacher. He hated the fact that I became a prosecutor, not a criminal defense attorney. He said, "What are you thinking?" I said, "You know, I just, it's what I want to do."

Judge Cohen: So when I saw that family law lawyers come into this, a lot of them, not all of them, thinking it's family law, they can just do it. Well, they're just wrong, because family law actually involves ... You got to know a lot about a lot. Just because it's a bench trial doesn't mean you shouldn't present evidence correctly. It was making me insane, because it inhibits the manner in which I was gathering the information that I needed. That's hard, because I'm the decision maker, right? The judge is the decision maker. So, if I could figure out how to help the lawyers get their evidence across more clearly, that could only help their clients. You learn trial work by doing. Period. I mean, you got to learn how to ask a question. You have to learn how to make an objection. It's difficult because the rules of evidence don't get invoked very often, so when they do nobody knows how to use them ... Even the person invoking them sometimes.

Ashley: In terms of presenting evidence at these bench trials, is there anything that if you see it one more time, or if these judges see it one more time, they're just going to lose it?

Judge Cohen: Well I can't speak for the other judges, but for me, it makes me insane when [lawyers] have witnesses read from a document that hasn't been admitted yet. It makes me nuts. It just happened the other day, and I kept interrupting. It makes me crazy, because it's just bad lawyering. Bad lawyering. I mean, I get it. Most of the time it's probably going to get admitted, but I think you still got to pay attention to the rules, right? You can't read them, because it's not admitted. Don't do it. Stop.

Judge Cohen: The other one is if rule two hasn't been invoked and they object as to hearsay.

Ashley: Knowing those objections-

Judge Cohen: Knowing. I mean, sometimes if it's multiple layers of hearsay, sure. But if it's just, "My son said ..." Why are you ... If you want to object to hearsay, invoke the rule, otherwise zip it.

Ashley: What are you seeing family lawyers do right in the courtroom?

Judge Cohen: I think they're getting better, at least the ones that I've seen, is to not taking on the personality of their clients. I used to see that a lot when I first started. I've talked about it a lot at different CLEs, that you can't do that. You've got to maintain some distance, because, while I understand ... Okay, so when I first started, it was hard for me to wrap my head around this, because I had never had a client. As a prosecutor, the victims aren't my clients. I was a victim crime prosecutor in most, if not all of, my career, whether it was child crimes or homicides, whatever it was ... and sex crimes. But they weren't my client, so I've never had to make an argument that I didn't agree with. It was an interesting dichotomy for me to come over and listen to very good lawyers make ridiculous arguments. I'd be like, "What? What?" Then I caught on, eventually because I'm not very bright, that they're making this argument that their client wants to make. Okay, that's fine, but don't take on their personality. I've seen less and less of that which I think is good. I'm seeing more of, "Your Honor, my client ..." That's a great way to tip me off that you think this argument is ridiculous.

Ashley: And that matters to you?

Judge Cohen: It matters a lot to me, because I need to trust the lawyer who's telling me something. If they're saying something that they know isn't solid in law, then they go down in my estimation, and that's not good.

Ashley: What's the easiest way to lose your trust?

Judge Cohen: Lying to me. Done. I just ... ask my son. He knows he gets in a whole lot more ... He gets in double the trouble if he lies to me than if he just tells me what happened. I hate being lied to, and it takes a long time for me to get over that. All we have in our business is our reputation, right? We don't make a product. There's no quality control. It's our reputation, and if you play fast and loose with the facts, mm-mm (negative). Nope. Don't like it. I don't mind aggressive cross examination, because ... that was my thing. I love to be an aggressive cross examiner, to a point. To a point. I mean, if the person deserves it. There's a lot of ways to skin a cat with cross examination. You don't have to be aggressive. You can still make your point. I've seen some beautiful cross examinations from a woman lawyer and a man witness without any aggression, but beautifully crafted questions that just sank the guy, you know? So, there's ways to do it, but if you play fast and loose with the facts and it's proven otherwise, it hurts your reputation. I don't know that I would go so far as it hurts the client, but it makes it harder to sift through the evidence, and that's not good.

Ashley: Your involvement with the MCBA seems very deliberate ... the CLEs, the judicial reception, the speed networking event.

Judge Cohen: Because I think it's important. I had mentors. But I don't I think of myself a mentor. I love the interaction. I feed off of it ... What was interesting, my son, who is very quiet, very reserved, and not ... He wanted to be in the talent show this year. His dad was like, "What? He's going to be in front of people?" I'm like, "See, there is some of me in there!" It was just funny. It was a recognition for me that that's what feeds me, is to be able to have that interaction with people, and if I can't impart some wisdom. But you know what, I learn just as much as, hopefully, I'm imparting. I like the questions. I like that. It gets my juices going.

Ashley: What surprised you the most about family law?

Judge Cohen: How much I liked it. I wanted to come here first, because remember, 80 percent of the population is pro per. That means 80 percent of people didn't know I didn't know what I was doing. It's comfort. Right? As opposed to if I had gone to civil, a hundred percent of the population would have known I wasn't knowing what I was doing. So, it was a great way for me to get my judge hat on, figure

what kind of judge I wanted to be. It really surprised me how much I liked being able to help. It's almost social work.

Ashley: As you're looking back at your time here on family court, do you feel like you helped families?

Judge Cohen: Helped, I guess. You know, I don't know that it was more, because there's a lot of them you can't, but I think there's a lot that you can. I'm satisfied that I helped who I could. There's some that ...

Ashley: Don't you think it'd be that way almost in any court, though?

Judge Cohen: I don't know. I can't speak to civil because I've never been a civil lawyer, and I've not been on the civil bench. I mean, criminal I'm sure, because I know what that's about, even though I haven't sat on that bench yet.

Ashley: You help those that want to be helped too, I think.

Judge Cohen: Right. Yeah, yeah. We'll see. I think it's going to be interesting, because one of the things I didn't like about being on family was that I was the decision maker. I won't be anymore. I mean, I'll be deciding the constitutional stuff and the admittance of evidence, but I'm not going to be deciding the sense of guilt. That's great.

Ashley: So, you said that you liked that you kind of had an opportunity to figure out what kind of a judge you wanted to be. Do you feel like you know what kind of a judge you are now?

Judge Cohen: That's a really good question. I hope that I'm a judge who has some compassion, and that listens. I know that sometimes, with specific families, I struggle with the patience ... to keep that. I also hope that I'm pretty laid back. I'm not a big stickler on a lot of stuff. There's some things I am, but ... and I want to be available. Approachable. I don't know if that's ... Yeah, that's what I mean, approachable.

Ashley: Do you hope that there's any lasting piece of you as the family court presiding judge that sticks around?

Judge Cohen: Well I hope the trial [college] program. I mean, Nicole and I started that before I was presiding. I hope that sticks around. I think that it would be sad if that fell by the wayside. I think trial practice is always a thing that should be learned and encouraged, so I hope that sticks around. But I plan on coming back, not as presiding. I do hope to come back once, at least, if not twice. I've got 18 years left before I can retire. By my calculations, if I play this right, I'll get here one more time, leave again, and then finish on family. That's my goal. We'll see.

Ashley: Would you like to see the family lawyers more actively approaching really any aspect of their work? All of the stuff that leads up to the courtroom, motion practice. Would you like to see us doing anything differently there? Aside from telling the truth.

Judge Cohen: I think sometimes there needs to be a little more communication between the sides. Sometimes that's the litigant and not the lawyer, but ... It's funny, because you would think in criminal law that there would be more tension between prosecutors and defense. Uh-uh (negative). When somebody's liberty is at stake, but ... and this goes back to taking on the personality of the client. You can't do that. You've got to maintain the professionalism. I would hope that those two sides would work as collaboratively as they could, because really, it's in the best interest of the clients to not go to trial. That's why I do settling conferences.

Ashley: What is the best way to educate a judge on something new or highly specialized in family law we see a judge maybe doesn't know?

Judge Cohen: Well, in your RMC statements, I'd be sure putting the law in there that affects your position, and then definitely in your trial memo as well. I'd be putting the law in there. You draw their attention to it. If something comes up in the meantime, you could just ask, "Judge, would you like a memo on this?" I always go, "Yeah! That'd be great!"

Ashley: Is there anything you think the judges wish we knew about them? The way that they're looking at these cases, or the way they're looking at us, that maybe isn't readily apparent in the courtroom?

Judge Cohen: I mean, like you said, I can't speak for all of the judges. I think you need to remember, this is your maybe one case of the day, it might be our fifth. The only way I've learned how to explain how it feels up there sometimes is that you feel like you've been assaulted. There's so much anger sometimes going on in that courtroom that it takes its toll on us. It's raining all that anger and fighting and back biting, and so if the lawyer's engaged in that, it makes it even worse. If you can keep in the back of your mind that if you're on a Thursday ... We've had 30 cases all week with people yelling at each other or yelling about each other or crabbing about each other or whatever they're doing. You feel like you're coming out of the ring, and it's really hard. Anything the lawyer can do ... I'm not saying don't present your evidence. Don't hear me to say that. You got to just pick your battles. Just remember that we're doing this five days a week, eight hours a day. It is draining. You hit ... and I hit mine. I was like, "Okay, I can't. I can't take another family fighting about ridiculous stuff." Haircuts for the toddler. I mean, there's just a point at which you got to ... So, like I said, it might be your first case of the week, but it might be our 30th.

Ashley: What are you going to miss about family court?

Judge Cohen: I'm going to miss the lawyers. I'm going to miss being part of the MCBA and the state bar; I love all that stuff. I'll miss that. I think I'll miss the interaction with the people.

Ashley: Will you miss seeing hundreds of pages of text messages?

Judge Cohen: No. I call that bathroom reading.

Ashley: Is that one of the least effective ... or does it just depend on what's in there.

Judge Cohen: No, so it depends. If you give me a hundred pages, that's not going to be effective, but if you pick out some doozies and put it in context ... because, if the other side has done their job, say there's a lawyer and they're bringing their client in, and their client is coming across low-key, nice, respectful, the whole bit and you see some of the emails or text messages they send, where I wouldn't say that to my dog.

Ashley: So it's all about just effectively presenting these things to you, telling you where to look.

Judge Cohen: Mm-hmm (affirmative), that's exactly right. Don't give me 50 pages of text messages without numbers on them. Same with bank records. You got to tell me what I'm looking at. I mean I'll read it all, but you got to put it in context.

Ashley: And, in putting things in context, how helpful is it for you to hear from an expert?

Judge Cohen: Pretty helpful, depending on what it is. If it's financial stuff, business evaluation, yeah.

Ashley: How about just kid stuff?

Judge Cohen: I think it depends on the expert, and what the issue is. A lot of people spend a lot of money for no reason. Then again, there's some cases where I really wish we had an expert because it's really hard. That's a tough one. Relocation cases. Those are heartbreaking.

Ashley: Who do you want to hear less from in the courtroom?

Judge Cohen: The lawyers, except for cross examination. I don't want to hear the lawyer. doesn't help me. That's not a good effective direct. It's a good effective cross, perhaps, depending on the issue, but it's not an effective direct.

Ashley: I really cannot tell you how much I appreciate this.

Judge Cohen: Oh of course, my pleasure.

Ashley: I'm really looking forward to sharing some of your words of wisdom. Any parting words?

Judge Cohen: Like in the words of Arnold Schwarzenegger, "I will be back."

NEW ARIZONA CASES

Basic Information
Barron v. Barron, CV-18-0234-PR (Supreme Court, 05-21-19)
Procedural History
In a dissolution decree, the Superior Court ordered Husband, who was then an active duty service member, to begin making payments to Wife that would be equivalent to what she would have been entitled to as her share of Husband's military retirement, if he chose to work beyond his retirement-eligibility date. Husband appealed, and the Court of Appeals reversed the Superior Court, reasoning that federal precluded such indemnification. *Barron v. Barron*, 1 CA-CV 17-0413 (07-31-18). The Supreme Court granted review.
Ruling
Wife argued that the indemnification order was proper under *Koelsch*. The Supreme Court pointed out that Arizona may only divide military retirement to the extent permitted by federal law, and cited to the U.S. Supreme Court opinion in *Howell*, 137 S. Ct. 1400 (2017). Under *Howell*, a state court can divide military retirement only to the extent it is disposable retired pay, as defined by § 1408(a)(4)(A), and a state court may not enter orders that "displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress." The Arizona Supreme Court upheld the Court of Appeals' ruling that a Superior Court cannot order a service member to indemnify a former spouse if the service member chooses to work past an eligible retirement date. Federal law only permits state courts to divide "disposable retired pay," the definition of which is "the total monthly retired pay to which a member is entitled." The Court read "entitled" to mean a service member has actually applied and been approved for military retirement benefits, not merely be eligible to apply for them. Unlike the retirement plan in *Koelsch*, a service member's interest in their military retirement is neither vested nor mature until the service member retires and benefits are approved. Because of this, state courts cannot order service members to make military retirement-based payments to former spouses before their retirement.

BASIC INFORMATION

Brittner v. Lanzilotta, 1 CA-CV 18-0088 (Ct. App. Div 1, 03-12-19)

PROCEDURAL HISTORY

During a divorce proceeding where Father was seeking equal parenting time with his children, the custody evaluator recommended a TI be appointed. The parties stipulated to the appointment of Lanzilotta as TI, who was then appointed by the Superior Court. At some point, Lanzilotta resigned from her role as TI.

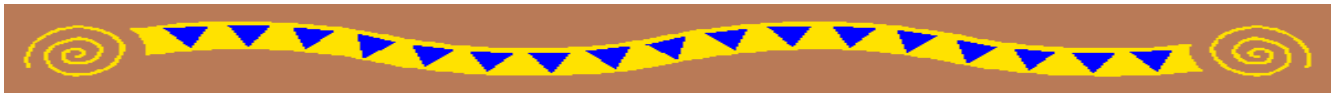
Thereafter, Father filed a civil action against Lanzilotta. Lanzilotta moved to dismiss the complaint, arguing she was entitled to judicial immunity as a court-appointed TI. The court dismissed the complaint, and Father appealed.

RULING

On appeal, Father argued that Lanzilotta was not entitled to judicial immunity because she was hired to provide therapeutic services to the parties, and not as an expert to assist the court, relying in part on Paul E. v. Courtney F.

The Court found the Superior Court appointed Lanzilotta to provide both therapeutic services and to make recommendations to the family court, which the court ultimately relied on in issuing its final order. The Court held that in order to formulate her expert opinion, therapeutic sessions were necessary to gather and evaluate the family dynamics and challenges to various proposed custody arrangements, and thus Lanzilotta was a court-appointed therapist who performed functions integral to the judicial process, and was entitled to judicial immunity.

The Court distinguished Paul E. because the court-appointed therapist in that case was not ordered to report to the court, and was only aiding the family in a treating capacity ("a nonjudicial function that does not justify immunity").



BASIC INFORMATION

Lehn v. Al-Thanayyan, 1 CA-CV 17-0756 FC (3-7-19)

PROCEDURAL HISTORY

Father (a Kuwaiti citizen with lawful permanent residence status in the United States) married Mother (a United States citizen) in Arizona in 2016. Shortly thereafter, the parties moved to Kuwait for 5 years and the parties' oldest child was born in Kuwait in 2008. When the parties lived in Kuwait, Mother and the older child would travel to the United States. When Mother became pregnant with the parties' second child in 2011, Father gave the consent required by Kuwaiti law for her to return permanently to the United States. The children are dual citizens of Kuwait and the United States. When Mother returned to the United States, the parties purchased a home in Arizona. Father traveled to Arizona several times a year, and Mother brought the children to Kuwait each summer for a month-long visit.

Mother alleged that Father owned multiple businesses in Kuwait in addition to working for the Kuwait Municipal Ministry. Mother alleged that Father's income was greater than he was representing. Father disputed ownership in the businesses and his income as alleged by Mother. At Trial, Mother presented evidence that Father was owner and/or an officer in the businesses. Mother also, to dispute Father's claim that his income was only $12,337 per month, presented evidence that Father deposited an average of $12,000 into the parties' United States bank account, paid the mortgage and the minor children's private school tuition, and gave Mother $8,000 per month for her expenses.

The family court found that Father likely had an ownership interest in these Kuwaiti businesses

and had received income for the benefit of the community "at some point in time." The court also found that he had provided insufficient disclosure of those interests or had otherwise hidden assets. For that reason, the court could not determine the value of these business interests. To compensate Mother for her share of the community's interest in these businesses, the court ordered Father to pay the entire balance of a $ 241,000 community debt and awarded Mother 85 percent of the community bank account, which contained $21,132.

Both parties called experts in international law to address Mother's request that Father's parenting time occur only in Arizona because she feared that if he were permitted to take the children to Kuwait, he would not return them to the United States. Mother also requested that Father be ordered to surrender his passport and United States permanent resident card to his attorney before exercising parenting time in the United States. Mother was concerned because Kuwait is not a signatory to the Hague Convention which would provide for the secure and prompt return from children wrongfully removed from a Contracting State.

Evidence showed that Father had told one child to lie to Mother about having a cell phone and had also told that same child he was old enough to visit Kuwait on his own and "more than that." According to Mother, Father refused to explain to her what he meant by the latter comment. Additionally, Father petitioned for divorce in Kuwait and falsely alleged that Mother left Kuwait without legal justification and submitted a power of attorney stating that he is the children's natural guardian. The family court ordered Father to exercise parenting time in Arizona unless Mother agreed in writing and was given the children's passports. Additionally, the court ordered that Father could exercise parenting time in Kuwait, but only if he first posted a $ 2.5 million cash bond per child to secure their safe return.

Lastly, the family court awarded Mother a portion of her attorney's fees and costs after finding a substantial disparity of financial resources between the parties. Father timely appealed and argued that the family court inequitably allocated community property and debt in Mother's favor, that the family court had no authority to require Father to post a $2.5 million cash bond to secure the safe return of the children from Kuwait, and that the family court abused its discretion in awarding Mother her attorney's fees.

RULING

Property Allocation

Father contends that the court had no basis for this unequal allocation because the court (1) did not find that he had an ownership interest in the businesses at the time Mother petitioned for dissolution and (2) did not make a valuation of these business interests. The family court found Father's arguments without merit. First, the court's finding that Father had received income from his business interests "for the benefit of the community" necessarily implies that Father's business interests existed during the marriage. Second, it was Father's own obstructionist behavior that made valuation impossible. The court also rejected Father's argument that the family court abused its discretion when it awarded him the entire $241,000 in community debt as Mother presented evidence that Father has business interest with $3.8 million in capital and Father failed to provide any evidence of the same.

Parenting Time Restrictions

Father argues that the imposed parenting time restrictions were without legal authority or support in the record. The Court of Appeals found that the family court based its parenting time orders on findings that are consistent with several factors listed in the UCAPA § 7 for determining whether a parent poses a risk of abducting the child. Other jurisdictions have applied these and similar risk assessment factors. And although Arizona has not adopted the UCAPA, it was within the family court's discretion to rely on these factors in the absence of a specific statute to the contrary provided the family court also considered the children's best interests. The Court of Appeals found that the evidence supported the family court's findings that Father might not return the minor children to Arizona and that Mother would have little recourse if Father absconded with the minor children to Kuwait.

Father also argued that the $ 2.5 million cash bond violated his fundamental right to custody of

his children and is not supported by any legal authority. The Court of Appeals disagreed and found that a parent's right to custody and control of his or her children is not absolute and that the bond requirement did not preclude Father from travelling with the minor children (but instead placed a condition on travel to Kuwait). Further, the Court of Appeals found that the family court has authority under A.R.S. § 25–403.02(D) to create a parenting plan with such conditions as are "necessary to promote and protect the emotional and physical health of the child." The bond deters violations of the court's parenting time orders and protects the children from the emotional harm that would be caused by an abduction. to Arizona if The Court of Appeals affirmed the family court's imposition of a security bon and concluded that the family court did not abuse its discretion when setting the bond amount to $2.5 million.

Attorney's Fees

Father argued that the family court abused its discretion when it ordered payment of attorney's fees based on disparity of financial resources as the family court failed to properly consider the parties' relative financial resources, Mother's ability to pay her own fees, and Father's ability to pay his own and Mother's fees. The Court of Appeals found that the family court did not abuse its discretion as A.R.S. § 25-324 does not require a showing of actual inability to pay as a predicate' for an award – a party only needs to show a relative financial disparity in income and/or assets exists between the parties.

BASIC INFORMATION

Paul E. V. Courtney F.,439 P.3d 1169, 246 Ariz 388 (2019).

PROCEDURAL HISTORY

The parties were divorced in 2010, and awarded joint legal decision making with equal parenting time with Father having final decision making as to education and medical decisions. The parties clashed on several parenting issues including most notably the gender identification of their biological son. Mother had allowed the child to identify as female with Father's knowledge or any professional consultation. The parties retained Diana Vigil to counsel and advise the parties regarding the child. When Mother refused to follow that advise, Father petitioned the court to grant him sole legal decision making concerning all three of their children. After the appointment of a custody evaluator and a parenting coordinator, the court held a four-day trial. After the trial, the court awarded Father sole legal decision making for all three children. The Court also implemented many of the Custody Evaluator's Guidelines, including the appointment of counselors for the child. The court of appeals vacated the family court's orders to the extent they infringed on Father's exercise of his sole legal decision-making authority concerning L. Paul E. v. Courtney F., 244 Ariz. 46, 48 ¶ 1 (App. 2018). Specifically, the court held that the family court lacked authority to choose L.'s therapists, to order the parties to refrain from making certain parenting choices (including discussing sensitive topics with L.), or to confer judicial immunity on the appointed therapists. Id. The court also vacated an attorney fee award against Father and remanded for a redetermination of Mother's fee request. Id. The Supreme Court granted review to decide whether the family court was authorized to appoint a specific treating therapist for L. (Vigil) and a consulting expert for the court and parties (Dr. Ehrensaft), with attendant restraints on Father's authority, all issues of statewide importance.

RULING

When a family court designates one parent as the sole legal decision-maker for a child, unless the parties agree otherwise, the court may limit the decision-maker's authority **only as necessary to prevent endangering the child's physical health or significantly impairing the child's emotional development.** See A.R.S. § 25-410(A). The court held that the family court **exceeded** its statutory authority by appointing specific treatment professionals for the child here and otherwise limiting the parent's sole legal decision-making authority.

The Court found that the key to complying with § 25-410(A) is that the limitation, in either form, **must be necessary to prevent the child's physical endangerment or significant emotional impairment**. The family court is authorized to make childrearing decisions in limited, statutorily prescribed circumstances. The court is also authorized to intervene when parents cannot agree on childrearing decisions to be included in a parenting plan. When the family court has awarded sole legal decision-making authority to a parent, if the other parent disagrees with the sole legal decision-maker on a major issue, the court **may only** intervene as authorized in § 25-410(A).

In sum, § 25-410(A) authorizes the family court to impose a specific limitation on the sole legal decision-maker's authority **only when the other parent demonstrates that absent that limitation, the child would be physically endangered, or the child's emotional development would be significantly impaired**. This provision will be triggered most often after the sole legal decision-maker has either actually exercised authority or has indicated he or she would do so in a way that would harm the child. For example, refusing to retain particular therapeutic services could justify an order requiring such services if refraining from doing so would endanger the child's physical health or significantly impair the child's emotional development. The limitation imposed can be a prohibition or a directive. But any limitation must be tailored to prevent or remedy the endangerment or impairment. The court must be mindful not to unnecessarily intrude on the sole legal decision-maker's unshared authority to make major decisions concerning the child's upbringing, even if those decisions conflict with expert opinion or the court's own views on childrearing.

Basic Information

Terrell v Torres 1 CA-CV 17-0617 FC

Procedural History

Torres and Terrell disagreed on the disposition of cryogenically preserved embryos created using Torres' eggs and Terrell's sperm prior to their marriage. The dispute arose whether, using the terms of their in vitro fertilization agreement ("IVF Agreement"), Torres could use the embryos for implantation without Terrell's consent, which was contrary to the terms of the IVF Agreement. But, the IVF Agreement, based on the parties' election, allowed for the Court to make a determination for disposition of the embryos in the event of a dissolution. The trial court applied a balancing approach and determined that Father's "right not to be compelled to be a parent outweighed Mother's right to procreate and desire to have a biologically related child." Therefore, the trial court ordered the embryos to be donated to a third party or couple.

Ruling

The Court first considered the different approaches to determine resolution like the contract approach, which focuses on the terms of the agreements entered by the parties and stating "Court's across jurisdictions have generally agreed that the primary benefit of the contract approach is that it leaves deeply personal decisions involving reproductive choices in the hands of the parties." See *Szafranski v Dunston*, 993 N.E.2d 502, 506 (Ill. App. Ct. 2013). The balancing approach balances the competing interests of the parties. See *Davis v Davis,* 842 S.W.2d 588 (Tenn. 1992). According to *Davis*, "Ordinarily, the party wishing to avoid procreation should prevail, assuming that the other party has a reasonable possibility of achieving parenthood by means other than use of the embryos in question." The next approach

considered was the Contemporaneous Mutual Consent approach that was only adopted by the Iowa Supreme Court *In Re Marriage of Witten,* 672 N.W.2d 768 (Iowa 2003). Under the Contemporaneous Mutual Consent approach "no transfer, release, disposition, or use of the embryos can occur without the signed authorization of both donors." After reviewing the different approaches, the Court elected to focus on the Contract approach, when there is a contract, asserting that contracts matter. In fact, they stated "Specifically, we hold that agreements between progenitors, or gamete donors, regarding disposition of their embryos should generally be presumed valid, binding and enforced in any dispute between them." Moreover, the Court stated that they agree with other jurisdictions that the party that does not wish to become a parent should prevail if the other party has a "reasonable possibility" of becoming a parent without the use of the embryos. But if the parties do not have an agreement or elect to allow the Court to decide then the balancing approach is proper.

In this matter the parties had an IVF Agreement, but one portion of the agreement allowed the Court to make the determination rather than the parties mutually agreeing on the disposition of the embryos and the parties elected to allow the Court to decide. Therefore, the Court relied upon the balancing approach to make the final determination.

In applying the balancing approach, the Court again reviewed the findings of the Trial court and determined the Trial court erred in applying the law to its findings.

Specifically, the Court found that the Trial court erred by finding that Torres' less than one percent chance of becoming pregnant through normal means and the remote possibility of adoption or insemination negated her claim. The Court of Appeals did not believe Torres had a strong alternative to having a child. The Trial court placed a heavy weight on the parties' ability to co-parent when neither party expected or intended to co-parent the child as Terrell anticipated he would never see the child. The Trial court discussed the parties' constitutional right to procreate or the right not to procreate. The Court of Appeal found when the parties voluntarily elected to allow the Court to decide the fate of the embryos in the IVF Agreement and the balancing should not have included this determination as the Trial court should only have considered the parties' competing and varying interests.

Based on the Court's analysis the decision was remanded to the Trial court to enter an order awarding Torres the embryos.

In a dissenting opinion, Judge Cruz argues that the IVF Agreement should have been enforced based on a note that stated "…embryos cannot be used to create a pregnancy without the express, written consent of both parties." Judge Cruz asserts this language is controlling and harmonizes the other sections of the Agreement. Judge Cruz also dissented from the Court of Appeals reweighing the evidence of the parties' interest. Rather, Judge Cruz writes the matter should have been remanded to the trial court to properly weigh the interests of the parties.