

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2012-094898
FC 2012-053300

05/29/2014

HONORABLE JAY M. POLK

CLERK OF THE COURT
D. Kenney
Deputy

IN RE THE MATTER OF
DANA NICOLE PROUTY

DEEAN GILLESPIE STRUB

AND

ADAM TIMOTHY KAFKA

STEPHANIE A STROMFORS

NICOLE P LASITER

MINUTE ENTRY

The Court has considered the following documents filed in these two cases:

- *Motion to Compel DNA Paternity Testing of Myles Prouty* (the “DNA Motion”) filed by Bradley W. Hughes (“Father Hughes”) on March 28, 2014; *Notice to Court* filed by Dana Prouty (“Mother”) on April 15, 2014; the *Notice to the Court Regarding Respondent’s Motion to Compel DNA Paternity Testing of Myles Prouty* filed by Mother on April 24, 2014; and the *Hughes’ Response to Petitioner’s Notice to the Court Regarding Motion to Compel DNA Paternity Testing of Myles Prouty* filed by Father Hughes on April 30, 2014.
- *Motion for Sanctions and Attorneys Fees Pursuant [to] Rule 31 ARFLP* (“Father Hughes’ Sanctions Motion”) filed by Father Hughes on April 4, 2014; *Mother’s Response to Father Hughes’ Motion for Sanctions and Attorneys Fees Pursuant to Rule 31 ARFLP* filed by Mother on April 17,

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2014; and the *Reply in Support of Motion for Sanctions and Attorneys Fees Pursuant [to] Rule 31 ARFLP* filed by Father Hughes on April 23, 2014.

- *Application for Interim Award of Attorney's Fees* ("Mother's Fee Application") filed by Mother on April 4, 2014;¹ the *Notice of Errata* that Mother filed on April 8, 2014, with respect to Mother's Fee Application; the *Corrected Application for Interim Award of Attorney's Fees* that Mother filed on April 8, 2014; the *Response to Mother's Application for Interim Award of Attorney's Fees* that Father Hughes filed on April 14, 2014;² the *Response to Petitioner's Application for Interim Award of Attorneys' Fees and Response to Respondent Hughes' Request for Sanctions* that Adam Timothy Kafka ("Father Kafka") filed on April 16, 2014; and *Mother's Reply in Support of Her Interim Application for Attorney's Fees* that Mother filed on April 23, 2014.
- *Motion for Interim Attorneys' Fees and Costs* ("Father Kafka's Fee Motion") filed by Father Kafka on April 7, 2014; *China Doll Affidavit* filed by Father Kafka on April 7, 2014; *Notice of Filing* filed by Father Kafka on April 8, 2014; *Mother's Response to Father Kafka's Motion for Interim Attorneys' Fees & Costs* filed by Mother on April 17, 2014; and *Father Kafka's Reply to Response to Motion for Interim Attorneys' Fees & Costs* filed by Father Kafka on April 24, 2014.
- *Motion to Compel and Motion for Sanctions Re: Response to Discovery, Disclosure, HIPPA Releases and Deposition* ("Father Hughes' Motion to Compel") filed by Father Hughes on April 14, 2014; *Statement of Certification in Support of Motion to Compel Pursuant to Rule 65(A)(3), A.R.F.L.P.* filed by Father on April 14, 2014. No response or objection to Father Kafka's Motion to Compel has been filed, and the time for filing such response or objection has passed. *See Ariz. R. Fam. L. P. 35(A)(3).*

¹ On February 28, 2014, Mother, acting *pro se*, filed a *Motion for Prospective Attorney's Fees or in the Alternative Appointment of a Family Court Attorney to Allow for Fair Litigation* in case number FC2012-053300. Subsequently, Mother retained counsel, DeeAn Gillespie. At the March 13, 2014, Status Conference, Ms. Gillespie indicated she would be filing an amended request for amended attorney fees. Thus, because Mother's Fee Application filed on April 4, 2014, constitutes an amendment to the *pro se* motion that Mother filed on February 28, 2014, the Court has not considered the *pro se* motion.

² This was filed only in FC2012-053300.

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- Father Hughes' *Affidavit of Financial Information (1st Amended)* filed on March 11, 2014; and Father Kafka's *Affidavit of Financial Information* filed on March 12, 2014.
- *Petition for OSC Re: Contempt* (the "Contempt Petition") filed by Father Kafka on March 24, 2014.

In addition, the Court has reviewed the history of these two cases.

The DNA Motion

IT IS ORDERED granting the DNA Motion, all in accordance with the formal written *Order to Compel DNA Paternity Testing of Myles Prouty* signed by the Court on May 23, 2014.

Father Hughes' Sanctions Motions

In his Motion for Sanctions, Father Hughes alleges that Mother has filed duplicative pleadings with the intention of causing undue delay and increasing Father Hughes' legal fees. As a result, he requests that pursuant to Rule 31, Arizona Rules of Family Law Procedure ("Rule"), the Court sanction Mother by ordering her to pay Father Hughes' attorney fees and to order that Mother is precluded from filing any further pleadings with regard to the issues of temporary relocation as it pertains to the minor child, Max, the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA") as it pertains to the minor child, Madeline, and the tape recording of Mother's telephone and videoconference conversations with Max. In response, Mother argues that each of her filings was the result of a change of circumstances and that, although these cases have been pending since approximately September 2012, "there has not yet been any custody evaluations completed, any significant discovery conduct, no evidentiary hearing, and no final trial on the merits set."

The Court disagrees with Mother's assessment. Many of Mother's filings in this case have been repetitive and redundant and made without any significant change of circumstances occurring. Moreover, the significant delay in these cases are the result of three factors: (a) the filing of a juvenile dependency case that stayed these cases for approximately five months (January 2013 through May 2013); (b) Mother's removal of Maxwell and Madeline to Illinois without consent of Father Hughes, Father Kafka, or this Court; and (c) the subsequent birth of the minor child, Myles, and his allegedly severe health problems that allegedly have prevented Mother from returning to Arizona. In December 2012, the parties agreed to the appointment of Brian Yee, Ph.D., to conduct a comprehensive family evaluation (then referenced to as a "comprehensive custody evaluation") and a psychological evaluation of Mother. But-for Mother

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fleeing with Max and Madeline to Illinois on or about August 1, 2013, the comprehensive family evaluation likely would have been completed by now, as would most (if not all) discovery in this case.

Despite the Court's concerns regarding Mother's conduct in this case, the Court does not believe an award of sanctions at this time is appropriate. Father Hughes' concerns can be addressed at the conclusion of this matter. Accordingly,

IT IS ORDERED denying Father Hughes' Sanctions Motion without prejudice. Mother is admonished that if she continues to make redundant or repetitive requests, the Court will entertain a renewed motion for sanctions.

Mother's Fee Application

Citing Arizona Revised Statutes ("A.R.S.") section 25-324 and arguing that a disparity of income exists among the parties, Mother asks the Court to order Father Kafka to contribute \$25,000 towards Mother's attorney fees and Father Hughes to contribute \$15,000 towards Mother's attorney fees. Fathers Kafka and Hughes oppose the request.

Father Kafka's Affidavit of Financial Information ("AFI") filed on March 12, 2014, indicates that his gross annual income has progressively increased from \$275,000 in 2011 to \$340,000 in 2013. Father Hughes' AFI filed on March 11, 2014, indicates that his 2013 gross annual income was \$76,152 and that his current monthly income is \$7,472, which equates to approximately \$89,664 per year. The only AFI that Mother has filed is the one she filed in FC2012-053300 on December 11, 2012. In that AFI, she states that she is unemployed, that she had no income in 2011 or 2012, but that her 2010 income was \$50,681.³ In addition, she lists monthly expenses that total approximately \$1,567, not including any outstanding debts.

THE COURT FINDS that a substantial disparity in financial resources does not exist between Father Hughes and Mother. Mother's previous employment history demonstrates that she is capable of earning at least \$50,000 per year. The Court further notes that although Max is currently in Father's physical custody, Mother is not paying any child support to Father or otherwise contributing to Max's care.

³ Attached as Exhibit X to Father Hughes' response to Mother's Fee Application is an AFI purported to be submitted by Mother on February 27, 2014. In reviewing the files for these two cases, the Court is unable to locate a copy of the February 27, 2014, AFI that has been filed by itself. The February 27, 2014, AFI indicates that as of that date, Mother was still unemployed and that she had no income in 2011, 2012, or 2013. It also lists monthly expenses totaling \$2,123, not including minimum monthly payments on outstanding debts.

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THE COURT FURTHER FINDS that a substantial disparity in financial resources does exist between Father Kafka and Mother.

THE COURT FURTHER FINDS that Mother has taken unreasonable positions in this case. For example, and without limitation: (a) as described in the Court's December 12, 2013, minute entry, Mother has taken inconsistent positions with respect to the Court's jurisdiction as to Madeline and, particularly, whether Arizona is Madeline's "home state" for purposes of the UCCJEA; (b) as described above, Mother has filed redundant, repetitive, and unnecessary pleadings that have caused Fathers Hughes and Kafka to incur unnecessary attorney fees; (c) Mother has disregarded this Court's order requiring her to turn over physical custody of Madeline to Father Kafka; and (d) Mother deliberately has misled this Court as to the purpose and duration of her August 1, 2013, trip to Illinois.⁴

THE COURT FURTHER FINDS that the unreasonable positions and actions taken by Mother in this case to-date far outweigh any disparity in the financial resources between her and Dr. Kafka, as well as any disparity in the financial resources between her and Dr. Hughes. Accordingly,

IT IS ORDERED denying Mother's Fee Application.

Father Kafka's Fee Motion

Arguing that Mother has unreasonably expanded these proceedings and taken unreasonable positions throughout the proceedings, Father Kafka asks the Court to award him more than \$30,000 in attorney fees and costs. Mother vehemently opposes the request.

⁴ Although Mother has previously characterized her August 1, 2013, trip to Illinois as temporary, the evidence strongly suggests that Mother was, in fact, fleeing Arizona to avoid this Court's jurisdiction with the intent of not returning in the foreseeable future. For example, in the exhibit to Father Hughes' *Reply in Support of Motion for Sanctions and Attorneys Fees Pursuant [to] Rule 31 ARFLP* filed on April 23, 2014, Mother wrote: "This time I was not going to let it happen again and on August 1, 2013 I fled to the State of Illinois with both of my children for safety." This is directly contrary to what Mother stated in her *Petitioner's Motions for: 1. Reconsideration of Orders Respecting Custody of Madeline Prouty and Maxwell Hughes Issued on September 30, 2013 2. An Emergency Telephonic [sic] Hearing to Consider the Motion for Reconsideration 3. Unsealing of the Dependency Case File Respecting Madeleine Prouty and Maxwell Hughes So That All Counsel May Have Access to the Documents, Orders and Minute Entries Filed in that Case* filed on October 2, 2013. Specifically, in paragraph 13 on page 3, Mother states: "Subsequent to the July 30 court hearing, Ms. Prouty traveled, with permission from her physician, back to Illinois to see her family. ***Her intention was to return to Arizona prior to the time of her expected delivery***; however, she experienced medical issues while in Illinois that required her to remain there for the delivery of her baby." (Emphasis added.)

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As described above, Mother has taken unreasonable positions in this case and has, without question, unreasonably expanded and unnecessarily delayed these proceedings. Mother's unreasonable conduct in this case so far outweighs any disparity of income between the parties such that an award of attorney fees in favor Father Kafka would likely be appropriate. *Cf. Mangan v. Mangan*, 227 Ariz. 346, 351-53, 258 P.3d 164, 169-71 (App. 2011) (holding that trial court did not abuse its discretion in awarding father attorney fees despite significant disparity in parties' incomes because Mother had taken unreasonable positions by making misrepresentations and false statements to deny father parenting time without good cause). Father Kafka correctly points out that A.R.S. section 25-324 gives the Court the discretion to make an attorney fee award "from time to time" during the proceedings and not just at the conclusion of the proceedings. However, in light of the substantial disparity in the financial resources between Mother and Father Kafka, the Court declines at this time to award Father Kafka his attorney fees. Therefore,

IT IS ORDERED denying Father Kafka's Fee Motion without prejudice. Mother is admonished that if she continues to take unreasonable positions, unnecessarily expand these proceedings, or unnecessarily delay the proceedings, the Court will entertain a renewed motion for attorney fees.

Father Hughes' Motion to Compel

No response or objection to Father Hughes' Motion to Compel having been filed and for good cause appearing,

IT IS ORDERED granting Father Hughes' Motion to Compel, all in accordance with the formal written *Order to Compel and Order for Sanctions Re: Response to Discovery, Disclosure, HIPPA Releases and Deposition* signed by the Court on May 23, 2014.

Contempt Petition

ORDER TO APPEAR FOR DANA PROUTY & MADELINE PROUTY

THIS IS AN IMPORTANT COURT ORDER THAT AFFECTS YOUR RIGHTS. READ THIS ORDER CAREFULLY. IF YOU DO NOT UNDERSTAND THIS ORDER, CONTACT A LAWYER FOR HELP.

IT IS ORDERED that Dana Nicole Prouty shall *personally* appear before the Honorable Jay M. Polk, Superior Court of Arizona for Maricopa County, 18380 North 40th Street, Phoenix,

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Arizona 85032, **at 10:00 a.m. on July 1, 2014**, and shall bring Madeline Prouty with her, and show good cause why she has not complied with this Court's November 12, 2013, order requiring that Madeline Prouty be placed in the physical custody of Father Kafka.

IT IS FURTHER ORDERED that Father Kafka's attorney shall cause a copy of this Minute Entry and a copy of the Contempt Petition to be personally served on Dana Nicole Prouty by no later than **June 9, 2014**.

MOTHER IS ADMONISHED THAT IF SHE FAILS TO APPEAR AT THE TIME AND PLACE SPECIFIED ABOVE, THE COURT MAY ISSUE A CIVIL ARREST WARRANT AS A RESULT OF HER FAILURE TO APPEAR AND THAT IF SHE FAILS TO PRODUCE MADELINE PROUTY AS ORDERED, THE COURT MAY FIND HER TO BE IN CONTEMPT OF COURT AND ORDER HER TO BE INCARCERATED UNTIL SHE PURGES HERSELF OF THE CONTEMPT.

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 / HONORABLE JAY M. POLK

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>.