June 2018
STATE BAR OF ARIZONA, FAMILY LAW SECTION, EXECUTIVE COUNCIL
CASE LAW UPDATE

This update contains summaries of 2 reported opinions and 11 memorandum decisions for cases decided in June 2018.

Arizona Supreme Court and Court of Appeals (Divisions 1 and 2) Opinions and Memoranda Decisions may be accessed at: http://apps.supremecourt.az.gov/aacc/default.htm

This update has been prepared by the Case Law Update sub-committee of the State Bar of Arizona Family Law Section, Executive Council, Timea R. Hanratty (Chair).

REPORTED OPINIONS

In Re the Marriage of Cotter & Podhorez, 2 CA-CV 2017-0159 (6/21/2018).
Spousal Maintenance; Equalization Payment. Affirmed orders regarding equalization payment and attorneys' fees. Reversed trial court's order deeming Wife ineligible for spousal maintenance and remanded for reconsideration of spousal maintenance.

Wife appealed the trial court's determination that she was not eligible for spousal maintenance (and other issues not addressed). The parties were married in 1993 and Wife only worked part time while receiving social security disability. At the time of trial Husband was also receiving short term disability and it was unknown when he would return to work. Wife was denied spousal maintenance at trial, with the court stating she had not established a statutory basis for an award. Wife's eligibility pursuant to A.R.S. § 25-319(A) was the only issue on appeal.

The Court addressed the meaning of "sufficient property" pursuant to 25-319(A) and the opinions of *Deatheridge* (a spouse may need to convert non-income-producing property into income-producing-property) and *Wineinger* (sufficient property is of such value that the spouse would be unlikely to exhaust it in his or her lifetime) and concluded that for the purpose of 25-329(A)(1), adequate or necessary property is that which "means capable of independently providing for a spouse's reasonable needs during his or her life" and "means property that, standing alone, can provide for a spouse's reasonable needs during his or her lifetime."

Friedman v. Roels, Jr. et al., CV-17-0225-PR (6/8/2018).
Third-Party Visitation; Special Weight; Best Interests. Vacated Court of Appeals' opinion and affirmed family court's grandparent visitation orders, which the family court found to be in the best interest of the child.

Both parents had parenting time of the minor children, although Mother had sole legal decision-making. Paternal grandparents had almost no access after divorce due to Mother's resistance. Grandparents filed a petition for visitation under A.R.S. § 25-409(C). The trial court gave

deference to Mother's opinion as "special weight" that grandparents should not have visitation, and applied a rebuttable presumption that Mother acted in the children's best interests, but the court found that visitation was in the children's best interests applying the factors in § 25-409.

The Supreme Court reasoned that although § 25-409 provides that parents' opinion should be given "special weight," that term is not defined although the Court assumed it was similar to that same phrase as used by the United States Supreme Court in *Troxel v. Granville,* 530 U.S. 57 (2000) (plurality). However, the Court did not need to define the contours of "special weight" because here two legal parents had opposite opinions, and thus giving each "special weight" essentially cancelled out any presumption in favor of any parent. The grandparents need only show that visitation was in the children's best interests. The Court also disapproved of a higher burden of proof for third-party visitation, previously established by *Goodman v. Forsen,* 239 Ariz. 110 (App. 2016), that a nonparent must prove the child's best interests will be substantially harmed absent judicial intervention. Accordingly, the Court held that when two legal parents disagree about third-party visitation and the child's best interests, neither parent is entitled to a presumption, and the court's finding controls on whether third-party visitation is in a child's best interests.

MEMORANDUM DECISIONS

Nicaise, Jr. v. Sundaram, 1 CA-CV 17-0334 FC (6/28/2018).
Attorneys' Fees; Excusable Neglect. Reversed order denying motion for leave to file attorneys' fees application and remanded to allow filing of fee application.

Trial court awarded attorneys' fees to Mother due to Father's unreasonable conduct and ordered deadline for her to file fee application. Mother's counsel failed to file fee application by deadline so filed a motion for leave to file the application, stating a paralegal incorrectly calendared the deadline and that Mother's counsel was hospitalized on the deadline and did not return to the office until seven days later. Without any reason other than Mother should have properly calendared the deadline, the trial court denied the motion and Mother's subsequent motion for reconsideration. On appeal, Mother argued trial court abused its discretion because the undisputed evidence showed that the failure to file the motion on time was due to excusable neglect. The Court of Appeals agree, finding the trial court did not apply the proper standard and abused its discretion.

Pyle v. Bennett, 2 CA-CV 2017-0179 (6/27/2018).
Grandparent Visitation. Affirmed, upholding trial court's ruling granting grandparent visitation.

*Case was pending on appeal when *Friedman & Roels* was decided by the Arizona Supreme Court.

Bennett and Pyle are the unmarried parents of a child. Bennett was awarded primary care of the child and Pyle was awarded parenting time supervised by his mother, Vogel. Vogel had visitation with the child while Pyle was attending school in California, until she had a dispute with Pyle. Vogel then filed a petition for grandparent visitation, requesting visitation at the times Pyle would otherwise have exercised parenting time (including 2 days a week at her home).

Bennett moved to dismiss the petition, and filed a petition for modification of legal decision making and parenting time and a request for relocation to South Carolina. Bennett requested supervised visits twice per month for two to three hours a time for Vogel by Facetime/Skype and supervised visitation in South Carolina.

Pyle did not appear at trial. The Court issued a preliminary oral ruling that Vogel would exercise visitation twice a week for 3 hours a time. Pyle resided with Vogel by the time of the trial. Before trial, Pyle submitted a pretrial statement indicating Vogel had established a close bond with the child and the trial ruling noted that Pyle favored his mother's continued interaction with the child during his absence. Trial court found that Vogel rebutted the presumption that Bennett was a fit parent and also found that Bennett's position regarding visitation was not in the best interest of the child, though it did give her position "some special weight." Because *Friedman & Roels* had not yet been decided, the trial court further noted that no prior case gave any guidance for a situation like this one where two potentially fit parents disagreed on grandparent visitation, but concluded that in such situations each parent's opinion should be given equal weight and further concluded terminating grandparent visitation would be contrary to the child's best interests.

Bennett appealed trial court's order granting Vogel visitation with the child. On appeal, Bennett argued the trial court should have given her position greater deference as a fit parent and denied that her position was diametrically opposed to Pyle's. The appellate court noted that pursuant to *Friedman & Roels,* when two legal parents disagree about visitation, both parent's wishes are granted special weight but neither is entitled to a presumption in his or her favor, instead requiring the trial court to consider foremost what is in the best interest of the child. The Court further noted the evidence supported a position that Pyle supported the visitation while Bennett was opposed to it. Upon a best interests analysis the court determined continued contact was appropriate.

Bennett also argued that the trial court abused its discretion in not adjusting the orders once Pyle was back in Arizona. To the contrary, the court noted his anticipated return and per A.R.S. § 25-409(F), the visitation for Vogel would occur during Pyle's regularly scheduled parenting time.

Greene v. Sawicki II, 1 CA-CV 17-0007 FC (6/26/2018).

UCCJEA. Reversed family court's order declining to exercise jurisdiction based on more appropriate forum.

Family court entered parties' parenting plan, which awarded Mother final decision-making authority and equal parenting time in 2008. In 2010, Mother moved to Illinois with the children and Father followed, even living with Mother and the children. In 2011, the parties stipulated to joint custody and a parenting time schedule, which provided that neither would move with the children more than 50 miles from their residence absent court order or written consent of the other parent. In 2012, Mother unilaterally moved back to Arizona with the children. Father filed a court action. The trial court found that both parties had committed DV against each other, but reaffirmed joint legal custody, ordered Mother to return to Illinois, and ordered a parenting time schedule.

In 2014, Mother still had not returned to Illinois, so she filed a petition to permit relocation, which the court denied. Mother and the children returned to Illinois in 2016 and moved in with Father. Mother then returned to Arizona alone. Thereafter, Mother obtained an OOP against Father, obtained an order for parenting time in Arizona, and Father filed a modification action in Illinois.

The Arizona and Illinois courts held a UCCJEA conference in November. Mother was not sworn, but described the DV Father had committed, which caused her to have to remain in Arizona. The Illinois Court found that the children's home state was now Illinois and Mother would have to appear in-person for hearings. The Arizona Court concluded that Illinois had jurisdiction under A.R.S. § 25-1037 (inconvenient forum), but did not make findings on the record, despite Mother's request to know what factors weighed in Arizona's favor, or in the minute entry. Mother appealed.

Court of Appeals held that under A.R.S. § 25-1037, the family court was required to consider domestic violence. Here, the family court was presented with disputed allegations of domestic violence, but took no evidence to resolve the dispute, which was error. The parties must have been given the opportunity to present facts and legal argument before a decision on jurisdiction was made pursuant to A.R.S. § 25-1010(B). Doing so ensures due process. And when the parties dispute relevant facts, the dispute must necessarily be resolved through an evidentiary hearing. The family court here abused its discretion by failing to hold an evidentiary hearing. Therefore, the Court of Appeals reversed because the record was inadequate to justify the court's decision to decline jurisdiction.

Ezell v. Tapia, 1 CA-CV 16-0411-FC (6/21/2018).

Marital Presumption of Paternity. Reversed trial court's order regarding lack of paternity and remanded for further proceedings consistent with the decision in *McLaughlin v. Jones*.

Ezell filed a petition for dissolution of marriage seeking recognition of her parentage of the child born to Tapia during the parties' same sex marriage. The trial court found that the marital presumption did not apply to Ezell because she is not a man and, therefore, Tapia rebutted the presumption of paternity. Ezell appealed and the appeal was stayed pending Arizona Supreme Court review in *McLaughlin*. Subsequent to the Arizona Supreme Court decision in *McLaughlin*, the court released the stay. The Court of Appeals reversed the trial court's orders and remanded for the trial court to consider the applicability of equitable estoppel in light of *McLaughlin*.

Morrow v. Morrow, 1 CA-CV 17-0658 FC (6/19/2018).

Modification of Spousal Maintenance; Arrears; Equitable Defenses of Waiver and Estoppel; Motion for New Trial. Affirmed trial court's orders denying motion for new trial and regarding downward modification and arrears through the filing date of the contempt petition, but remanded for determination of arrears thereafter.

Wife worked during the marriage and made approximately $117,434 gross the year prior to the entry of the divorce. Husband had a Bachelor's and Master's Degree, but had not worked since

2001 due to a serious car accident in 2000. He was denied social security disability in 2006. The parties had two adult children as of 2012. Wife was ordered to pay Husband $2,000 for temporary spousal maintenance and $4,000 as permanent spousal maintenance to Husband for an indefinite term as the family court found Husband was unlikely to achieve financial independence.

After both parties appealed, Husband told Wife he had told his attorney to put spousal payments "on hold" and he was going to "hold off" on seeking to collect his spousal maintenance award. Neither party pursued their appeals and both were dismissed in 2014. In 2016, Husband asked for money and raised the issue of alimony to Wife, but did not request back pay or maintenance going forward. Wife paid him $2,500. In 2017, Husband filed a contempt petition seeking judgment for $156,000 in unpaid support. Wife responded and filed a counter-petition for modification. In her response, Wife argued that Husband had been working since shortly after the divorce and raised affirmative defenses (waiver, laches, fraud, unclean hands, and estoppel).

The family court denied Husband's request to find Wife in contempt and found that Wife established waiver and estoppel on any maintenance arrearages by clear and compelling evidence. The court reduced spousal maintenance to $0 and awarded Wife a portion of her fees based on Husband's unreasonableness. Husband appealed and later, filed a motion for new trial related to arrearages, the modification, and the award of fees (but he failed to present any arguments concerning the attorneys' fee award on appeal). The family court denied Husband's motion for new trial and awarded Wife $1,000 for her fees after Husband objected to her Fee Application. Husband amended his notice of appeal to include the denial of the motion for new trial.

The Court of Appeals held the family court did not err in ruling that Husband was not entitled to arrears because Wife proved by clear and compelling evidence her equitable defenses of waiver and estoppel. The Court distinguished *Ray v. Mangum*, on which Husband relied, and instead analogized *Cordova*, as the facts were more on point. The Court found that Husband's statements that spousal maintenance was "on hold" coupled with his inaction to commence collection efforts for many years was clear and compelling evidence of his admission of waiver of his spousal maintenance award. Husband's waiver was, however, revoked upon the filing his contempt petition so the Court remanded for determination of the arrears from that point.

Regarding estoppel, Husband argued that Wife unjustifiably relied on his verbal promise to forego spousal maintenance because she and her attorney "knew and understood the necessity of formalizing their agreement." The Court distinguished the case Husband cited because it was a child support case and child support has different policy considerations than spousal maintenance, among other distinguishing characteristics. The Court of Appeals found that Wife was injured in relying on Husband's statements regarding the "hold" because she forever lost the ability to have a higher court review the spousal maintenance award. The Court affirmed the family court's order, but held that Husband is estopped from asserting a claim for spousal maintenance arrearages only from the time he waived the maintenance obligation until he filed his contempt petition.

As for the downward modification, the Court of Appeals held the family court did not abuse its discretion because the family court considered all of the -319(B) factors and concluded that the appropriate amount would be $0.00 based on those factors. Nor did the family court abuse its discretion in denying Husband's motion for new trial as waiver and estoppel were proven and there were substantial and continuing changed circumstances warranting modification.

Torres v. Miramontes, 1 CA-CV 17-0472 FC (6/19/2018).
Property Division; Disclaimer Deed. Affirmed trial court's orders regarding real property.

Parties were married in 2007 and divorced in 2016. Husband presented as evidence a disclaimer deed Wife signed regarding the Solano property, which was purchased during the marriage and the down payment paid with Husband's sole and separate property, which Wife disputed. Wife admitted she signed the disclaimer deed, but only because she was an undocumented immigrant Regarding the 87th Avenue property, which was also purchased during the marriage, Wife testified there was an $8,000 outstanding debt on the property resulting from a loan made by Wife's parents so the property should be awarded to her because that is what the parties intended. The family court awarded Solano property to Husband as his sole and separate property and ordered the 87th Avenue property be sold with net proceeds divided equally between the parties. Wife appealed.

On appeal, Wife argued that the trial court erred by ignoring her explanation about the motivation for signing the disclaimer deed; she had believed that her immigration status precluded her from being on the title and loan documents. The Court of Appeals disagreed, citing *Bell-Kilbourn*, as the reasons behind Wife's decision to sign the disclaimer deed do not alter the character of the property as Husband's separate property at the time of acquisition. Regarding the 87th Avenue property, the Court of Appeals held the family court did not err in ordering it be sold with the proceeds divided equally because Wife presented no evidence to overcome the community property presumption.

Jasso v. Jasso, 1 CA-CV 17-0385 FC (6/19/2018).
Real Property Division; Quitclaim Deed; Default; Estoppel. Affirmed trial court's orders regarding division of real property granting home to Husband despite having signed quitclaim deed after default became effective, but before entry of default decree.

Parties had two community property homes. Wife requested in her Petition for Dissolution that she be awarded one and Husband be awarded the other. Wife then filed for default and default became effective. The following month, Husband signed a quitclaim deed conveying to Wife the home that Wife asked be awarded to him. A few days later, the court issued the default decree, which awarded Husband the home he had just quitclaimed to Wife. Four years later, Husband filed a petition to enforce, requesting that Wife sign quitclaim deed for the home that was awarded to him in the default decree. In her response, Wife asked the court to confirm the quitclaim deed Husband had executed to Wife and confirm that she is the owner of that home.

At trial, Wife argued equitable estoppel and estoppel by deed applied and Husband's relief should be denied. The family court granted Husband's petition ordering that Husband should be awarded the home awarded to him in the default decree and that the parties execute a new deed in accordance with the court's ruling. The family court also ordered the parties to refinance both homes so that neither party was responsible for the mortgage on the other party's home. The family court did not, however, address Wife's estoppel arguments.

Wife moved for a new trial, arguing the family court did not address her estoppel argument and improperly ordered her to refinance the homes. The family court only rescinded the order that the parties refinance the homes. In its ruling, the family court stated that its silence as to estoppel meant it did not apply to the facts of this case because Wife prepared and entered her own default decree awarding the house to Husband and she did not seek any remedies under the ARFLP nor appeal the default decree. The family court further reasoned that equitable estoppel may have applied if despite the Default Decree Husband signed a quit claim deed after the Default Decree. Instead, it was signed three days before the Default Decree was entered. As such, the family court found that neither equitable estoppel nor estoppel by deed applied. Wife appealed.

The Court of Appeals essentially dismissed Wife's arguments on appeal and upheld the family court's rulings because Wife did not address the family court's conclusion that the decree controls the disposition of property or the finding that Wife failed to seek remedies under ARFLP 83 and 85 after submitting the decree ultimately entered by the court. Nor did Wife make any attempt to address the impact of these conclusions or findings on her estoppel theories. The Court of Appeals, therefore, found Wife's arguments in this regard are deemed waived and abandoned and even if the family court applied the incorrect legal standards for equitable estoppel and estoppel by deed, or erred in analyzing these two defenses, the court properly granted Husband's petition to enforce and denied Wife's motion for new trial based on the aforementioned unchallenged grounds.

Anthony v. Anthony, 1 CA-CV 17-0384 FC (6/12/2018).
Domicile; UCCJEA. Affirmed trial court's Decree and orders regarding jurisdiction.

The parties are Native American and lived in Arizona, New Mexico, and Texas during their marriage. From 2013 to the beginning of 2014, the parties and child lived on the Navajo reservation, but in January 2014, they moved to Texas. In April 2014, Mother and child returned to Arizona. In September 2014, Father filed for divorce in Apache County. Father listed his address as Texas and Mother's address as Sanders, Arizona. The family court requested the parties to submit memoranda on child custody jurisdiction and a hearing was set for July 2015.

At the July 2015 child custody hearing, the family court found Mother had tried to intentionally mislead the court by exaggerating certain allegations and found the child had not lived with her in Arizona, but instead with her mother in New Mexico. The family court granted Father legal decision-making and primary custodial parent status. The family court denied Mother's post-trial motions and Mother petitioned for special action. The Court of Appeals mandated that the family court hold a hearing to make specific findings on jurisdiction. Meanwhile, the month after the

child custody hearing, Mother submitted a petition for child custody to the Navajo Nation court, which entered a default judgment, and awarded Mother sole legal and physical custody of the child. The Navajo Nation court additionally found it had "home state" jurisdiction over child custody because the child had been living in New Mexico, on the Navajo reservation, from August 2015 through the date of the judgment. Mother tried to register the Navajo court order, but the Arizona family court denied her request as it had already decided the issue of child custody.

The family court hearing on jurisdiction occurred in November 2015. Mother's testimony regarding the child's location was found to not be credible and the family court found that neither Arizona nor the Navajo Nation had home state jurisdiction because the child had lived in Texas, with the intention to remain, within the six months before Father filed the petition. Mother did not provide any evidence that her home in Sanders was on the reservation. The family court found Mother's attempt to seek a custody order from the Navajo Nation was forum shopping. The family court further found that the child had the most significant connection to Arizona and entered the Decree in April 2017. Mother moved for new trial, which was denied. Mother appealed the family court's jurisdiction to enter the Decree and determine the issue of child custody.

The Court of Appeals disagreed with Mother's argument that the family court had to expressly state she was domiciled in Arizona so long as sufficient evidence supports a finding of domicile, which it did. The Court agreed with the family court's analysis and conclusion that Mother and the child had significant connections to Arizona. The Court of Appeals found that even if Mother's home was on the reservation, it would not affect the analysis because the child would have had to live on the Navajo Nation from March 2014 onwards to establish six consecutive months of physical presence by the time Father filed his petition in September 2014, and Mother's own testimony refuted any such conclusion. The Court reasoned that although the Navajo Court could have concluded Mother and the child also had a significant connection with the reservation, its jurisdiction would have been concurrent with, not exclusive to the state court.

Williams v. Stapley-Williams, 1 CA-CV 17-0520 FC (6/7/2018).

UPAA; Allocation of Sales Proceeds; Trial Time/Due Process; Attorneys' Fees. Affirmed trial court's orders upholding premarital agreement and the decree and the award of attorneys' fees.

Facts

Wife was first presented with the parties' premarital agreement two months before their wedding date, but it was not signed until the wedding day in 2003. Per the premarital agreement:

- The parties agreed to retain all property then owned or later acquired as separate property and abrogated community property except as to any salaries earned after marriage.
- Wife would receive $3,000 per month in spousal maintenance for thirty-six months, if the parties were married for at least three years.
- Both parties acknowledged "full financial disclosure" by the other party and waived additional disclosure.

- Both parties agreed they were entering into the agreement "freely, voluntarily and with full knowledge."
- The agreement stated who Husband's attorney was, but listed no attorney as representing Wife (testimony at trial revealed Husband encouraged her to consult an attorney).

The schedules attached to the agreement were blank at the time of signing and were not completed when the parties signed the premarital agreement; rather, Husband testified that he disclosed his assets to Wife throughout the period they dated when he took her to the various properties he owned and told her the value of each. Husband did not provide Wife with tax returns or bank statements before the premarital agreement was signed.

The year after the wedding, Husband purchased a condo for his adult son's use. Before closing, Wife signed a disclaimer deed. After closing, Husband signed a warranty deed conveying the property as CPROS. Four years later, an "Agreement to Sell and Buy Certain Rights and Interests" was entered. The condo sold in 2015.

At a hearing on Husband's Motion for Summary Judgment, the parties' testimony regarding duress and voluntariness contradicted each other. Wife also argued the premarital agreement was unconscionable. The family court ruled Wife had failed to establish the premarital agreement was involuntary or unconscionable, and that any defects were cured when Wife signed the subsequent 2008 Agreement, which the court also upheld as valid. The family court also found Wife had at least some actual disclosure and/or constructive knowledge of Husband's property provided during the 2.5 year courtship, and waived in writing her right to additional full disclosure.

At trial, the parties disputed the allocation of sale proceeds from the condo. In rejecting Wife's Statute of Frauds argument, the superior court concluded the parties and Husband's son had an oral agreement that Husband would pay the down payment, his son would make all remaining payments and would own the condo when he paid off the mortgage. The court also found this to be one of the rare cases where an equal allocation of the community sale proceeds would not be equitable, and awarded the remaining proceeds to Husband. Citing both the prevailing party standard in the premarital agreement and A.R.S. § 25-324, the family court also awarded $40,000 in fees to Husband, finding Wife to have been unreasonable. The family court also denied Wife's request for fees, finding Husband was not unreasonable and the financial disparity "was not so great as to merit an award of fees and costs." Wife appealed the trial court's rulings.

Voluntariness: The Court of Appeals reiterated that it does not reweigh conflicting evidence and defers to the superior court's findings if reasonable evidence supports them. The Court did not find the embarrassment Wife felt in having to postpone the wedding as evidence of duress or deprivation of her free will and judgment, especially when she had the agreement for two months prior thereto, during which she could have reviewed it, requested changes, and sought legal counsel. The Court of Appeals held that when a premarital agreement is first presented and discussed is but one consideration in determining the voluntariness of the premarital agreement.

Unconscionability: The Court of Appeals disposed of this issue by first addressing the disclosure requirements, which allowed the Court to bypass the procedural and substantive unconscionability questions. The Court of Appeals reasoned that Wife expressly waived additional disclosure and acknowledged Husband acquainted her with his means. Therefore, the premarital agreement was valid and enforceable. Had the additional disclosure waiver not existed in the premarital agreement, the Court of Appeals noted that Husband's partial, verbal disclosures of his assets would have been inadequate under Arizona's UPAA.

Condominium Sale Proceeds: The Court of Appeals did not need to decide whether there was an enforceable "contract" to transfer ownership of the condominium to the son or whether the part performance exception applied. Instead, it affirmed the award as an equitable property allocation under the circumstances, citing *Toth*, because the sales proceeds were not the result of any community effort and instead were the result of the son making the mortgage payments for 11 years and the down payment. Other home improvements were paid for by either Husband from his separate property or by the son. As with the wife in *Toth*, Wife made no contribution to the condominium. The superior court could not award the sale proceeds to the son after he withdrew his motion to intervene. However, the son assigned his interests to Husband. Therefore, it was equitable to award the remaining proceeds to Husband, as the son's assignee.

Attorneys' Fees: The express findings of the court concerning Wife's unreasonable positions and the sufficiency of her financial resources more than adequately support an award of fees to Husband pursuant to A.R.S. § 25-324, and on that basis, the Court of Appeals affirmed that award.

Trial Time Limitations: Most of the evidence Wife mentioned in her offer of proof related to the unconscionability and disclosure elements. The Court of Appeals ruled that the superior court properly upheld the premarital agreement based on Wife's waiver of any additional financial disclosure beyond that already provided by Husband. Therefore, any additional evidence offered by Wife does not impact that finding; accordingly, the Court of Appeals held that Wife was not prejudiced by the court's denial of additional time.

Jurgens v. Jurgens, 1 CA-CV 17-0492-FC (6/5/2018).

Relocation. Affirmed trial court's order denying motion to dismiss petition to prevent relocation filed outside of time limits prescribed by A.R.S. § 25-408(C).

Married couple lived in Yuma for at least 12 years, and at time of divorce had an infant. They divorced in 2015 and shared legal decision-making and parenting time there until 2017, when Mother refused to sign a renewal letter for her employment and accepted a job in Phoenix. Father filed a petition to prevent relocation, and Mother eventually served a notice of intent to relocate under A.R.S. § 25-408(A)-(B). Father did not serve his petition until after the deadline to respond to the Notice of Intent. The trial court denied Mother's motion to dismiss, which argued the petition was premature because it was filed before her Notice of Intent, and the petition was served too late after her Notice of Intent. The trial court held an evidentiary hearing, heard testimony favoring both parents, and eventually ruled in Father's favor.

Court of appeals held that Father substantially complied with the procedural requirements of A.R.S. § 25-408(C) and had good cause for late service, and there was no prejudice to Mother as to late service because she had sufficient time to find counsel and knew of Father's early petition before her Notice of Intent. The statutory scheme explicitly contemplates late filed petitions to be granted upon good cause, and the court refused to "exalt form over substance."

Doe v. Bernal, 2 CA-CV 2017-0206 (6/1/2018).
Order of Protection. Affirmed trial court's order upholding OOP.

Bernal contends the court abused its discretion in continuing an ex-parte order of protection after an evidentiary hearing. The parties had a 2-year relationship. At the hearing, Doe testified to several acts of domestic violence (pushing, restraining, screaming at her) and she stated she feared his violent tendencies and explosive behavior. Bernal denied any acts of domestic violence, and, at the hearing, claimed Doe's testimony was not credible and that she had failed to testify that their relationship was romantic or sexual or that she had proved any acts of domestic violence.

The court upheld the order of protection finding sufficient evidence to support the finding that Doe had proved her case by a preponderance of the evidence based on testimony supporting harassment and disorderly conduct. The court also confirmed sufficient evidence that the parties had a sexual or romantic relationship. The fact that Bernal did not prevail was also sufficient to deny his request for an award of fees.