

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-052893

12/14/2021

HONORABLE ALISON BACHUS

CLERK OF THE COURT
C. Lett
Deputy

LAURA OWENS

LAURA OWENS
11440 N 69TH ST
SCOTTDALE AZ 85254

v.

GREGORY GILLESPIE

KACI YOUNG BOWMAN

JUDGE BACHUS

MINUTE ENTRY

Pending before the Court are the following motions, which are now ripe for disposition: (1) Defendant's Motion to Dismiss, filed September 24, 2021; (2) Plaintiff's Motion to Seal Court Records, filed September 24, 2021; (3) Defendant's Motion to Strike Petitioner's "Declaration of Fraud, Perjury, Impersonation, Extortion, and Additional Illegal Actions taken by the Defendant and His Counsel," filed October 7, 2021; and (4) Plaintiff's Motion to Modify Date of Service, filed October 13, 2021. After considering these filings, the Court has concluded that the issues presented have been fully briefed and oral argument will not assist a decision. *See* Maricopa Cty. Loc. R. 3.2(d).

After considering the filings and applicable law and rules, the Court addresses each of the motions in turn:

Defendant's Motion to Dismiss, filed September 24, 2021

First, the Court observes that Defendant failed to comply with Rule 12(j) of the Arizona Rules of Civil Procedure, which requires that a good faith consultation certificate be filed with a motion to dismiss brought under Rule 12(b)(6). On that basis alone (assuming the motion was

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timely-filed), the motion would be rejected. Furthermore, the motion fails on its merits. A motion to dismiss is not a procedure for resolving disputes about the facts or merits of a case. *Coleman v. City of Mesa*, 230 Ariz. 352, 363 (2012). Instead, the narrow question presented by a motion to dismiss for failure to state a claim is whether facts alleged in a complaint are sufficient “to warrant allowing the [plaintiff] to attempt to prove [its] case.” *Id.* “Arizona follows a notice pleading standard.” *Id.* at 356 (quoting *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008)). The purpose of a complaint is to “give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved.” *Cullen*, 218 Ariz. at 419 (quoting *Mackey v. Spangler*, 81 Ariz. 113, 115 (1956)). Dismissal on a 12(b)(6) motion is permitted only when a “plaintiff[] would not be entitled to relief under *any interpretation of the facts* susceptible of proof.” *Fid. Sec. Life Ins. Co. v. State Dep’t of Ins.*, 191 Ariz. 222, 224 (1998) (emphasis added). Moreover, a motion to dismiss requires a court to accept all material facts alleged by the nonmoving party as true [*Acker v. CSO Chevira*, 188 Ariz. 252, 255 (App. 1997) (citing *Lakin Cattle Co. v. Engelthaler*, 101 Ariz. 282, 284 (1966))], view those facts “in the light most favorable to the nonmoving party” [*Mirchandani v. BMO Harris Bank, N.A.*, 235 Ariz. 68, 69, (App. 2014)], and “indulge [the nonmoving party] all reasonable inferences” that the pleaded facts permit [*Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. at 419].

Therefore, in ruling on a Rule 12(b)(6) motion to dismiss, the Court will “assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom.” *Cullen*, 218 Ariz. at 419. The Court may grant the motion only if the plaintiff is not entitled to relief “under any facts susceptible of proof in the statement of the claim.” *ELM Ret. Ctr., LP v. Callaway*, 226 Ariz. 287, 289 (App. 2010) (quoting *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346 (1996)). The Court will not “speculate about hypothetical facts that might entitle the plaintiff to relief.” *Cullen*, 218 Ariz. at 420. Nor will the Court “accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts.” *Jeter v. Mayo Clinic Ariz.*, 211 Ariz. 386, 389 (App. 2005).

In the case at bar, Defendant moves to dismiss the claims against him because Plaintiff was not actually pregnant with his child as she claimed in the Complaint, she fabricated documentation to support her false assertion that she was indeed pregnant, and she is motivated by her desire to resume a relationship with Defendant. Those bases, though, are typically found in a motion for summary judgment, rather than a motion to dismiss. When considering a motion to dismiss, the Court must assume the facts in the Complaint are true and view those facts in the light most favorable to Plaintiff, per the case law. Therefore, after assuming the facts are true and viewing them in the light most favorable to Plaintiff, the Court concludes that the Complaint states a claim upon which relief may be granted. Defendant vehemently argues that Plaintiff cannot carry her burden, but that question is for another day, not a motion to dismiss.

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Therefore, the Court will deny the motion to dismiss for the reasons stated above.¹

Plaintiff's Motion to Seal Court Records, filed September 24, 2021

Plaintiff moves to seal “court records in regards to this case due to the extremely private nature of the Complaint, which relates to abortion coercion.” She alleges that Defendant’s motion to dismiss contained “fraudulent charges that, if on public record, could destroy the Plaintiff’s credibility.” Defendant opposes the motion. Rule 5.4(c) of the Arizona Rules of Civil Procedure govern procedures for sealing court records and states in pertinent part:

(2) Requirements. Unless a statute, rule, or prior court order authorizes a document to be filed under seal, a court may order that a document may be filed under seal only if it finds in a written order that:

(A) an overriding interest exists that supports filing the document under seal and overcomes the right of public access to it;

(B) a substantial probability exists that the person seeking to file the document under seal (or another person) would be prejudiced if it is not filed under seal;

(C) the proposed restriction on public access to the document is no greater than necessary to preserve the confidentiality of the information subject to the overriding interest; and

(D) no reasonable, less restrictive alternative exists to preserve the confidentiality of the information subject to the overriding interest.

¹ The Court notes, however, that Plaintiff cited to the criminal domestic violence statute in her Complaint. To the extent that Plaintiff asserted a claim based solely on the criminal domestic violence statute, that claim would fail because “[t]he general rule is that ‘no private cause of action should be inferred based on a criminal statute where there is no indication whatsoever that the legislature intended to protect any special group by creating a private cause of action by a member of that group.’” *Ward v. Fireman's Fund Ins. Cos.*, 152 Ariz. 211, 216 (App. 1986) (affirming summary judgment in a civil claim that was based on a criminal statute and noting the criminal statute “does not contain any provision that can reasonably be construed as authorizing a private cause of action”), overruled in part on other grounds, *Transamerica Fin. Corp. v. Superior Ct.*, 158 Ariz. 115, 117, n. 1 (1988). However, the Complaint is not entirely clear if Plaintiff is asserting a claim based on that statute, or whether she is merely citing to it for some other purpose.

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(emphasis added).

After considering the Rules, applicable law, and the parties' filings, the Court concludes Plaintiff has not demonstrated good cause under Rule 5.4(c)(2). Finally, the Court notes that Plaintiff filed her Complaint, which included the allegation of "abortion coercion," as she has phrased it in the motion to seal, and she did not seek to seal at that time. Rather, it was only when Defendant filed his motion challenging Plaintiff's claims that Plaintiff sought to seal documents. Because Plaintiff did not carry her burden under Rule 5.4(c)(2), the motion to seal is denied.

Defendant's Motion to Strike Petitioner's "Declaration of Fraud, Perjury, Impersonation, Extortion, and Additional Illegal Actions taken by the Defendant and His Counsel," filed October 7, 2021

Pursuant to Rule 7.1 of the Arizona Rules of Civil Procedure, Defendant moves to strike Plaintiff's "Declaration of Fraud, Perjury, Impersonation, Extortion, and Additional Illegal Actions taken by the Defendant and His Counsel" that she filed on October 4, 2021. The motion will be granted, as good cause appears.

The Court recognizes that Plaintiff is self-represented, but the Court is required by Arizona law to hold Plaintiff to the same standard as a licensed attorney. Requests for relief must be made by motion, and filings such as the "Declaration" in question are improper.

Plaintiff's Motion to Modify Date of Service, filed October 13, 2021

In her motion, Plaintiff contends that defense counsel's paralegal e-mailed Plaintiff on September 23, 2021 "to notify [Plaintiff] that they were accepting service on [Defendant's] behalf." Plaintiff further contends that the first acceptance of service filed by Defendant reflected that date, September 23, 2021. Plaintiff goes on to state that Defendant then filed a second acceptance of service with the incorrect date of September 27, 2021. Plaintiff argues that the service date on file with this Court should be reflected as September 23, 2021.

At the outset, the Court notes that Plaintiff's month in her motion and reply appear incorrect. Plaintiff repeatedly states service occurred in September, but the docket shows the month in question was August 2021. The acceptance of service with which Plaintiff takes issue was reflected on docket as being filed August 27, 2021. It appearing to the Court that Plaintiff erroneously stated September 2021 when she intended to plead August 2021, the Court will therefore deem Plaintiff's motion to be requesting the correct date of service to be reflected as August 23, 2021.

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In response to the motion to modify, Defendant asserts the acceptance of service filed August 23, 2021 was correctly dated, but the document reflected Coconino County. Defendant states that the August 27, 2021 acceptance of service was filed only to ensure the correct county was also reflected.

Thus, the parties' filings demonstrate there is no dispute as to the service date for Defendant. The record will be ordered to reflect that Defendant was served by acceptance of service on August 23, 2021. Even with that date, however, the Court notes that default would not be entered in this case because Defendant has been actively litigating the matter. To proceed by default would not be in the interests of justice.

As a final note, the Court observes that this motion appears to be an example of an issue that could have been easily resolved with a simple e-mail between Plaintiff and opposing counsel, and a stipulation being filed to reflect the correct service date. In the future, the parties shall make attempts to confer with one another to determine if consensus may be reached before filing such motions. The parties are also reminded to abide by the Arizona Rules of Civil Procedure in all respects, including regarding timely filing of motions, proper form of motions, and good faith consultation certificates.

Conclusion

Based on the foregoing,

IT IS THEREFORE ORDERED denying Defendant's Motion to Dismiss, filed September 24, 2021. An Answer shall be filed no later than 20 days from the date this Order is entered by the Clerk.

IT IS FURTHER ORDERED denying Plaintiff's Motion to Seal Court Records, filed September 24, 2021.

IT IS FURTHER ORDERED granting Defendant's Motion to Strike Petitioner's "Declaration of Fraud, Perjury, Impersonation, Extortion, and Additional Illegal Actions taken by the Defendant and His Counsel," filed October 7, 2021. Plaintiff's "Declaration of Fraud, Perjury, Impersonation, Extortion, and Additional Illegal Actions taken by the Defendant and His Counsel," filed October 4, 2021, is stricken.

IT IS FURTHER ORDERED denying Plaintiff's Motion to Modify Date of Service, filed October 13, 2021. The record in this matter shall reflect that Defendant was served by acceptance of service on August 23, 2021.