Court of Appeals

STATE OF ARIZONA
DIVISION TWO

Laura Owens, Petitioner/Appellant, v. Clayton Echard, Respondent/Appellee.	Case No. 2 CA-CV 2024-0315 FC Maricopa County Superior Court Case No. FC2023-052114 Judge Julie A. Mata

APPELLANT'S REPLY BRIEF

David S. Gingras, #021097
Gingras Law Office, PLLC
4802 E. Ray Road, #23-271
Phoenix, AZ 85044
Tel.: (480) 264-1400
David@GingrasLaw.com
Attorney for Petitioner/Appellant
Laura Owens

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules/Statutes

I. PREFACE

Like any appeal, the primary focus *should be*: did the lower court commit any reversible legal errors? Sometimes the answer to that question depends heavily on a factual issue, and sometimes not.

This case involves complicated facts, and, without doubt, the record reflects *numerous* factual errors committed by the trial court. Indeed, the very first fact the trial court found — that Laura commenced this action on *May 20, 2023* — was wrong.[1]

But the trial court's minor mistake as to the filing date is not why we are here. Laura's Opening Brief made that clear: "plentiful and egregious factual mistakes notwithstanding, factual errors are not the primary focus here." Opening Brief (OB) at 2. That statement was, and is, still true.

At the same time, it is critically important for this Court to receive accurate information about the facts to help guide the Court's legal analysis. Unfortunately, Clayton's Answering Brief contains inaccurate statements about the record, some of which are highly inflammatory. Laura's Reply thus begins with some clarifying points to avoid confusion about the record.

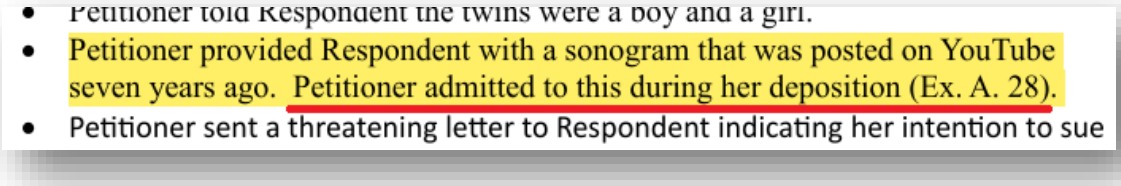
[1] The case was filed on August 1, 2023, not May 20, 2023. See ROA 1.

Laura's Opening Brief explained the trial court made multiple errors of fact: "Many of [the trial court's] findings are either directly contrary to the admitted evidence, or supported by no evidence of any kind." [OB at ep 15] (emphasis added). Despite this warning (which was not news to either side), in his discussion of the facts Clayton repeats numerous findings made by the trial court as if they are accurate and supported by the record, even when they plainly are not.

A few of the more serious examples:

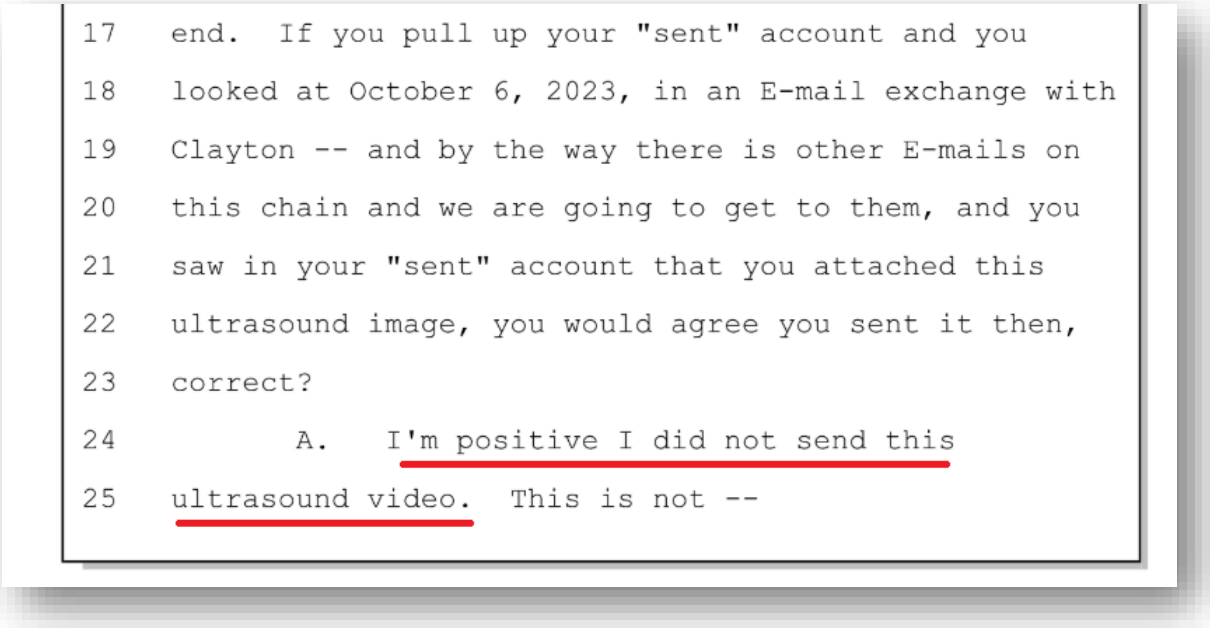
- **Laura "admitted" sending Clayton a sonogram video she copied from YouTube**

Clayton claims Laura ***admitted*** "to providing Clayton a seven-year-old sonogram video of twins she obtained online months earlier." AB at 39. As support, Clayton cites the under-advisement ruling (ROA 126, ep 12), and sure enough, it does contain that finding:


- Petitioner told Respondent the twins were a boy and a girl.
- Petitioner provided Respondent with a sonogram that was posted on YouTube seven years ago. Petitioner admitted to this during her deposition (Ex. A. 28).
- Petitioner sent a threatening letter to Respondent indicating her intention to sue

The UAR states Laura "*admitted to this during her deposition*". The UAR cites trial Exhibit A28 as support, but that exhibit was not admitted in evidence, and it was not Laura's deposition.

Worse yet, in her deposition (which *was* received in evidence as trial Exhibit B49), Laura did not admit to sending Clayton a sonogram video from YouTube. On the contrary, Laura flatly denied this allegation:

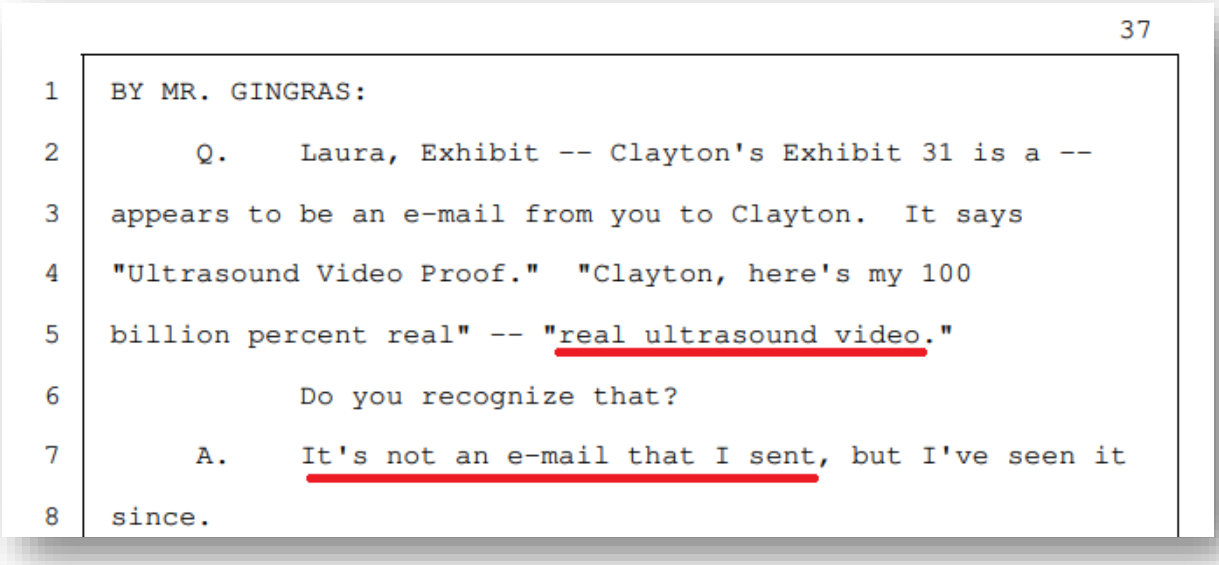


end. If you pull up your "sent" account and you looked at October 6, 2023, in an E-mail exchange with Clayton -- and by the way there is other E-mails on this chain and we are going to get to them, and you saw in your "sent" account that you attached this ultrasound image, you would agree you sent it then, correct?

A. I'm positive I did not send this ultrasound video. This is not --

Ex. B49 at 95:17–25.

Laura gave exactly the same response at trial:



37

BY MR. GINGRAS:

Q. Laura, Exhibit -- Clayton's Exhibit 31 is a -- appears to be an e-mail from you to Clayton. It says "Ultrasound Video Proof." "Clayton, here's my 100 billion percent real" -- "real ultrasound video."

Do you recognize that?

A. It's not an e-mail that I sent, but I've seen it since.

ROA 129 at ep 95.

In short, there not a shred of evidence in the record to show Laura admitted sending Clayton a sonogram video copied from YouTube. It is false to say Laura *admitted this in her deposition*. On the contrary, Laura *denied* this in her deposition, and she *denied* it again at trial.

- **Laura knew she was not pregnant when she filed this action because she did not allege sexual intercourse occurred in her original petition**

One of Clayton's central themes is that Laura *knew* she was not pregnant because "**only oral sex occurred.**" Clayton's brief repeats that story; "On May 20th, 2023, Laura performed 'oral sex' on Clayton." AB at 7. In a footnote to that sentence, Clayton further suggests, "Laura alleged there was nonconsensual sexual intercourse but this was 'not alleged initially in the court filings. It was not alleged until 2024.'" (emphasis added).

Laura's original petition, [ROA 1, ep 3] conclusively disproves this.[2]

☒ **SEXUAL INTERCOURSE:** Parties A and B were not living together but had sexual intercourse at the probable date(s) of conception of the minor child(ren). The mother of the minor children did not have sexual intercourse with anyone else during the periods in which the minor child(ren) could have been conceived.

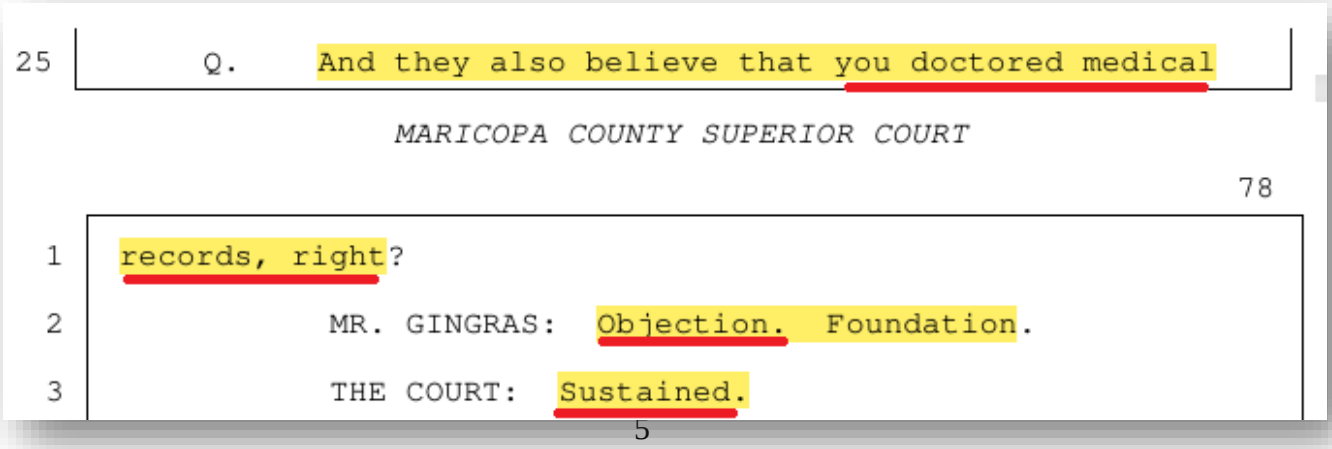
2 There was a *separate* dispute as to whether the intercourse was consensual, but Clayton does not frame the issue as limited to that question. Moreover, the alleged lack of consent was *not* new and was *not* raised only after Clayton sought sanctions; it was described in correspondence between the parties shortly after the case began. *See*, *e.g.*, [ROA 127; Ex. B9 (email from Laura sent Oct. 14, 2023)].

- **Multiple Other Men Believed Laura Fabricated Pregnancies And Doctored Medical Records**

One of the most harrowing examples of an inflammatory yet baseless "fact" offered by Clayton is this: "This was the fourth (4th) time [Laura] had tested positive for pregnancy in her lifetime. **All prior alleged fathers 'believed she fabricated the pregnancy and doctored medical records**.'" AB at 7–8 (emphasis added).

To support this shocking "fact", Clayton *quotes* from the UAR. And, once again, page 4 contains those exact findings. *See* [ROA 126 at ep 4]

What *admitted* trial evidence supported that finding? Absolutely nothing. Due to the extreme brevity of the June 10th evidentiary hearing, no other "prior alleged fathers" testified (just Clayton), nor was their testimony offered by others means (stipulation or deposition). In fact, the only *attempt* to support this allegation was a question which led to an objection that was sustained: ROA 129 at ep 77–78.



25 Q. And they also believe that you doctored medical

MARICOPA COUNTY SUPERIOR COURT

78

1 records, right?
2 MR. GINGRAS: Objection. Foundation.
3 THE COURT: Sustained.

The above examples are only a few instances of several inaccurate statements Clayton makes about the record below. To be clear about the *actual* facts in the record:

- **Laura *did not* admit sending someone else's sonogram video copied from YouTube (in her deposition or anywhere else);**
- **Laura *did not* file this paternity action without alleging sexual intercourse occurred or alleging that only oral sex occurred; and**
- **There was zero admitted trial evidence to show either that Laura fabricated a pregnancy in the past, or that other putative fathers believed she "doctored medical records".**

Of course, Laura recognizes the trial court found the above points were true, and she understands factual findings normally receive deference, except where (as here) they are clearly erroneous. *Gibbs v. Gibbs*, 227 Ariz. 403, 410 (App. 2011). It suffices to say the trial court's factual errors are *extensive*, and Clayton's discussion of the facts is misleading, at best.

But there is good news: resolving this appeal does *not* require reversing the trial court's factual errors. As such, this brief does *not* identify or explain every factual error. Because factual disputes have no effect on this appeal, this Court should not linger on them; it should just be aware Laura firmly disputes the accuracy of the record as discussed in Clayton's brief.

II. DISCUSSION

Turning to the merits, we begin with a subtle theme in Clayton's brief. While he never specifically says so, his position rests heavily on the old maxim; "equity will not suffer a wrong without a remedy." *Tumacacori Mission Land Dev., Ltd. v. Union Pac. R.R. Co.*, 231 Ariz. 517, 520 (App. 2013).

Clayton argues Laura's position is inequitable because, in his view, "the core issue is whether a person may … tamper with evidence and lie under oath … and [then] … opt out of the litigation consequence-free." AB at 6 (emphasis added). If ever there was a histrionic argument invoking the all-flexible power of equity, that's it.

But Clayton is wrong to suggest Laura will walk-away "consequence-free" if she prevails here. Putting aside the *devastating* reputational, emotional, and financial harm she has already suffered, in addition to the nearly $150,000 judgment, the trial court also referred Laura for investigation and potential criminal prosecution. The Maricopa County Attorney has not yet charged Laura with any crime, despite making public statements about her investigation. It is impossible to know *why* charges have not been filed. Whatever the reason, Clayton is wrong to say if Laura prevails, she will walk away without any consequences. Hardly.

Clayton also ignores another point — even assuming this Court orders the paternity case dismissed, that does not mean Clayton has no remedy. Indeed, while Clayton argues Arizona's Civil Rule 11 and Family Law 26 are materially different (i.e., *less* protective of litigants like Laura) than the federal version on which they are based, the comments to the 1993 revision of Fed. R. Civ. P. 11 are clear – the rule's safe harbor does *not* provide immunity from *civil liability* arising from litigation abuse; "it should be noted that Rule 11 does not preclude a party from initiating an independent action for malicious prosecution or abuse of process."

If Laura wins this appeal, Clayton *could* potentially still bring a separate civil action against her. While this option exists, it may be a bad idea – Clayton's trial counsel used a similar approach in an earlier case and lost.[3] Nevertheless, if Clayton wants more relief, other options exist.

This leads to a final point that is extremely important – it is clear what *really* happened in the case below: Clayton *tried* to litigate civil tort counterclaims against Laura in family court, but he forgot one key thing – the family court has no subject matter jurisdiction over tort claims.

---

3 *See* ROA 90 at ep 3 and ROA 93.

This is so because although Arizona family courts sit in equity, their jurisdiction is strictly defined, and constrained, by statute:

> Despite the application of equitable standards in a dissolution proceeding, it remains a statutory action, and the trial court has only such jurisdiction as is granted by statute …. Thus, Title 25 defines the boundaries of a dissolution court's jurisdiction, and the court may not exceed its jurisdiction even when exercising its equitable powers.

Weaver v. Weaver, 131 Ariz. 586 (Ariz. 1982); *see also* A.R.S. § 25-801 (giving family court limited jurisdiction to "to establish maternity or paternity.")

Once Laura informed the family court on December 28, 2023 that she was no longer pregnant [ROA 37], there was no paternity to establish. Nothing in Title 25 authorized the family court to exceed its limited jurisdiction by granting Clayton limitless, free-wheeling power to endlessly investigate and litigate civil tort claims in family court. Those claims belong in *civil*, not *family*, court. In any case, Clayton is simply wrong to suggest Laura winning this appeal means she walks away consequence-free.

A. Issue 1 - Rule 26

Laura's brief presented five questions for review. Clayton's response breaks each into multiple subparts. This reply will follow a similar format.

i. Laura Was Sanctioned Under Rule 26, But Even If She Was Not, The Safe Harbor Still Protects Her

Clayton begins by challenging the "centerpiece" of Laura's argument – i.e., that Clayton did not follow the requirements of Family Law Rule 26, so the award of sanctions under Rule 26 was improper. Clayton says this argument is misplaced because he thinks the trial court did not sanction Laura under Rule 26. Therefore, Clayton contends Laura's arguments about Rule 26 are moot.

Clayton's rebuttal echoes René Magritte's famous surrealist painting, *The Treachery of Images*. To make a point, Magritte absurdly painted a smoking pipe, then captioned the painting with the famous line: "*Ceci n'est pas une pipe*" (*This is not a pipe*). It's a painting *of a pipe*, with a caption that reads: "*This is not a pipe*." Get it?

Much like Magritte's painting, Clayton's Rule 26 argument is equal parts surreal and absurd. *Of course* the trial court sanctioned Laura under Rule 26. Putting aside the fact that Clayton filed *only* a Rule 26 Motion for Sanctions (and *no other motions for fees or sanctions*), the UAR specifically cited Rule 26 as a proper basis for sanctions [ROA 126 at ep 14–16]. Furthermore, the June 10th hearing was set in response to Clayton's Rule 26 motion. [ROA 63; 2/1/2024 setting evidentiary hearing, "regarding the issue of sanctions and attorney's fees …."].

At the time the evidentiary hearing was set, Clayton's Rule 26 motion was the *only* pending motion in which sanctions or fees were requested. As Laura has noted many times, the Rules of Family Law Procedure require parties seeking relief to bring a *motion* for relief. *See* Ariz. R. Fam. L.P. 35(a)(1) (explaining, "A party must request a court order in a pending action by motion, unless otherwise provided by these rules.") Expressing a desire for fees in a response to a petition or verbally at a hearing is not sufficient; a *motion* is required, yet the only fee-seeking motion Clayton ever filed sought fees *only* based on Rule 26.

Since Clayton brought a motion for sanctions under Rule 26, and did not bring any motions for fees under any other authority, the trial court