ARIZONA COURT OF APPEALS

DIVISION ONE

In Re the Matter of: KATHLEEN MARIE BALL, Petitioner/Appellee, v. SHAWN ALLEN BALL, Respondent/Appellant.	Court of Appeals Division One No. 1 CA-CV-19-0787 FC Maricopa County Superior Court No. FC2017-096436

RESPONDENT/APPELLANT'S COMBINED REPLY BRIEF AND SUPPLEMENTAL APPENDIX

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INTRODUCTION*

Ignoring the trial court's actual framing of this dispute as a substantive "battle of the religious experts" to determine "what is or is not within the definition of Christianity," Mother now attempts to reframe the case as solely a matter of divining the Parties' subjective understanding of the Parenting Plan. Mother's diversionary effort cannot be squared with the facts or law for at least two, fundamental reasons.

First, words matter. The language of the Parenting Plan is plain and unambiguous on its face. No amount of lexical incantations, sprinkled with "this is what I really meant," can reasonably conjure up Mother's proposed interpretation from the language of the Parenting Plan. Mother's interpretation can only be achieved by rewriting the relevant provisions to say essentially the opposite of what they plainly state. (*See* § I.A, *infra*.)

Second, the Parenting Plan is not a contractual agreement between Mother and Father; it is part of the divorce decree—a judgment of the court that must be "interpreted as a matter of law without parol evidence" and

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* Selected record items cited are included in the Supplemental Appendix attached to the end of this brief, cited by page numbers (e.g., SAPP001), which also match the PDF page numbers and function as clickable links.

regardless of any "negotiated intent of the parties." *Merrill v. Merrill*, 230 Ariz. 369, 374, ¶ 14 (App. 2012); *In re Marriage of Zale*, 193 Ariz. 246, 249, ¶ 11 (1999). Thus, Mother's (or Father's) subjective understanding or intent is irrelevant. (*See* § I.B.1-2, *infra*.) Nor would an analysis of intent help Mother's argument because: (a) the rules of construction—including those advanced by Mother—firmly support Father's plain-language interpretation (*see* § I.B.3, *infra*.), and (b) even if the Parties subjectively "intended" an agreement to attend only "Christian" churches, the trial court erred in excluding Father's church, based on the ordinary, secular definition of "Christianity." (*See* § I.C, *infra*.)

Most important, interpreting the Parenting Plan in accordance with its plain and ordinary meaning avoids entangling the Court in a constitutionally impermissible ecclesiastical debate. Unfortunately, the trial court improperly allowed itself to be drawn into that thicket when it made itself the arbiter of what is Christianity and issued a government-sponsored declaration: that "the Christian faith … does not include Mormonism"; that Father's faith "is a separate and distinct religion from Christianity"; and that Father's beliefs "do[] not fall within the confines of the Christian faith"—despite Father's sworn testimony affirming that "Jesus Christ is the center

point of my faith" in a church that "bears [Christ's] name." Such governmental intrusion into core issues of religious dogma is anathema to the fundamental protections afforded under the First Amendment and Arizona Constitution. (*See* § II.A-B, *infra*.)

Similarly, unsupported is Mother's post-hoc suggestion that the trial court's ruling was somehow intended to protect the children against harm so grave as to justify overriding constitutional protections and fundamental parental rights. The trial court expressed no such concern in its analysis or ruling. To the contrary, the trial court openly questioned why the teenage children should not simply "learn about all sorts of religions and then when they are 18 they can decide what they want to do." Tellingly, Mother's response likewise had nothing do with any harm the children; she simply argued: "That's not what we agreed to." (*See* § II.B.3, *infra*.)

A panel of this Court previously granted Father's Motion for Stay, following Father showing a strong likelihood of success on the merits. The Court should now complete the circle by reversing the trial court's erroneous ruling—both on the merits and as to the fee award—and by awarding Father his fees and costs in defending his constitutional and fundamental parental rights.

ARGUMENT

I. The Parenting Plan is plain and unambiguous in affirming Father's right to take his children to The Church of Jesus Christ of Latter-day Saints and to share with them his beliefs.

Mother acknowledges (at 18) that "[i]t is not within the province or power of the court to alter, revise, modify, extend, rewrite or remake an agreement." (quoting *Goodman v. Newzona Inv. Co.*, 101 Ariz. 470 (1966)). She then argues that the trial court was correct when it violated this very prohibition after effectively rewriting the Parenting Plan to say:

- "Each parent ~~may~~ [rewrite: *may not*] take the minor children to a church ..... of his or her choice," and
- "[T]he minor children ~~may~~ [rewrite: *shall*] be instructed in the Christian faith."

Mother goes on to take the nonsensical position that her rewritten version of the Parenting Plan is not only permissible but is the "only reasonable interpretation" of the Parenting Plan. (Ans. Br. 18.) This position—like the trial court's Order—defies both the law and common sense because: (a) the Parenting Plan is not ambiguous; (b) the Parties' supposed intent is irrelevant; and (c) interpreting the words of the Parenting Plan according to their "natural and legal import," plainly permits Father to

take his children to The Church of Jesus Christ of Latter-day Saints and share with them his beliefs.

A. The Parenting Plan is not ambiguous.

A text is not ambiguous "just because the parties … disagree about its meaning." *In re Estate of Lamparella*, 210 Ariz. 246, 250, ¶ 21 (App. 2005). It is ambiguous "only when [the language] can reasonably be construed to have more than one meaning," which is a question of law for the Court. *Cohen v. Frey*, 215 Ariz. 62, 66, ¶ 11 (App. 2007) (quoting *Lamparella,* 210 Ariz. 246, 250, ¶ 21). Notably, the purported reasonable, alternative constructions must be products of the *language of the text itself*; textual ambiguity cannot be manufactured—as Mother proposes—by reference to alleged evidence of the Parties' intent. *Id.* at 66, ¶¶ 10-11 (emphasizing that ambiguity in a divorce degree must be evident "from the language used," and "not according to the negotiated intent of the parties").

The language of the Parenting Plan is clear and cannot reasonably be construed to support the meaning advanced by Mother and the trial court without actually rewriting the language.

1. Selecting both the church-of-choice and may-be-instructed provisions does not make the Parenting Plan ambiguous.

Mother claims that the Parenting Plan is ambiguous because the Parties selected two provisions with respect to religious education, when the recommended instructions suggested that they choose one. (Ans. Br. 7, 9.) But a text is not made ambiguous because the Parties elected to disregard a recommendation on the form. Nor is it ambiguous simply because it does not say what Mother now claims was intended.

The superior court website, where the Parenting Plan form is located, specifically warns parties that utilizing court-offered forms poses the risk of "undesired and unexpected consequences,"[1] and the Parenting Plan form itself expressly advises parties to "'b[e] specific about what you want the judge to approve in the court order." (Parenting Plan 3.)

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[1] "If you do not understand something, have trouble filling out any of the forms or are not sure these forms and instructions apply to your situation, see an attorney for help. Before filing documents with the court, you might consider contacting an attorney to help guard against undesired and unexpected consequences."
https://www.azcourts.gov/selfservicecenter/Child-Support-Family-Law/Family-Law-Forms/Dissolution-of-Marriage-with-Children

Here, if Mother wished to make the may-be-instructed provision *mandatory*, she could have substituted "shall" instead of "may." Likewise, if Mother wished to limit the church-of-choice provision to *only* Christian churches—or to only Christian churches *of a specific variety*, she could have added such a caveat.[2] Mother's post-divorce case of buyer's remorse does not make the language of the text ambiguous. The language can—and should be—applied according to its plain meaning, and the trial court erred in failing to do so.

2. The may-be-instructed provision is not superfluous under a plain reading of the Parenting Plan.

Mother likewise fails to clear the ambiguity hurdle by claiming that a plain-language interpretation of the may-be-instructed provision renders it superfluous. (Ans. Br. 9, 19.) Not so. As set forth in Father's Opening Brief (at 13, 16-19), the may-be-instructed provision affirmatively prohibits either

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[2] Moreover, because such a provision would effectively constitute a waiver of constitutional rights, it would be inappropriate to implicitly read such a waiver into the Parenting Plan, contrary to its express wording. *Daniel Y. v. Arizona Dep't of Econ. Sec.*, 206 Ariz. 257, 260-61, ¶ 15 (App. 2003) ([W]hile parties perhaps may be able to waive [constitutional] rights, waiver "is not easily presumed."). Rather, a "surrender of Constitutional rights" requires showing that "the waiver was knowingly, intelligently and voluntarily made" and "will not be presumed from a silent record." *State v. Avila*, 127 Ariz. 21, 25 (1980).

party from objecting to instruction of the children in the Christian faith. This plain reading gives both parents substantive rights and comfort that either may instruct the children in the Christian faith without fear of objection from the other. And while Mother now claims those rights are minimal, they are far from meaningless. *Cf.* 11 Williston on Contracts § 32:5 (4th ed.) ("[W]ords or clauses are not to be treated as meaningless, or to be discarded, if any reasonable meaning can be given them consistent with the whole contract.") (citing *Equinor USA Onshore Props. Inc. v. Pine Res., LLC*, 917 F.3d 807 (4th Cir. 2019)).

B. The Parties' subjective intent is irrelevant.

The absence of ambiguity should end the Court's analysis. But even if Mother could clear the ambiguity hurdle, that does not give Mother—or the trial court—license to rewrite the Parenting Plan, based on parol evidence of the Parties' supposed, subjective intent. The Division Two case of *Cohen v. Frey* is in accord and provides no support for Mother's position.

1. Parol evidence of the Parties' alleged intent is impermissible to alter the terms of the Parenting Plan.

Mother asserts that the Court can ignore the plain language of the Parenting Plan because, she claims, the Parties didn't really mean what they

said. But the law is clear: The Parenting Plan is incorporated into the divorce decree—a judgment that must be construed as "an independent resolution by the court," "not according to the negotiated intent of the parties." *Zale*, 193 Ariz. at 249, ¶¶ 10-11; *In re Marriage of Johnson & Gravino*, 231 Ariz. 228, 233, ¶¶ 16-17 (App. 2012) (same, noting further: "[t]o interpret the decree …. we may not consider parol or extrinsic evidence"); *In re Palmer v. Palmer*, 217 Ariz. 67, 73, ¶ 21 (App. 2007) ("We … reject [the] contention that the court should consider the intent of the parties."); *Weiss v. Weiss*, 1 CA-CV 16-0504 FC, 2017 WL 4682100, at *2, ¶ 8 (App. Oct. 19, 2017) (to resolve ambiguity, courts "[may] not rely on extrinsic or parol evidence of the parties' intent").[3]

The divorce decree is not "an agreement between or among the parties" but an "act of a court which fixes clearly the rights and liabilities of the respective parties," and the "[p]arties have a right to rely upon it." *Zale*, 193 Ariz. at 249, ¶¶ 10-11. The divorce decree is "res judicata on the merits of the controversy" and "a bar to further litigation" over what the Parties

[3] Mother acknowledges that the Parenting Plan is "part of" the parties' divorce decree and "carries the same legal weight" as the decree itself. (Ans. Br. 16 n.1); *see also* Decree Order ¶ 3; Parenting Plan at 7 (affirming that the Plan will be "made an order of the Court"); *Weiss*, 2017 WL 4682100, at *2, ¶ 8 (confirming that a divorce decree is "not a contract, but a judgment.").

may have subjectively intended in filling out the Parenting Plan. *Carroll v. Carroll*, 1 CA-CV 08-0529, 2009 WL 3464747, at *4, ¶ 19 (App. Oct. 27, 2009) (citing *Zale*, 193 Ariz. at 251, ¶ 18).

Accordingly, "extrinsic evidence" of the Parties' intent is "irrelevant" and must be excluded as an otherwise "impermissible collateral attack" on the court's judgment. *In re Marriage of Fernandez & Manriquez*, 2 CA-CV 2014-0131, 2015 WL 1469032, at *2 (App. Mar. 30, 2015); *Zale*, 193 Ariz. at 250, ¶ 14); *Merrill*, 230 Ariz. at 373-74, ¶ 14 (holding that the decree must be "interpret[ed] as a matter of law without parol evidence") (citation omitted).

In sum, Mother is demonstrably wrong—as a matter of law—in asserting that purported evidence of the Parties' "original intent" is a talismanic eraser she can use to alter plain language in the Parenting Plan.

2. *Cohen v. Frey* does not permit considerations of subjective intent to undermine the plain language of the Parenting Plan.

Mother relies on the Division Two case of *Cohen v. Frey*, 215 Ariz. 62 (App. 2007) as her flagship basis for ignoring the actual language of the Parenting Plan, declaring it ambiguous, and rewriting it in accordance with the Parties' supposed original intent. (Ans. Br. 18.) But *Cohen* does not support Mother's position; on the contrary, it directly rejects Mother's

argument, confirming—consistent with the authorities cited above—that the Parties' subjective intent is irrelevant:

> A final judgment or decree is "an independent resolution by the court … and rightfully is regarded in that context and *not according to the negotiated intent of the parties*."

215 Ariz. at 66, ¶ 10 (quoting *Zale*, 193 Ariz. at 249, ¶ 11) (emphasis added); *id.* at 67, ¶ 14 (noting further: "[W]e may not consider extrinsic evidence to determine the trial court's intent ….").

The excerpt from *Cohen* on which Mother relies says nothing to the contrary; rather, it notes only that "our rules of construction allow us to reject a commonly understood meaning of language *when the surrounding language demonstrates the words have a particular import*." *Id.* at 66, ¶ 12 (emphasis added). The court's focus on the "surrounding language" rather than the Parties' intent is repeatedly emphasized in the decision: "The meaning of a decree is to be determined from the *language* used"; "[t]he decree is ambiguous 'only when the [*language*] can be reasonably construed to have more than one meaning'"; "the *language* in a decree 'should be construed according to [its] natural and legal import.'" *Id.* ¶ 11 (emphasis added; citations omitted).

Thus, while *Cohen* suggests that it may be appropriate in some circumstances to consider "surrounding language" *in the document itself* to determine whether particular words have a particular import, nothing in *Cohen* authorizes or endorses Mother's and the trial court's expedition into extrinsic evidence of the Parties' negotiated intent (*e.g.*, lists of churches previously attended, "historical beliefs," "the faith [the children] grew up in," and alleged marital "discussions" concerning "their Christian faith" (Ans. Br. 9, 11, 19)) as a means of dismantling and rewriting the plain language of the Parenting Plan.

3. The "surrounding language" in the Parenting Plan supports Father's plain-language interpretation.

To the extent the Court considers the "surrounding language" in the Parenting Plan's broader context, such an analysis does not undermine, but rather *reinforces*, the plain-language interpretation. Specifically, it confirms that "may" is permissive (consistent with its ordinary meaning), and that when a mandatory term is intended, the Parenting Plan appropriately uses the terms "will" or "shall."

For example, the Parenting Plan's provision regarding "Religious Education Arrangements" is most analogous to the provision on secular

"Educational Arrangements," which appears in the "surrounding language" on the same page (APP042). The latter provision provides that the Parties "*will* make major educational decisions together." (*Id.* (emphasis added).) Because the Parenting Plan "uses both permissive and mandatory terms," the Court should presume that the drafter was "aware of the difference and intended each word to carry its ordinary meaning." *Democratic Party v. Ford*, 228 Ariz. 545, 548, ¶ 10 (App. 2012); *In re Curtis v. Thomas*, No. 1 CA-CV 18-0587 FC, 2019 WL 2762333, at *2, ¶ 10 (Ariz. Ct. App. July 2, 2019) (reading "may" as "shall" would "render the distinction between the two words meaningless."). Mother's Brief does not even address this controlling rule of construction. Nor does Mother attempt to respond to the absurd results that would follow a reading of "may" as "shall" in the Parenting Plan. (Br. 18.)

C. The "natural and legal import" of the religious-upbringing provisions plainly permit Father's choice.

If the Court is required to interpret the Parenting Plan, the "words and clauses" of the Parenting Plan must be construed according to "their natural and legal import." *Lopez v. Lopez*, 125 Ariz. 309, 310 (App. 1980), instead of pursuing an impermissible hunt for "extrinsic/parol evidence" of the Parties' supposed "negotiated intent."

Separate from any religion-specific definitions, the "natural and legal" definition of "Christian" faith, according to its ordinary, secular meaning, is undisputed. The commonly accepted, secular definition of a "Christian" is "one who professes belief in the teachings of Jesus Christ." Webster's Third New International Dictionary (1961).[4] Mother's "expert" agreed with this dictionary definition, confirming that Christianity is delineated to encompass anyone who is a "Christ follower" —*i.e.*, "anybody who believes in Jesus, . . . follows him, obeys his teaching, and holds fast to what his word says, would essentially be considered a Christ follower." (APP098-99.)

The Court should accept this acknowledged, secular definition. *Accord Zheng v. Gonzales*, 464 F.3d 60, 63 n.2 (1st Cir. 2006) (superseded by statute on unrelated grounds) (observing that "all Catholics are, by definition,

[4] Adopting the ordinary dictionary definition of Christianity is not constitutionally problematic here for two reasons. First, it is the accepted *secular* definition of Christianity; applying it does not force the Court to engage in resolving "truth" claims or other substantive theological disputes. Second, the Parties have both conceded this definition. If the parties had wanted a more religion-specific definition, they could have detailed one in the Parenting Plan. They were not compelled to use the sample form or to limit their revisions to what fit in the blank space provided. But once they did, and once the divorce court adopted their revised plan, the Parties became bound by the ordinary, secular meaning of its terms.

Christians"); *First Nat'l Bank of Kansas City v. Danforth*, 523 S.W.2d 808, 818 (Mo. 1975) (concluding that "'Protestant Christian' is not ambiguous" and construing the phrase according to its "common and familiar usage").

Similarly, the evidence is undisputed that Father and his church fall within this shared, secular definition. Mother's expert again agreed that The Church of Jesus Christ of Latter-day Saints recognizes Jesus as Savior, accepts his "atonement," and teaches the Bible. (APP093). Moreover, despite the trial court's ignoring it, (APP035) Father's testimony was undisputed that "Jesus Christ is the center point of [his] faith"; that he is "more of a practicing follower of Jesus Christ than ever before in [his] entire life"; and that his church "bears [Christ's] name and always emphasizes we should feast on the words of Christ." (APP105.)

Thus, relying on the ordinary, secular meaning of "Christian," as conceded by both Parties and consistent with a "dictionary definition" of Christianity, the Parenting Plan unambiguously protects Father's ability to take his children with him to his church and to share with them his religious beliefs—*even if* the Parenting Plan is read to limit the Parties to taking the children to Christian churches *only*, and without requiring the Court to

impermissibly entangle itself in ecclesiastical dispute about the scope of Christianity.

* * * *

Mother claims (at 7) that textual "interpretation is the only issue" before the Court. But in practice, she dismisses or contorts the plain text in order to advance her preferred interpretation. Mother's entire argument is that the Court should "reject" the "commonly understood meaning" of the text (at 13, 22) and instead divine what the Parties *really* meant. This is textual abuse, not textual interpretation, and is expressly forbidden as a matter of law. A straightforward reading of the text, applying its undisputed, ordinary meaning, is conclusive that Father is well within his rights in taking his children with him to church and sharing with them his beliefs.

II. The ruling below violated the First Amendment and infringed Father's religious freedom and fundamental rights.

By flouting the legal norms for interpreting judicial decrees, chasing Mother's amorphous vision of the Parties' supposed original intent, and calling for a "battle of the religious experts" to determine "what is or is not within the definition of Christianity," (APP079; APP088), the trial court committed gross error in violation of Father's constitutional rights.

A. Mother's introduction of expert testimony and her shifting definition of "Christianity" improperly entangled the trial court in a fundamentally religious dispute.

Mother justifies the trial court's religiously entangling definition of Christianity by arguing that it was merely defining Christianity "as set forth in the parenting plan." (Ans. Br. 22.) But this assertion cannot be squared with reality.

1. Mother's claimed focus on interpreting the Parties' subjective intent is belied by her use of a religious expert and the trial court's engagement in doctrinal disputes.

No expert was needed (or qualified) to give the words on the paper their ordinary meaning. Likewise, no expert was needed (or appropriate) to opine on Mother's and Father's subjective, "original intent." And Mother's "expert," in fact, testified only about substantive theological disputes within Christianity. Instead of helping the trial court understand an issue, Ariz. R. Evid. 702(a), Mother's expert entangled the trial court in centuries-old religious disputes about Christian theology—disputes that are clearly beyond the jurisdiction of the courts. (Br. 21-22.)

For example, through her expert, Mother focused on claims that Father's church teaches that people can become like God (APP093, APP095); that it accepts scripture in addition to the Bible and is not "Sola Scriptura"

(APP096, APP099); and that it follows Joseph Smith's teachings about the Bible (APP093, APP095, APP096, SAPP055). But ecclesiastical disputes on such issues are not unique to Father's church; they pervade "Christianity." For instance, at least some Orthodox Christians also believe in deification;[5] Catholics have more books in their Bible than do Protestants and follow Church tradition beyond *sola scriptura*;[6] and Lutherans look to the writings of Martin Luther to understand the Bible.[7]

Mother is certainly free to distinguish between these churches and Father's church, but courts must "abstain" from inquiring into such "ecclesiastical matters." *Ad Hoc Comm. of Parishioners of Our Lady of the Sun Catholic Church, Inc. v. Reiss*, 223 Ariz. 505, 510, ¶¶ 10, 12 (App. 2010); *Rashedi*

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[5] "Deification (Greek *theosis*) is for Orthodoxy the goal of every Christian. Man, according to the Bible, is 'made in the image and likeness of God.' . . . It is possible for man to become like God, to become deified, to become god by grace." The Westminster Dictionary of Christian Theology (Westminster Press 1983) ("Deification").

[6] *See Tract: Scripture and Tradition*, Catholic Answers (Aug. 10, 2004), https://perma.cc/4RTP-VHGF; Trent Horn, *Answering the Most Common Objection to the Deuterocanonical Books*, Catholic Answers (Mar. 26, 2020), https://perma.cc/M8B3-7EBP.

[7] *See The Lutheran Confessions*, The Lutheran Church Missouri Synod, https://perma.cc/5KDH-NPNX (stating that the Lutheran Church regards the Book of Concord "as a true and binding exposition of Holy Scripture and as authoritative").

v. Gen. Bd. of Church of the Nazarene, 203 Ariz. 320, 323-24, ¶ 13 (App. 2003) (civil courts cannot inquire into disputes "that would require interpreting religious doctrine or practice") (citations omitted). The Court can and must avoid these complexities simply by applying the Parenting Plan according to the ordinary meaning of its terms, and the trial court erred in failing to do so. *See NLRB v. Catholic Bishop of Chi.*, 440 U.S. 490, 507 (1979) (where possible, courts should "decline to construe [language] in a manner" that could raise "difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses").

2. Mother's shifting definition of "Christianity" is an inappropriate measure of Parenting Plan compliance.

The folly of engaging these issues is further underscored by the fact that Mother herself has no clear definition of Christianity. For example, she admitted that, in drafting the Parenting Plan, the Parties never contemplated the nuances of what would, or would not, count as "Christian." Specifically, with regard to "Mormonism," her counsel admitted that "they didn't contemplate that debate [about 'Mormonism'] at the time they entered the agreement . . . because they never practiced it." (APP079.) Rather, Mother claimed to have a "list of churches" the Parties "attended in [their] 19 years"

of marriage and argued that Father must consult with her if his preferred church is not on that list. (SAPP046.) Thus, if Father wanted to "attend a Lutheran church," there would have to be "a discussion," because they did not ever "attend a Lutheran church" and Mother "ha[d]n't researched that religion enough" to know whether it would "fall under the Christian faith." (SAPP046.)

Mother, therefore, cannot even claim that the Parties intended "the Christian faith" to mean "the Protestant faith" or some other discernable subset of Christianity. Thus, beside the fact that intent is irrelevant and delving into theological disputes is forbidden, Mother has essentially conceded that she is not defending the *Parties'* intent at signing, but rather her own amorphous after-the-fact sense of what should count as "Christian."

B. *Paul E.* does not authorize courts to ignore constitutional protections, and the facts of this case do not satisfy the strict scrutiny required to justify depriving Father of his constitutional rights.

Beyond violating norms of textual interpretation and entangling the Court in theological disputes, Mother's proposed reading of the divorce decree would violate Father's First and Fourteenth Amendment rights to participate in the religious upbringing of his children, as well as his statutory

rights to direct the moral or religious training of his children, under A.R.S. § 1-602(A)(4).

1. Parents' fundamental right to raise their children is entitled to enhanced protection when coupled with a free exercise claim.

The right "to raise one's children" is one of the most "essential, basic civil rights" of all parents, in or out of marriage. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). And that right is enhanced "when the interests of parenthood are combined with a free exercise claim." *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972); *Emp't Div. v. Smith*, 494 U.S. 872, 881 (1990). Mother never addresses these constitutional implications, contending that courts "routinely intervene to resolve religious conflicts between parents." (Ans. Br. 24.) But there is nothing "routine" about depriving a parent of his ability to participate in the religious upbringing of his children. Such deprivation can be justified only by a compelling government interest that cannot be resolved in any less restrictive way—a strict scrutiny standard clearly not met here.

2. Courts may not restrict a parent's right to participate in the religious upbringing of their children absent exceptional circumstances.

Except in the rarest circumstances, the government cannot "lawfully place the individual in the extreme of choosing between the active practice of a religious belief" and "a child's association and companionship." *Smith v. Smith*, 90 Ariz. 190, 193, ¶ 6 (1961); *see also Munoz v. Munoz*, 489 P.2d 1133, 1134 (Wash. 1971) ("Courts are reluctant . . . to interfere with the religious faith and training of children where the conflicting religious preferences of the parents are in no way detrimental to the welfare of the child.").

It is not enough that children might be "upset" by their parents' conflicting religious beliefs or "disturb[ed]" by a parent's new faith. *Hanson v. Hanson*, 404 N.W.2d 460, 464 (N.D. 1987). Even religious conduct that so "deviat[es] from the normal" as to bring "ridicule and criticism" does not alone warrant restriction of parental rights. *Smith*, 90 Ariz. at 194 ("Criticism is the crucible in which character is tested. Conformity stifles the intellect.").

Even where a court has found harm sufficient to make one parent the sole decision-maker over religious issues, it cannot "deprive [the other parent] of her constitutional right to take her child to her church for any reason other than *substantial* physical or emotional harm to the child *from*

attendance at the church." *In re Marriage of McSoud*, 131 P.3d 1208, 1220 (Colo. Ct. App. 2006) (emphasis added); *see also Soler v. Stark*, A-2156-18T2, 2019 WL 5788327, at *4 (N.J. Super. Ct. App. Div. Nov. 6, 2019) ("[R]egardless of any purported agreement to raise the children in the Jewish faith, the court could not bar plaintiff from exercising her religious beliefs by prohibiting her from educating the children concerning her [Catholic] religious and moral values during her parenting time."); *Zummo v. Zummo*, 574 A.2d 1130, 1138 (Pa. Super. Ct. 1990) ("[C]ourts scrupulously protect the non-custodial parent's right to maintain a meaningful parental relationship with his or her child.").

Mother is simply wrong that courts can decide "any" religious dispute between joint legal decision-makers without regard to First Amendment rights.

(a) Mother's reliance on *Paul E. v. Courtney F.* is misplaced.

In support of her argument, Mother misreads dictum in *Paul E. v. Courtney F.*, 246 Ariz. 388, 439 P.3d 1169 (2019), to argue that—in cases involving joint legal-decision making—courts can intervene to resolve "*any conflict*," without regard to any "*religious or other conflicts*." (Ans. Br. 23-24

(emphases Mother's)). But Mother's reading turns the ruling in *Paul E.* on its head.

There, one of the parents had been given *sole* legal decision-making authority. *Paul* E., 246 Ariz. at 392, ¶ 16. In that circumstance, the court of appeals had held that it was not authorized to make childrearing decisions in place of the authorized parent, but only to allocate the decision-making authority between parents. The Supreme Court disagreed, holding that courts *can* directly impose parenting decisions, albeit only "in limited, statutorily prescribed circumstances," *id.* at 395, ¶ 25, pursuant to "a compelling governmental interest 'of the highest order.'" *Id.* at 394, ¶ 22 (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion); A.R.S. § 1-601). Under this stringent standard, the court concluded that mere disagreement about what "would be in the child's best interests" would never suffice to override the authorized parent's decisions. *Id.* at 393, ¶ 20. Such drastic authority to strip individuals of their parental rights exists only when "'the child's physical health would be endangered or the child's emotional development would be significantly impaired'—circumstances

that presumably would occur infrequently with a fit parent making decisions." *Id.* at 393-94, ¶ 20 (citing § 25-410(A)).[8]

In dictum, the Court looked to the Arizona statute governing *joint* legal decision-making to further demonstrate that courts are authorized, in limited circumstances, to impose on parents the courts' own childrearing preferences. *Id.* at 395, ¶¶ 26-27. But its concluding language that "the court is authorized to resolve any conflict" and "is not limited to merely vesting one parent with sole legal decision-making authority," *id.* at 395, ¶ 27, must be read in light of its broader ruling that courts can resolve "any conflict" *within their statutory and constitutional authority*.

Those conditions are not met here. The statute governing joint legal decision-making authority—like the section addressed in *Paul E.* governing sole authority—is self-limiting in scope. It states that courts "shall" intervene only when "parents are unable to agree on any element to be included in a

[8] Even "in healthy marriages," parents "may disagree about important matters; and, despite serious, even irreconcilable, differences . . . the government could certainly not step in, choose sides" just "to protect judicially or bureaucratically determined 'best interests' of the children." *Zummo*, 574 A.2d at 1140. There is "no reason to treat such disagreements between divorced parents differently." *Id.*

parenting plan," § 25-403.02(D)—a scenario not at issue here. And with respect to "other factors," the statute provides only that courts "*may* determine" them if "*necessary* to promote and protect the emotional and physical health of the child." § 25-403.02(D) (emphases added).[9] Here there is no showing sufficient to meet this standard, let alone the strict scrutiny imposed by the First and Fourteenth Amendments, which prohibit interference with parents' childrearing absent a compelling government interest that cannot be met by any less restrictive means. *Paul E.*, 246 Ariz. at 394, ¶ 22 (quoting *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion)); *see also Yoder*, 406 U.S. 205, 233–34 (1972) (courts may restrict parental authority only "if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens").

---

[9] Even if the statutory authority were as broad as Mother claim, it "cannot" be read to "validate action which the Constitution prohibits." *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 107 (1952). To the contrary, courts must construe statutes narrowly to avoid provoking "difficult and sensitive questions arising out of the guarantees of the First Amendment Religion Clauses." *NLRB v. Catholic Bishop of Chicago*, 440 U.S. at 507.

Here, there is neither statutory basis nor facts so compelling as to make it "necessary" for the trial court to deprive Father of his constitutional right to participate in the religious upbringing of his children, contrary to the plain language of the Parenting Plan.

(b) *Funk v. Ossman* and other cases cited by Mother are inapposite.

None of the other cases Mother cites, (Ans. Br. 24-26), are to the contrary. First, none of them involved a parenting plan, as governs here. Second, in all of the cases, the reasoning is uniformly consistent with the principle that a court's ability to interfere in parental rights is subject to strict First Amendment limitations.

In *Funk v. Ossman*, for example, the father's rights were limited only after three psychologists testified that a young child (age 8) suffered severe anxiety from trying "to please both parents" over their religious disputes. 150 Ariz. at 579, 582 ("psychosomatic problem" manifested by child "soiling his pants"). And—notably—the court still did *not* bar the father from taking the child to synagogue. *Id.* at 580. The court's statement in passing that the law "recognizes no difference in objectives between religious or other

conflicts," *id.* at 581; (Ans. Br. 11), thus must be read in light of the severity of the facts and the limited remedy imposed by the court.

In all of the other cited cases, the courts similarly demonstrated significant respect for, and deference to, their constitutional obligation to confirm an actual risk of severe harm before limiting parental rights.[10] Mother is simply wrong that courts can resolve this or any other dispute, free from constitutional restraints.

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[10] *Franco v. Franco*, No. 1 CA-CV 07-0802, 2008 WL 4814415 (Ariz. Ct. App. Oct. 23, 2008) (unpublished) (mother sole legal decision-maker; father abusive); *Pace v. Farr*, No. 1 CA-CV 09-0575, 2010 WL 5030870, at *1, ¶ 1, ¶ 4 (Ariz. Ct. App. Oct. 26, 2010) (unpublished) (father had "final decision-making authority"; all relatives Jewish except mom; kids 10, 12; therapist showed harm by "clear and affirmative showing"); *Andros v. Andros*, 396 N.W.2d 917, 922 (Minn. Ct. App. 1986) (mom sole legal custodian; kids 8, 10; parents in "continual dispute"; harm shown by psychologist); *Morris v. Morris*, 412 A.2d 139, 144, 145 (Pa. Super Ct. 1979) (child 4; psychologist showed harm in taking child "door-to-door"; right "to provide religious instruction" preserved) *Matter of Bentley v. Bentley*, 86 A.D.2d 926, 927 (N.Y. App. Div. 1982) (deferred to custodial parent; First Amendment required showing of harm; "record amply supports"); *Matter of Matthews v. Matthews*, 72 A.D.3d 1631, 1632 (N.Y. App. Div. 2010) (mother had right to direct religious upbringing; "substantial evidence" dad "consistently used . . . religion" to "alienate" mom from kids).

3. Mother has failed to demonstrate harm or any other basis for restricting Father's constitutional and fundamental rights.

In contrast to her arguments in the trial court, Mother attempts to shift her argument on appeal from the scope of the Parenting Plan to a concern about the welfare of the children. (Ans. Br. 14-15, 26.) This is a red herring.

Mother's petition identifies no harm, or risk of harm, to the children in accompanying Father to church or otherwise being exposed to his religious beliefs. (IR-18 at ¶ 27.) Nor does the trial court's Order even mention—much less rely on—any demonstrated, adverse impact on the Parties' teenage children. At the hearing, Mother simply contended that the children are "upset" and "confus[ed]" about having to attend church with Father. (Ans. Br. 14-15.) She claimed that the son (age 14) was upset about wearing a shirt and tie to church (SAPP041-43), and the daughter (age 17) was confused about doctrinal issues (SAPP040.)[11] Yet, Mother specifically confirmed at the July 10 hearing that her issue was Father's alleged breach

[11] For his part, Father testified that he was taking the children to church with him "for exposure only": "They're not being told to practice anything because it's all based on personal belief, and if they don't have a personal belief, it's not something—nobody wants to be forced." (SAPP048.)

of the terms of the "agreement," rather than any purported harm to the children:

> THE COURT: I guess I'm confused on what it is that they're practicing that's causing detriment? What is it detrimental to?
>
> * * * *
>
> THE COURT: I mean why not learn about all sorts of religions and then when they're 18 they can decide what they want to do?
>
> [MOTHER]: Because that's not what we agreed upon, Your Honor.

(SAPP044.) Likewise, when the trial court again asked Mother what was "the detriment to the kids to learn a different religion or to learn about a different religion," Mother's response was, "None to learn." (SAPP041.)

In short, Mother never raised the children's welfare in her petition; the welfare of the children played no part in the trial court's decision; and no evidence of harm was established. *See Munoz*, 489 P.2d at 1136 ("We are not convinced, in the absence of evidence to the contrary, that duality of religious beliefs, per se, creates a conflict upon young minds."); *Yoder*, 406 U.S. at 215 (must "jeopardize the health or safety of the child, or have a potential for significant social burdens"); *see also Pater v. Pater*, 588 N.E.2d 794, 401 (Ohio 1992) (rule requiring actual harm is "well established") (citing cases). The Parenting Plan expressly contemplates that the Parties will take

their children to different churches. That they might be annoyed by some aspect of one or both churches is inevitable, and ultimately irrelevant.

III. Mother, not Father, should cover the Parties' attorneys' fees and costs.

The trial court ordered Father to pay $3,000 of Mother's attorneys' fees and costs on the ground that "Father ha[d] violated the parties' Parenting Plan." (APP036.) But because the trial court's ruling was erroneous, the fee award must be reversed. *Palmer v. Palmer*, 217 Ariz. 67, 73, ¶ 22 (App. 2007) (reversing fee award where merits ruling "may affect the factors that were considered by the family court"). Father should instead be awarded *his* fees for at least three reasons.

First, A.R.S. § 25-414(C) provides that, when one party's actions violate the visitation or parenting-time rights of the other, the non-violating party may recover his/her costs and fees. Here, Mother's refusal to comply with the Parenting Plan, combined with the ensuing litigation, violated Father's parenting time by depriving him of the ability to take his children with him to church or to share with them his beliefs.

Second, A.R.S. § 25-324 allows one party to recover fees when the other party's position is unreasonable. Mother's dragging Father into court over a

theological disagreement with his Christian church, and on a theory of intent unfounded in the law, certainly meets this standard. Mother further complains that Father never filed a financial affidavit in the trial court. But as a *pro se* respondent in the trial court, he had no reason to at the time. And, even if he had, an updated affidavit would now be required. *Breitbart-Napp v. Napp*, 216 Ariz. 74, 84, ¶39 (App. 2007) (finding financial affidavit inadequate because it was filed eight months before fee award). Father has prepared an updated financial affidavit and asks the Court for leave to file it in connection with his fee request.

Finally, A.R.S. § 25-411(M) requires that fees "shall" be assessed when a petition is "vexatious and constitutes harassment." That standard has been met where a petition was "not filed in good faith" but to "gain control of school choice" and on a theory "not . . . based in law" but on "overstated" facts. *In re Matter of Hough v. Shreve*, No. 1 CA-CV 15-0842 FC, 2016 WL 6956614, at *4 (Ariz. Ct. App. Nov. 29, 2016). Mother's attempt to gain control of Father's religious choices when he has custody and to terminate Father's constitutional rights based on what he asks their children to wear to church, a theological dispute, and a false theory of the law is likewise more than sufficient to meet the standard.

CONCLUSION

For all the foregoing reasons, the Court should reverse the Order below and uphold Father's right to take his children with him to church and to share with them his religious beliefs. The $3000 in fees imposed against Father should also be reversed, with fees instead being awarded in his favor.

RESPECTFULLY SUBMITTED this 10th day of June, 2020.

OSBORN MALEDON, P.A.

By /s/ David D. Garner

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SUPPLEMENTAL APPENDIX
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* The appendix page number matches the electronic PDF page number. Some record items included in the Supplemental Appendix contain only a limited excerpt. This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN RE THE MARRIAGE OF KATHLEEN MARIE BALL, Petitioner, and SHAWN A. BALL, Respondent.	No. AZMCPV-06097

Mesa, Arizona
July 10, 2019
9:06 a.m.

BEFORE THE HONORABLE MICHAEL MANDELL

TRANSCRIPT OF PROCEEDINGS

Temporary Orders Hearing

Proceedings recorded by electronic sound recording; transcript produced by eScribers, LLC.

ALICIA YOUNG
Transcriptionist

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July 10, 2019

EXHIBITS

PETITIONER'S EXHIBITS

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RESPONDENT'S EXHIBITS

NO.	DESCRIPTION	ID	EVD
None			

APPEARANCES

July 10, 2019

Judge: Michael Mandell

For the Petitioner:

Audra Elizabeth Petrolle

Witnesses:

Kathleen Guthrie

For the Respondent:

Steven N. Cole

Witnesses:

None

honor that and yes, it's going to be a battle in the court. I don't want it to be a battle in the court, but he broke down all communication with me to even have that discussion the minute I opposed and said this is why I don't believe it. I even brought it to his attention that for the 19 years we were married we've had lots of discussions about that, and if I would have thought, I would have wrote it differently.

But again -- and also, my main concern is that he didn't -- I had not taken the kids to any church without his approval and his understanding that this is where the kids are going, including Grace --

THE RESPONDENT: That's incorrect.

THE WITNESS: -- and that's the only church that they've gone to. I have emails supporting that saying --

THE COURT: Let me interrupt you.

THE WITNESS: -- this is where I'd like to go.

THE COURT: So what is the detriment to the children for learning a different religion?

THE WITNESS: It's very conflicting with all the Christian based churches that we've gone to before because there's a lot of additional things that -- like adding to the Bible, subtracting from the Bible, saying Joseph Smith's the prophet. There's other things about the role of the woman, kids, all -- there's material differences and they're confused.

And I spent a lot of time talking to them about what

we had intended when we divorced for our religion upbringing and bringing them back to this is the difference. If they were 18, it wouldn't be an issue. And I started an argument with him when he then supported that fact that he didn't care which church they went to.

THE COURT: Go back to my question.

THE WITNESS: Yes, sir.

THE COURT: Because I'm trying to understand. I mean, you know, I mean, what's the detriment to the kids to learn a different religion, or to learn about a different religion?

THE WITNESS: None to learn.

MS. PETROLLE: Well, they're being forced to practice something that they don't want to be a part of, Your Honor. And they do find it confusing, like she said. You know, there are material differences --

THE COURT: Well, forced to practice means what?

THE WITNESS: They're -- my son had to go buy and dress a certain way. They are not allowed to --

THE COURT: When he goes to church or outside of church?

THE WITNESS: When he goes to church.

THE RESPONDENT: That's incorrect.

THE WITNESS: I have pictures of --

THE RESPONDENT: My son bought dress clothes because

he didn't want to feel like he wasn't fitting in.

THE WITNESS: He --

THE COURT: Well, what is -- what is -- what are the clothes that he bought?

THE WITNESS: He called it his uniform.

THE COURT: Okay, well what is it?

THE WITNESS: It's black pants, white shirt, black --

THE COURT: Is it black pants and a white shirt and a black tie?

THE WITNESS: Yeah.

THE RESPONDENT: No, it's a red tie.

THE WITNESS: And my son called it his uniform.

THE COURT: Okay, but --

THE WITNESS: My dad went out and bought me a uniform.

THE COURT: When he attends your church, what does he wear?

THE WITNESS: Whatever he feels like.

THE COURT: So he can go in shorts and flip-flops?

THE WITNESS: He does go in shorts and flip-flops and t-shirts because that's the way our church dresses.

THE COURT: Okay.

THE WITNESS: But I never impose that he has to wear specific attire and it's never required. I mean, I've never --

THE COURT: If Dad took him to Grace Church and said,

when we go to Grace Church you need to wear a shirt and a tie and pants, would that be a problem?

THE WITNESS: No, not necessarily. I mean, but if my son didn't want to wear it, if it's not required. There's a difference between requesting --

THE RESPONDENT: It's not required.

THE WITNESS: -- you kid and requiring it --

MS. PETROLLE: Does everyone --

THE WITNESS: That's again --

THE COURT: Okay.

THE WITNESS: -- it's because we cannot agree. I -- we had a practice of speaking to each other with respect with our churches, approving those churches, and it broke down. And because of that breakdown, then all this other visitation and custody things became a battle as well, Your Honor. Including, like I said, I went to him outside of this court, never wanted to come to court, and proposed a different parenting plan and he shut it down. Well, actually, he didn't shut it down, his response back was taking even more time from me.

THE COURT: So do you all want to have a hearing on what Christianity is?

THE RESPONDENT: No, sir.

THE WITNESS: I am willing to fight for my beliefs and what's best for the kids.

THE COURT: Okay. And help me out on why it's best

for the kids to only learn one religion.

THE WITNESS: Because that's what we agreed upon, that's the way we raised them for the 19 years --

MS. PETROLLE: I don't think it's about learning one religion --

THE WITNESS: It's not about learning, it's about practicing and their faith.

THE COURT: Well, what is it that -- again, I guess I'm confused on what is it that they're practicing that's causing a detriment? What is it detrimental to?

THE WITNESS: Besides that they don't want to be a part --

THE COURT: I mean, why not learn about all sorts of religions and then when they're 18 they can decide what they want to do?

THE WITNESS: Because that's not what we agreed upon, Your Honor.

MR. COLE: Your Honor, we're poised to go down this road to define what is a Christian, that's a frightening thought.

THE COURT: Well, it's -- we're poised to go down the road for me to determine whether or not going to the Mormon church was an issue that required joint legal decision making.

MS. PETROLLE: Your Honor, I think it really --

THE COURT: It's not really a definition of

Christianity, it's really a decision of whether or not I think that Father should have talked -- should have spoken to Mother. If it's a sufficient deviation from the plan where Father should have spoken to Mother and they would -- and it's otherwise something that they would have had to agree upon.

MR. COLE: But ultimately what you're saying is that his religion is not Christian because it says that he can raise them as Christian. He can take them to a Christian church. He's saying he did that.

MS. PETROLLE: Actually, ultimately what we should be looking at is what was the intention of the parties at the time they formed this agreement cause there is an ambiguity there, and so that's what the question is. It's not necessarily what --

THE COURT: And so where is -- what evidence can I look at other than testimonial?

THE WITNESS: That's the emails that he did in Exhibit 2 and Exhibit 6.

MS. PETROLLE: Well, that's showing that he changed his beliefs, Your Honor. He didn't have those beliefs historically, but now he's exposed to something new so he believes Mormonism now. And so at the time they formed this agreement, he had never practiced Mormonism. He had never even gone to a Mormon church, they never contemplated it at all.

THE COURT: Okay. So what is -- what religion do you

practice?

MS. PETROLLE: You.

THE WITNESS: Me?

THE COURT: Yes.

THE WITNESS: Christian. It's nondenominational Christian. We go to Grace Community Church. It's a community Christian church.

THE COURT: Okay. So is being a -- is being a Protestant outside of the bounds? Would he need to come and talk to you if he wanted to go to a Protestant church?

THE WITNESS: There was a list of churches we attended in the 19 years. So no, because we did attend a Protestant church.

THE COURT: How about a Lutheran church?

THE WITNESS: We did not attend a Lutheran church. That would just be a discussion between the two of us like it's always been of going, do you have a problem with this church or not.

THE COURT: But do you think that would be -- would that fall under the Christian faith?

THE WITNESS: I haven't researched that religion enough. That's where -- if you look at that email in Exhibit 6, Your Honor, and on Exhibit 2, I went to the churches that we both were attending. He had the kids attending Sun Valley, I was attending Grace and asked for their religious input and

help and guidance so that I could have a discussion with him. When I did that, he immediately shut down communication regarding that topic.

MR. COLE: My client tells me that they were attending a Lutheran church after the divorce, my client was, and they didn't have a discussion about that.

THE WITNESS: Then I wasn't aware --

MS. PETROLLE: Your Honor, none of these other religions or sects of Christianity follow the Book of Mormon.

THE WITNESS: No.

MS. PETROLLE: None of them have a Book of Mormon, only Mormonism has a Book of Mormon, which is a huge material --

THE WITNESS: They all follow --

MR. COLE: They haven't gone into all these other religions.

MS. PETROLLE: They all just have the Bible.

THE WITNESS: They all just have the Bible.

MR. COLE: I don't have any independent knowledge of these other religions. I can't --

MS. PETROLLE: I don't have extensive knowledge, but I mean, just basically, I'm confident none of the others follow the Book of Mormon.

THE WITNESS: And Your Honor --

MR. COLE: I know fundamentalist Christians don't

follow any book I don't think.

THE WITNESS: Well, Your Honor, I just went -- that's why I went to the two churches because I didn't understand and I wanted to know if there was an issue that I should be concerned with since we -- not necessarily on the legal issue, I was concerned about how we were raising our kids and if that was going to be changing our essential beliefs of following the Bible and Bible only.

THE RESPONDENT: Could I maybe say something? Do you know what Bible we're talking about?

THE WITNESS: Yes, the Holy Bible.

THE COURT: I guess, let me ask -- because I got a 10 o'clock, so we're going to wrap this up. My question is, are the children -- if the children are with you on weekends, are they going to continue to go to the Mormon church?

THE RESPONDENT: Yes. But I would like to point out that they're going with me for exposure. They're not being told to practice anything because it's all based on personal belief, and if they don't have a personal belief, it's not something -- nobody wants to be forced.

THE COURT: Okay.

THE WITNESS: It's not the -- just the church, they're being forced to go to youth groups. They're in --

THE RESPONDENT: They are not being forced.

MS. PETROLLE: They're going to youth groups; they're

it's up to you as to whether or not you all want to go down that road.

THE PETITIONER: Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. COLE: Thank you, Your Honor.

THE RESPONDENT: Thank you, Your Honor.

(Proceedings concluded at 10:04 a.m.)

CERTIFICATE

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/s/

ALICIA YOUNG
Transcriber

August 13, 2019

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KATHLEEN MARIE BALL, Petitioner, vs. SHAWN BALL, Respondent.	No. FC2017-096436

Mesa, Arizona
September 16, 2019
10:01 a.m.

BEFORE THE HONORABLE MICHAEL MANDELL

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

Proceedings recorded by electronic sound recording; transcript produced by eScribers, LLC.

KAYLA GRIFFIN
Transcriptionist

I N D E X

September 16, 2019

PETITIONER'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VD
Josh Girgenti	7, 17	--	--	--	--
Kathleen Guthrie	17	--	--	--	--

RESPONDENT'S WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VD
Shawn Ball	33	36	--	40,43	--

EXHIBITS

PETITIONER'S EXHIBITS

NO.	DESCRIPTION	ID	EVD
3	Email exchange between Mother and Father 11/26/2018	22	22
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RESPONDENT'S EXHIBITS

NO.	DESCRIPTION	ID	EVD

None

APPEARANCES

September 16, 2019

Judge: Michael Mandell

For the Petitioner:

Audra E. Petrolle

Witnesses:

Josh Girgenti

For the Respondent:

Shawn Ball, Pro Se

Witnesses:

None

to the church or place of his or her choice during the time that the minor children is/are in her care." You didn't actually write those words, correct?

A No, I did not.

Q Okay. And then the next provision is, "Both parents agree that the minor children may be instructed in the Christian faith." You didn't -- and the one term there that's actually written in by the party was Christian, correct?

A Yes.

Q So you are not denying that you reached an agreement that the children should be instructed in the Christian faith, correct?

A Correct. I'm also not denying that I -- or I'm not saying that I have moved away from the Christian faith. My definition of - of a Christian is following the teachings of Jesus Christ, and I contend that I am actively doing that.

Q Okay. And do you fol -- do you not follow the Book of Mormon in Mormonism?

A The Book of Mormon is another testa -- testament of Jesus Christ as is the New Testament.

Q As interpreted by Joseph Smith, correct?

A Correct.

Q Thank you, Your Honor. I think that's it for now.

THE COURT: All right. The text that was referred to in Exhibit 17 previously -- so when the child was telling

whether you like it or not forever since you decided that -- since you all had children together. So they are the ties that bind and, you know, it's -- if you can attend weddings and happy events and different things together, it makes life much much easier for the children. So through the extent that you cannot have those kinds of issues arise, it's certainly in the kids' best interest, which the Court will expect that both of you will act in. All right. Given that, good luck to you both. Like I said, hopefully, you're able to resolve your issues if not, then I'm sure we'll be seeing you all again. Thank you.

MS. PETROLLE: Thank you.

MR. BALL: Thank you, Your Honor.

THE PETITIONER: Thank you.

MR. BALL: Thank you.

(Proceedings concluded at 10:56 a.m.)

CERTIFICATE

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/s/
_____

KAYLA GRIFFIN, November 20, 2019
Transcriber

ATTACHMENT COVER PAGE

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By Deputy Clerk: *SS*

ATTACHMENT NAME: **BRIEF - Reply: Respondent/Appellant's Combined Reply Brief and Supplemental Appendix**

CASE NAME: **BALL v. BALL**

CASE NUMBER: **CV-19-0787**

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