

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 12/11/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

AMANDA C. JONES, ) No. 1 CA-SA 12-0248  
)  
Petitioner, ) DEPARTMENT E  
)  
v. ) Maricopa County  
) Superior Court  
THE HONORABLE JANICE CRAWFORD, ) No. FC 2012-006939  
Judge *Pro Tempore* of the SUPERIOR )  
COURT OF THE STATE OF ARIZONA, in ) **DECISION ORDER**  
and for the County of MARICOPA, )  
)  
Respondent Judge, )  
)  
JARED WILLIAMS, )  
)  
Real Party in Interest. )

The court, Presiding Judge Diane Johnsen, Judge Jon W. Thompson and Chief Judge Lawrence F. Winthrop, has considered the petition for special action, the response, the reply and the brief of the amici and the oral argument presented on November 26, 2012. By order issued November 27, 2012, the court exercised its discretion to accept jurisdiction of the special action.

Relief in a special action may be granted when a superior court judge has failed to exercise discretion that she has a duty to exercise, has failed to perform a duty required by law as to which she has no discretion, has proceeded or is

threatening to proceed without or in excess of jurisdiction or legal authority, or has made a determination that is arbitrary and capricious or an abuse of discretion. Ariz. R.P. Spec. Act. 3.

As argued by the parties, this special action concerns whether a putative father forfeits his right to establish his paternity if he does not both file and serve the birth mother with his paternity action within 30 days of receiving the statutory notice pursuant to Arizona Revised Statutes ("A.R.S.") section 8-106(G) (West 2012).<sup>1</sup> State statutes and rules that directly or indirectly may bear on this issue, however, appear inconsistent and/or contradictory. See, e.g., A.R.S. § 8-106(G)(3), (I)(4) (requiring notice to potential father that he has responsibility to initiate paternity proceedings and serve the mother within 30 days of completion of service of the notice); A.R.S. § 8-106(G)(7), (I)(8) (potential father must be informed that he will be barred from pursuing paternity if he fails to file and serve action "as prescribed by this section"); A.R.S. § 8-106.01(G) (West 2012) (putative father is barred from maintaining paternity action if he does not file a paternity action within 30 days of receiving statutory notice; no mention of any deadline for service of paternity complaint); A.R.S. § 8-

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<sup>1</sup> Absent material revisions after the relevant date, we cite a statute's current version.

106(J) (potential father who does not file a paternity action and "comply with all applicable service requirements" within 30 days of the statutory notice "waives his right to be notified of any judicial hearing regarding the child's adoption or the termination of parental rights and his consent to the adoption or termination is not required"); A.R.S. § 25-806(C) (West 2012) ("[t]he procedure on the filing of the petition [of paternity] shall be as in other civil cases"); Ariz. R. Civ. P. 4(i) (allowing 120 days for service of a complaint in a civil action); A.R.S. § 8-111(5) (West 2012) (notice of a petition for adoption must be served "as provided for the service of process in civil actions" to any person who has initiated a paternity action). In addition, to the extent the 30-day period for service of a paternity action described in A.R.S. § 8-106(G) imposes a requirement that conflicts with Arizona Rule of Civil Procedure 4(i), the statute may raise due-process and/or separation-of-power concerns that the parties' briefing does not sufficiently address. See, e.g., *State v. Fowler*, 156 Ariz. 408, 413, 752 P.2d 497, 502 (App. 1987).

For these reasons, the court cannot conclude the superior court judge has failed to exercise discretion that she has a duty to exercise, has failed to perform a duty required by law as to which she has no discretion, has proceeded or is threatening to proceed without or in excess of jurisdiction or

legal authority, or has made a determination that is arbitrary and capricious or an abuse of discretion. Accordingly, and upon consideration,

**IT IS ORDERED** denying relief.

/s/

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DIANE M. JOHNSEN, Acting Presiding Judge