

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: 11-23-2010  
RUTH WILLINGHAM,  
ACTING CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

RAYMOND J. CONROY, ) 1 CA-CV 10-0097  
)  
Plaintiff/Appellant, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication  
PHYLLIS SCHILLING, ) - Rule 28, Arizona  
) Rules of Civil  
Defendant/Appellee. ) Appellate Procedure)  
)  
)  
)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CV 2009-053976

The Honorable Eddward Ballinger, Jr., Judge

**AFFIRMED**

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Raymond Conroy	Winslow
In Propria Persona	
Phyllis Schilling	Peoria
In Propria Persona	

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**H A L L**, Judge

¶1 Raymond Conroy (Father) appeals from the trial court's dismissal of his complaint against Phyllis Schilling (Mother).

For the reasons that follow, we affirm the trial court's dismissal order.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 Father and Mother are the biological parents of a minor child, Danae. On May 7, 2008, the Honorable Linda H. Miles ordered that Father, an inmate, "shall be entitled to weekly telephone access with Danae, at his expense, subject to ADOC rules, regulations and/or policies." On June 3, 2009, Judge Miles entered an order finding Mother in contempt of court for willfully failing to comply with the court's order of weekly telephone access between Father and Danae. As a sanction for her noncompliance, Judge Miles ordered that Mother pay for a portion of Father's collect call fees.

¶3 On September 10, 2009, Father filed a "Tort - Non Motor Vehicle" complaint against Mother. He explained that Mother had been found in contempt of court for failing to provide him with telephone access to Danae and argued

that the defendant's violations of the court order was knowingly and intentionally done. It was done to continue to deny Plaintiff access to his daughter that was court ordered. Plaintiff has had no telephonic access with the minor child since December 2008. Judge Miles clearly wanted access and ordered it. The defendant's failure to comply with the court orders has caused Plaintiff injury. Plaintiff has suffered continued alienation of his own daughter at

the hands of the defendant. Plaintiff is entitled to damages forthwith.

Father requested "damages in the amount of \$500.00 for each missed opportunity to talk to my daughter," discretionary damages in the amount of "\$10,000.00 for mental and emotional distress for not being able to talk to my daughter," and punitive damages in the amount of \$5,000.00.

¶4 In her answer, Mother acknowledged that Judge Miles found her in contempt, but argued that the matter had already been sufficiently addressed with "appropriate sanctions" imposed. Mother also argued that Father "failed to state a claim upon which relief could be granted" and petitioned the court to dismiss the complaint. On November 9, 2009, Father filed a motion for summary judgment, contending that he was entitled to judgment as a matter of law based on Mother's admission that she was found in contempt of court.

¶5 On December 1, 2009, the Honorable Eddward Ballinger entered an order dismissing Father's complaint, finding "this case to be properly heard by the family court and that a viable civil claim is not asserted." Father timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-2101(B) and -2102(B) (2003).

## DISCUSSION

¶16 Father contends that the trial court erred by dismissing his complaint. Specifically, he argues that the trial court erred in finding that (1) the matter had been properly heard by the family court, and (2) the complaint did not set forth a viable civil claim.

¶17 We review de novo a trial court's grant of a motion to dismiss for failure to state a claim. *Phelps Dodge Corp. v. El Paso Corp.*, 213 Ariz. 400, 402, ¶ 8, 142 P.3d 708, 710 (App. 2006). We assume the allegations in the complaint are true, and will "uphold the dismissal only if the plaintiff [] would not be entitled to relief under any facts susceptible of proof in the statement of the claim." *T.P. Racing, L.L.L.P. v. Ariz. Dep't of Racing*, 223 Ariz. 257, 259, ¶ 8, 222 P.3d 280, 282 (App. 2009).

¶18 Arizona is a notice-pleading state, and a complaint need only set forth a short and plain statement showing the plaintiff is entitled to relief in order to survive a motion to dismiss. Ariz. R. Civ. P. 8(a); *Mobilisa, Inc. v. Doe*, 217 Ariz. 103, 111, ¶ 23, 170 P.3d 712, 720 (App. 2007). The pleading must do no more than "give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved." *Mackey v. Spangler*, 81 Ariz. 113,

114, 301 P.2d 1026, 1027-28 (1956). But neither this court nor the trial court is permitted "to speculate about hypothetical facts that might entitle the plaintiff to relief." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 420, ¶ 14, 189 P.3d 344, 346 (2008) (internal quotation omitted).

¶19 Father's complaint and claim for damages is based solely on Mother's failure to comply with the family court's order that she allow Father telephonic access to Danae. As Judge Ballinger found, Mother's noncompliance with the court order was appropriately addressed by the family court and sanctions were imposed. Although Father requests the civil remedy of damages, he did not raise any cognizable claim for tort relief in his complaint, that is, he did not set forth any theory of liability other than Mother's failure to abide by a court order. Even assuming that Father's assertion that he suffered "continued alienation" of his own daughter is an attempt to state a cause of action, and that such a claim is cognizable in Arizona, *but see* Restatement (Second) of Torts § 699 (1977) ("One who, without more, alienates from its parent the affections of a child, whether a minor or of full age, is not liable to the child's parent."), the complaint alleged no facts that could support such a claim. *See Cullen*, 218 Ariz. at 419, ¶ 7, 189 P.3d at 346 ("Because Arizona courts evaluate a

