

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 01/28/2010
PHILIP G. URRY, CLERK
BY: GH

) 1 CA-SA 09-0317
CARRIE L. WALTERS, M.D., a single)
woman,) DEPARTMENT B
)
Petitioner,) **DECISION ORDER**
)
v.)
)
THE HONORABLE ROBERT BUDOFF,)
Judge of the SUPERIOR COURT OF)
THE STATE OF ARIZONA, in and for)
the County of MARICOPA,)
)
Respondent Judge,)
)
LOIS WINKLER, on her own behalf,)
)
Real Party in Interest.)
)
)
_____)

The court, Presiding Judge Patricia K. Norris, and Judges Daniel A. Barker and Peter B. Swann, has considered Petitioner Carrie L. Walters' Petition for Special Action, the Response, and Reply.

Petitioner raises three issues with regard to this case. She contests the trial court's orders with regard to: (1) requiring production of Dr. Walters' medical records, (2) requiring Dr. Walters to submit to a Rule 35 examination, and (3) requiring production of Dr. Walters' income tax returns.

As to issues (1) and (2), the documents at issue, with limited exception, have already been produced thus obviating the need for special action review. Accordingly,

IT IS ORDERED declining jurisdiction.

As to issue (3),

IT IS ORDERED accepting jurisdiction and granting relief. Winkler asserts that because she made detailed "factual allegations" in her amended complaint, there is no need for her to present evidence establishing a *prima facie* case based on admissible evidence that entitles her to have the punitive damages claim submitted to a jury. We disagree. The court's order must be based on a *prima facie* case established by evidence, not allegations.

As stated in *Larriva v. Montiel*, 143 Ariz. 23, 24, 691 P.2d 735, 736 (App. 1984), "there must be *prima facie* proof of a defendant's liability for punitive damages before his wealth or financial condition may be discovered." For instance, if a motion for partial summary judgment was brought and denied, this would constitute a *prima facie* case for punitive damages. There are many other ways a *prima facie* case may be established. *Id.* Accordingly,

IT IS ORDERED vacating the trial court's order as to the production of income tax records without prejudice to the reissuance of the order in the event Winkler establishes a *prima*

facie case entitling her to have the issue of punitive damages submitted to a jury.

/s/

DANIEL A. BARKER, Judge