

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

HOLLY HECKENBERG,) Court of Appeals
) Division One
)
) Petitioner,) No. 1 CA-SA 09-0318
)
) v.) Maricopa County
) Superior Court
)
) THE HONORABLE PETER REINSTEIN,) No. FC 2009-004054
)
) Judge of the SUPERIOR COURT OF)
) THE STATE OF ARIZONA, in and for) Department B
) the County of MARICOPA,)
)
) **DECISION ORDER**
) Respondent Judge,)
)
) TAMMY BILLMAN,)
)
)
) Real Party in Interest.)
)
)

In this special action, Petitioner Holly Heckenberg argues the family court should not have denied her motion to dismiss the "Petition to Establish in Loco Parentis Custody and Child Support" ("Custody Petition") filed by the Real Party in Interest, Tammy Billman ("Guardian"). Having considered both the petition for special action and the Guardian's response to petition for special action, the court, Presiding Judge Patricia K. Norris and Judges Daniel A. Barker and Peter B. Swann,

accepts jurisdiction and grants relief in part and denies relief in part.

Arizona Revised Statutes ("A.R.S.") section 25-415 (Supp. 2009) presupposes that custody of a minor child is with a person other than the person seeking relief. As alleged by Guardian and supported by the record, Guardian has had custody over and of the minor child pursuant to an order of appointment of guardian entered in December 1999. *See generally* A.R.S. § 14-5209(A) and (C)(2) (2005). The family court, therefore, should have denied that portion of Guardian's Custody Petition requesting custody of minor child under A.R.S. § 25-415. Although Guardian has alleged Petitioner has threatened to terminate the guardianship, such termination would require a court order, and nothing in the record reflects Petitioner has taken any steps to obtain such an order. We therefore reverse the family court's denial of Petitioner's motion to dismiss Guardian's request for relief under A.R.S. § 25-415.

Guardian's Custody Petition also requested an award of child support. As authority for this request, Guardian cited A.R.S. §§ 25-501 and -320 (Supp. 2009). Although Guardian may seek reimbursement for room, board, or clothing personally provided to the minor child as approved by the court, *see* A.R.S. § 14-5209(D), that statute does

not preclude Guardian from seeking an award of child support pursuant to A.R.S. § 25-502(J) (guardian may file request to establish child support). Although Guardian failed to refer to A.R.S. § 25-502(J) in the Custody Petition, she has standing to seek an award of child support under that statute. The family court was not, therefore, obligated to dismiss Guardian's request for an award of child support. We therefore deny Petitioner's request for relief from that portion of the family court's order denying her motion to dismiss Guardian's request for an award of child support. We express no opinion on the merits of Guardian's request for an award of child support, or Petitioner's objections thereto.

Petitioner and Guardian shall each bear her own fees and costs incurred in this special action.

/s/

Patricia K. Norris, Presiding Judge