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

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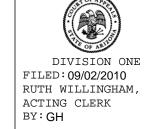
DEPARTMENT E

) MARICOPA County

DECISION

ORDER

) Superior Court



GENLIFE INSTITUTE, LLC, an Arizona limited liability company; DMP CAPITAL PARTNERS, LLC, an Oklahoma limited liability company; GREG and DOMITILA PAULOS, husband and wife; DONNA and TIMOTHY GOYETTE,) No. CV2009-032397 husband and wife; DAVID and KELLIE BREEDLOVE, husband and wife; ALLEN FUNERAL HOME AND CREMATION, an Arizona limited liability company; CORBETT FINANCIAL HOME, an Oklahoma Corporation,

Petitioners,

v.

THE HONORABLE LINDA K. MILES, Judge of the SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of MARICOPA,

Respondent Judge,

SCIENCE CARE, INC., an Arizona corporation,

Real Party in Interest.)

This special action came on regularly for conference this 31st day of August, 2010, before Presiding Judge Sheldon H. Weisberg and Judges Peter B. Swann, and Jon W. Thompson participating, and the matter was taken under advisement.

In the proceedings below, Petitioner, GenLife Institute, LLC, filed an Emergency Motion to Enforce Settlement

Agreement. Real Party in Interest, Science Care, Inc., opposed the motion, disputing that such an agreement had been reached.

Rule 80(d), Arizona Rules of Civil Procedure, provides:

Agreement or consent of counsel or parties. No agreement or consent between parties or attorneys in any matter is binding if disputed, unless it is in writing, or made orally in open court, and entered in the minutes.

Here, the trial court ruled, and we agree, that the written communications between counsel did not constitute a final agreement as to all material terms. Without either a written agreement or an adequate record reached in open court, the rule frees the trial court from choosing between conflicting recollections and interpretations offered by advocates whose interests diverge. Canyon Contracting Co. v. Tohono O'Odham Hous. Auth., 172 Ariz. 389, 391, 837 P.2d 750, 752 (App. 1992). The trial correct did not err in denying the motion.

IT IS ORDERED accepting jurisdiction of this special action but denying relief.

IT IS FURTHER ORDERED lifting the stay of the proceedings ordered by this court on August 9, 2010.

/s/