IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

AARON MITTELSTADT; BRETT T. DONALDSON, *Petitioners*,

v.

KARISMA AALIYAH BURGESS, *Respondent*.

No. 1 CA-SA 24-0174[1]
FILED 01-09-2025

Petition for Special Action from the Superior Court in Maricopa County
CV 2023-051545
The Honorable Scott A. Blaney, Judge

JURISDICTION ACCEPTED IN PART; RELIEF DENIED

COUNSEL

Donaldson Law PLC, Carefree
By Brett T. Donaldson, Iman R. Soliman
Counsel for Petitioners

Shapiro Law Team, Scottsdale
By Heather E. Bushor, David C. Shapiro
Co-Counsel for Respondent

Ahwatukee Legal Office PC, Phoenix
By David L. Abney
Co-Counsel for Respondent

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[1] The court exercises its discretion to adopt a caption consistent with the new Arizona Rules of Procedure for Special Actions, effective January 1, 2025, which no longer list judges as respondents. Ariz. R.P. Spec. Act. 5(b)(2).

OPINION

Judge Andrew M. Jacobs delivered the opinion of the Court, in which Presiding Judge Maria Elena Cruz and Judge Samuel A. Thumma joined.

J A C O B S, Judge:

¶1 Petitioners Aaron Mittelstadt and his attorney Brett Donaldson seek special action review of an order sanctioning Donaldson for instructing Mittelstadt to refuse to answer nonprivileged questions at his deposition and for related misconduct. The superior court correctly found Donaldson's violation of Arizona Rule of Civil Procedure 30(d) was sanctionable and, as a remedy, properly imposed attorneys' fees against Donaldson and properly ordered Mittelstadt to be redeposed. Given the lack of a plain, speedy, and adequate remedy for errors claimed by Donaldson, and given the importance of the proper conduct of pretrial depositions in civil disputes, we exercise special action jurisdiction over Donaldson's request for review but decline special action jurisdiction to the extent Mittelstadt (who was not sanctioned) seeks review. Because the superior court did not err, we deny Donaldson's request for relief.

FACTS AND PROCEDURAL HISTORY

¶2 This is a personal injury case arising from a June 2021 car accident in which defendant Aaron Mittelstadt's car collided with one operated by plaintiff, Karisma Burgess. In January 2024, Burgess' lawyer, Heather Bushor, conducted a discovery deposition of Mittelstadt. She asked Mittelstadt whether he was cited for his conduct in the accident.

¶3 Donaldson objected at length and directed Mittelstadt not to answer "any questions about any citations regardless of who may or may not have been cited," citing A.R.S. § 28-1599. Bushor told Mittelstadt he had to answer her questions unless the answers were privileged. Donaldson countered that Mittelstadt would not answer the question and that Bushor could only ask questions "that would not cause a mistrial and in violation of Arizona law." When Bushor explained she could ask any relevant question, Donaldson cited A.R.S. § 28-1599 and said Bushor would "have to get a court order to have [the question] answered." Bushor cited Rule 30, but Donaldson interrupted her several times. Each lawyer threatened the other with sanctions.

¶4 The lawyers continued to argue on the record. Bushor read Rule 30 into the record and correctly explained that Donaldson could only instruct his client not to answer if the question involved privileged information or if he moved for a protective order under Rule 30(d)(3). While continuing to interrupt Bushor, Donaldson also criticized the quality of her questions. Donaldson did not seek to terminate the deposition and did not seek a protective order under Rule 30. Nearly half of the 45-minute deposition was taken up by Donaldson's interruptions, objections, instructions not to answer, and criticism of Bushor's questions and her responses.

¶5 In post-deposition correspondence, Bushor explained that Burgess would move for sanctions and that other depositions should be postponed pending resolution of the motion for sanctions. Donaldson maintained he would not allow any questioning about whether Mittelstadt was cited and that such questioning would be in bad faith.

¶6 Burgess moved for sanctions against Donaldson, and Mittelstadt cross-moved for sanctions against Bushor. At oral argument, the court discussed the difference between discoverable information and admissible evidence, the scope of proper objections at depositions, and Rule 30's requirement that the *deponent* has the burden to move to terminate the deposition. During the hearing, Donaldson repeatedly interrupted the court and the court repeatedly admonished him, telling him to "check [his] tone[.]"

¶7 The court granted Burgess' motion for sanctions and denied Mittelstadt's. The court found Donaldson "engaged in unreasonable, groundless, and obstructionist behavior when he repeatedly instructed the witness not to answer[]" questions related to citations and tickets. The court explained that Rule 30 places the burden on the deponent – here Mittelstadt, through his counsel Donaldson – to seek a protective order to terminate his deposition. The court likewise rejected Donaldson's argument that he could instruct a witness not to answer questions seeking information that might not be admissible at trial, ruling that "[a] citation's inadmissibility [at trial] for [the] specific purpose [of proving negligence] does not make it off-limits to questioning at a deposition." The court explained that Rule 30 prohibits speaking objections and that relevance is not a proper objection in a deposition. The court ordered Donaldson to reimburse Burgess for attorneys' fees related to the motion for sanctions and for fees and costs arising from the first deposition. The court also ruled that Burgess was "entitled to conduct a new deposition [of Mittelstadt]

unimpeded by opposing counsel's previous behavior[,]" including any question already asked in the first deposition. This special action followed.

DISCUSSION

I. This Court Exercises Its Discretionary Special Action Jurisdiction over Donaldson's Request for Review.

¶8 Special action jurisdiction is discretionary. *Am. Fam. Mut. Ins. Co. v. Grant*, 222 Ariz. 507, 511 ¶ 9 (App. 2009); A.R.S. § 12-120.21(4); Ariz. R.P. Spec. Act. 12(a). We accept jurisdiction here over Donaldson's request for special action review because there is no plain, adequate, and speedy remedy for the complaints arising from the deposition, as discovery orders are not immediately appealable. *See Am. Fam. Mut. Ins. Co.*, 222 Ariz. at 511 ¶ 10; Ariz. R.P. Spec. Act. 12(a). The proper defense of a witness at a deposition consistent with Rule 30(d) is likewise a question of statewide importance. *See* Ariz. R.P. Spec. Act. 12(a); *cf. Redwood v. Dobson*, 476 F.3d 462, 469-70 (7th Cir. 2007) ("Because depositions take place in law offices rather than courtrooms, adherence to professional standards is vital, for the judge has no direct means of control."). This question tends to evade review, and accepting jurisdiction will materially advance the efficient management of this case. *See* Ariz. R.P. Spec. Act. 12(b)(5), (7). And while extraordinary relief is not routinely granted in discovery matters and is done so "only in 'rare' cases," the circumstances of this case warrant the exercise of our discretion. *Jolly v. Superior Court*, 112 Ariz. 186, 188 (1975) (quoting *Zimmerman v. Superior Court*, 98 Ariz. 85, 87 (1965)).

¶9 In accepting special action review of Donaldson's request, the court recognizes that Donaldson himself (and not his client) was sanctioned for his conduct at the deposition of his client. Mittelstadt, his client, however, is not claimed to have done anything improper during the deposition and was not sanctioned. Accordingly, Mittelstadt is not an aggrieved party and, in this special action, there is nothing he challenges. Accordingly, in the exercise of our discretion, the court declines special action review to the extent Mittelstadt is a petitioner.

II. The Superior Court Correctly Determined That Donaldson Violated Rule 30(d) by Instructing His Client Not to Answer Deposition Questions for a Reason Other Than Privilege and Without Terminating the Deposition to Seek a Protective Order.

¶10 Donaldson's primary argument appears to be that A.R.S. § 28-1599 prohibits all evidence of a civil traffic citation or judgment. It does not. That statute states that "[a]n admission of the allegation of a civil traffic

complaint or a judgment on the complaint is not evidence of negligence in a civil or criminal proceeding that is not authorized by" specified provisions of A.R.S. Title 28 ("Transportation"). A.R.S. § 28-1599. Although specifying one prohibited purpose for evidence of a civil traffic complaint or resulting judgment, Section 28-1599 does not purport to prohibit admission of such evidence for all purposes. In that respect, it appears similar to Arizona Rule of Evidence 407, prohibiting admission of evidence of subsequent remedial measures to prove negligence and other specified prohibitions, but allowing such evidence "for another purpose, such as impeachment, or – if disputed – proving ownership, control, or the feasibility of precautionary measures." Ariz. R. Evid. 407; *accord* Ariz. R. Evid. 408 (similar provision for compromise offers and negotiations); Ariz. R. Evid. 409 (similar provision for offers to pay medical and similar expenses); Ariz. R. Evid. 411 (similar provision regarding liability insurance). Section 28-1599 bars admissibility in evidence of a civil traffic complaint or resulting judgment for one purpose, but not all purposes.

¶11 Donaldson is incorrect, for these same reasons, in asserting that Section 28-1599 creates, in substance, a privilege that precludes inquiry into whether a driver has been cited or a judgment has been entered on a driving complaint involving that driver. It does not. Instead, it precludes introducing at trial such evidence for a specific purpose. But because it does not preclude introduction of such evidence for all purposes, Section 28-1599 does not constitute a privilege, precluding any questioning about a traffic citation or resulting judgment. *See, e.g.*, A.R.S. §§ 12-2231 to -2240 (listing various statutory privileges).

¶12 Donaldson is incorrect in asserting that, to be discoverable, evidence must be admissible at trial. In Arizona, discovery in civil cases is broad but not without limits. "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense[.]" Ariz. R. Civ. P. 26(b)(1). "Information within this scope of discovery need not be admissible in evidence to be discoverable." *Id.* By this express language, evidence need not be admissible to be discoverable. And Donaldson cannot credibly argue that evidence of a civil traffic citation or judgment is not relevant in discovery for a civil traffic accident, like this case. *Cf.* Ariz. R. Evid. 401 (broad relevance standard when considering the admission of evidence at trial).

¶13 Donaldson also fails to acknowledge the proper way to address objections made during a discovery deposition. "Counsel may instruct a deponent not to answer . . . *only when* necessary to preserve a privilege, to enforce a limit ordered by the court, or to present a motion"

seeking to terminate or limit discovery. Ariz. R. Civ. P. 30(c)(2) (emphasis added). Here, Donaldson instructed his client not to answer questions that did not seek privileged information and were not prohibited by court order, while suggesting the burden was on opposing counsel to file a motion seeking an order requiring an answer. Those positions are the opposite of what Rule 30(c)(2) requires.

¶14 Donaldson and his client were not without recourse if they believed Burgess' counsel was wasting time with legally irrelevant or harassing questions. "At any time during a deposition, the *deponent or a party* may move to terminate or limit the deposition on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party." Ariz. R. Civ. P. 30(d)(3)(A) (emphasis added). Such a motion must be filed "in the court where the action is pending or the court where the deposition is being taken." *Id*. Thus, if Donaldson believed that it was improper given A.R.S. § 28-1599 for Burgess to ask Mittelstadt in a discovery deposition whether he was cited, he was free to stop the deposition to seek a court order to that effect. *See id.* Or Donaldson could have instructed Mittelstadt not to answer and demanded that the deposition "be suspended for the time necessary to obtain an order[]" limiting the deposition. *Id.*

¶15 But the one thing Donaldson could not do was selectively instruct his client not to answer without moving to terminate or limit the deposition. *See* Ariz. R. Civ. P. 30(c)(2), (d)(3)(A); *see also Lewis R. Pyle Mem'l Hosp. v. Superior Court*, 149 Ariz. 193, 198 (1986) (holding that if deponent believed deposition was conducted in bad faith "he had the right to demand that the deposition be suspended for the time necessary to allow him to make a motion for a protective order" and that "deponent may not refuse to be deposed or leave a deposition without complying with the rules[]"); 8A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2113 (3d ed. 2024) ("Disruptive or oppressive behavior by attorneys during depositions has emerged as a serious concern. Rule 30(d) has long authorized a motion to terminate the examination if it is being conducted in such a way as to harass the deponent. . . . [A] party may instruct a witness not to answer only to preserve a privilege or move for a protective order.") (footnote omitted).

¶16 For these reasons, the superior court properly found Donaldson's instructions not to answer violated Rule 30(d).

III. The Superior Court Did Not Abuse Its Discretion in Fashioning Remedies for the Difficulties in Mittelstadt's Deposition.

¶17 Rule 30(d)(2) provides that a court may "impose appropriate sanctions . . . against a party or attorney who has engaged in unreasonable, groundless, abusive, or obstructionist conduct in connection with a deposition[.]" Ariz. R. Civ. P. 30(d)(2). Courts have substantial discretion in determining whether to impose sanctions and, if sanctions are warranted, which sanctions to impose. Wright & Miller, *supra*, § 2116 ("Rule 30(d) [was] adopted for the protection of parties and deponents[.] . . . To prevent abuse of these rights, all phases of the examination are subject to the control of the court, which has discretion to make any orders that are necessary."). This court reviews the superior court's decision to impose discovery sanctions for abuse of discretion. *Sec. Title Agency, Inc. v. Pope*, 219 Ariz. 480, 505 ¶ 111 (App. 2008). The superior court abuses its discretion when its ruling is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Quigley v. City of Tucson*, 132 Ariz. 35, 37 (App. 1982).

A. The Superior Court Did Not Abuse Its Discretion by Sanctioning Donaldson.

¶18 Donaldson argues the court abused its discretion by sanctioning him. The superior court found that counsel "engaged in unreasonable, groundless, and obstructionist behavior when he repeatedly instructed the witness not to answer." The court further found that Donaldson improperly employed speaking objections in violation of Rule 30(c)(2), interrupted the attorney taking the deposition to ask questions of his own witness, and condescendingly criticized the taking attorney's questions, as by saying, "[t]hat's a better question, which you should have asked in the first place." The court further found counsel "disrespectful [and] obstructionist" to the court in oral argument on these issues. The record contains support for these findings. The court did not abuse its discretion by imposing sanctions for this conduct or for granting opposing counsel's fees in being forced to address it before the court.

B. The Superior Court Did Not Abuse Its Discretion in Not Sanctioning Bushor.

¶19 Donaldson argues the superior court abused its discretion in not ordering sanctions against Burgess' counsel, Bushor. Donaldson argued to the superior court that Bushor should be sanctioned for pursuing the questioning to which Donaldson objected. But as we have already explained, Bushor's questions were authorized under Rule 30, while much

of Donaldson's conduct in the deposition was not. Accordingly, the court did not abuse its discretion by declining to sanction Bushor. Moreover, to the extent the deposition became heated, trial courts are better situated to assess misconduct and prescribe the appropriate remedy. *See, e.g.*, *Goodyear Tire & Rubber Co. v. Haeger*, 581 U.S. 101, 110 (2017) (recognizing that because trial courts have "'superior understanding of the litigation,'" their judgments regarding sanctions "are entitled to substantial deference on appeal") (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983)). We defer to the superior court's assessment of the deposition conduct here and see no abuse of discretion in declining to sanction all counsel in the deposition.

C. The Superior Court Did Not Abuse Its Discretion in Ordering a New Four-Hour Deposition.

¶20 Donaldson argues the superior court abused its discretion by ordering a new four-hour deposition in which Mittelstadt can "be deposed about questions that were already asked, or could have been asked, and answered." Donaldson argues that Bushor asked and Mittelstadt answered most, if not all, relevant questions, making redeposition excessive.

¶21 The superior court's order authorizing a new deposition on all topics essentially concluded the original deposition was unusable, given Donaldson's sanctionable conduct. That misconduct consumed much of the deposition, displacing the focus of the deposition. On this record, recognizing that the second deposition apparently has not yet been taken (and is not part of the record provided), Donaldson has shown no abuse of discretion in the superior court allowing Burgess an opportunity to take a new deposition of Mittelstadt, given what remains to be done in the case.

CONCLUSION

¶22 For the reasons stated, we accept jurisdiction of this special action as to Donaldson, decline special action jurisdiction as to Mittelstadt, and affirm the superior court's orders finding Donaldson's conduct was sanctionable, imposing attorneys' fees against Donaldson, and ordering Mittelstadt to be redeposed. We grant Burgess her taxable costs incurred in this special action subject to her compliance with ARCAP 21 and deny Donaldson's requests for fees and costs.

AMY M. WOOD • Clerk of the Court
FILED: JR