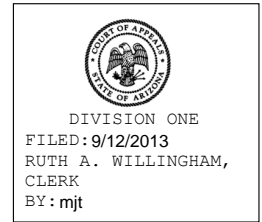


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In re the Matter of:) No. 1 CA-CV 12-0658
)
AUSTEN G. BETHAY,) DEPARTMENT E
)
Petitioner/Appellee,) Maricopa County
) Superior Court
v.) No. FC2011-052424
)
JACQUELINE N. MOORE,)
)
Respondent/Appellant.) **DECISION ORDER**
)
_____)

Respondent/Appellant, Jacqueline N. Moore ("Mother"), has filed an appeal seeking relief from the family court's joint custody order (filed May 9 and August 24, 2012) and denial of her amended motion for new trial. Among other issues, Mother raises several arguments concerning the medical marijuana use of Petitioner/Appellee, Austen G. Bethay ("Father"), including whether the court erred by not fully considering Father's compliance with the medical marijuana statutes and prior court orders.

Father has not filed an answering brief on appeal responding to any of Mother's arguments. When there are debatable issues and an appellee fails to file an answering brief, we may consider such failure a confession of reversible

error on the part of the appellee. See *United Bonding Ins. Co. v. Thomas J. Grosso Inv., Inc.*, 4 Ariz. App. 285, 285, 419 P.2d 546, 546 (1966); *Hoffman v. Hoffman*, 4 Ariz. App. 83, 85, 417 P.2d 717, 719 (1966); ARCAP 15(c).

The record also indicates that Father has not complied with prior court orders, including the court's order that he obtain a letter from his prescribing medical marijuana physician showing that he is being treated in accordance with the Arizona Medical Marijuana Act, see Ariz. Rev. Stat. ("A.R.S.") §§ 36-2801 to -2819, and is using medical marijuana in accordance with the prescription.

Given Father's apparent noncompliance with those court orders, which raises a question whether Father may properly rely on the non-discrimination provision of A.R.S. § 36-2813(D), we exercise our discretion to consider Father's failure to file a brief a confession of error as it relates to these issues. Additionally, since the time of the court's order, the statutes related to child custody and visitation (now titled "legal decision-making and parenting time"), including A.R.S. §§ 25-403 and -403.04, have been substantially revised. See, e.g., 2012 Ariz. Sess. Laws, ch. 309, §§ 1, 5, 10 (2nd Reg. Sess.) (eff. Jan. 1, 2013). Accordingly,

IT IS ORDERED vacating the family court's joint custody order and order denying Mother's amended motion for new trial.

IT IS FURTHER ORDERED remanding this matter for further proceedings consistent with this decision.

IT IS FURTHER ORDERED that the clerk of this court provide a copy of this Decision Order to the Honorable Gerald J. Porter, a Judge of the Superior Court, and to each party appearing herein.

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

CONCURRING:

_____/S/_____
MARGARET H. DOWNIE, Judge

_____/S/_____
JON W. THOMPSON, Judge