

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



DIVISION ONE  
FILED: 12/4/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

SHERRY COX, now known as Sherry	)	1 CA-SA 12-0249
Lund,	)	
	)	DEPARTMENT B
Petitioner,	)	
	)	Maricopa County
v.	)	Superior Court
	)	No. CV0000-445923
THE HONORABLE ARTHUR T. ANDERSON,	)	
Judge of the SUPERIOR COURT OF	)	
THE STATE OF ARIZONA, in and for	)	
the County of MARICOPA,	)	
	)	
Respondent Judge,	)	
	)	
JEWELS BY G. DARRELL OLSON, INC.,	)	DECISION ORDER
an Arizona Corporation,	)	
	)	
Real Party in Interest.	)	
_____	)	

The court, Presiding Judge Maurice Portley and Judges Patricia A. Orozco and Randall M. Howe participating, has considered the petition for special action filed by Sherry Cox, now known as Sherry Lund ("Lund"). For the following reasons, we accept jurisdiction and deny relief, but order the trial court to issue findings of facts and conclusions of law to support the denial of the protective order.

### **PROCEDURAL BACKGROUND**

The Real Party in Interest, Jewels by G. Darrell Olson, Inc., secured a judgment by default against Lund that was filed on September 6, 1983. The judgment was duly renewed over the years. The Real Party in Interest discovered that Lund had gotten married and served her with a subpoena to appear at an April 19, 2011 debtor's examination.

After the Real Party in Interest refused to stipulate to a protective order, Lund filed a motion for a protective order. The motion was denied. Lund then filed this special action.

### **JURISDICTION**

Special action jurisdiction is discretionary. Ariz. Rev. Stat. ("A.R.S.") § 12-120.21(A)(4) (West 2012). If, however, a party does not have a remedy on appeal, we can exercise special action jurisdiction. Ariz. R.P. Spec. Act. 8(a). Discovery matters can be resolved by special action, and we assume that post-judgment discovery matters can also be resolved by special action. *See, e.g., Am. Family Mut. Ins. Co. v. Grant*, 222 Ariz. 507, 511, ¶ 10, 217 P.3d 1212, 1216 (App. 2009).

## DISCUSSION

Lund contends that the trial court abused its discretion by denying her motion for protective order. The Real Party in Interest argues that the court did not abuse its discretion.

Post-judgment discovery is governed by Arizona Rule of Civil Procedure ("Rule") 69. The Rule provides, in relevant part, that "the judgment creditor . . . may obtain discovery from any person, including the judgment debtor, in the manner provided in these Rules or otherwise by law." Ariz. R. Civ. P. 69.

The reference to other rules in Rule 69 includes the general discovery rule, Rule 26. Although a judgment creditor can use the discovery rules to attempt to collect the judgment, a judgment debtor can seek to use Rule 26(c) to secure a protective order. Rule 26(c) places the burden of proof on the party seeking the protective order. The Rule then provides that "[t]he court shall then make findings of fact concerning any relevant factors," and lists three in reaching its decision. Ariz. R. Civ. P. 26(c)(2). The Rule concludes by providing that "[n]o such findings of fact are needed where the parties have stipulated to such an order or where a motion to intervene and to obtain access to materials subject to a confidentiality order are not opposed." *Id.*

Here, the trial court did not make any findings of fact when it denied the motion for protective order. Although the court has discretion to resolve the request, the Rule appears to require that the court make findings of fact in making its decision. Our understanding of the requirement finds support in the interpretation of Federal Rule of Civil Procedure 26(c). See *Marquette Venture Partners II, L.P. v. Leonesio*, 227 Ariz. 179, 182 n.6, ¶ 11, 254 P.3d 418, 421 n.6 (App. 2011) (noting that we look to the interpretation of federal rules when those rules are similar to our civil rules).

For example, in *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, the Tribune was attempting to get the district court to unseal documents that the parties had agreed should be sealed. 263 F.3d 1304, 1308-09 (11th Cir. 2001). The district court ordered the documents to be unsealed but granted a stay pending review. *Id.* In determining that the denial of a protective order would be reviewed for an abuse of discretion, the circuit court noted that "findings of fact made by a [trial] court need to be sufficiently detailed to permit meaningful appellate review." *Id.* at 1314. After finding that the district court did not make any findings supporting its ruling, the circuit court stated that "whether good cause exists for a protective order is a factual matter to be decided by the nature and character of the information in question, this

determination, supported by findings of fact, must be conducted upon remand." *Id.* at 1315. Consequently, in the absence of a stipulation or an unopposed agreement to access material subject to a confidentiality order, Rule 26(c) requires a trial court to make findings of fact in ruling on a protective order.

Because the trial court did not make findings of fact in denying the motion, we deny the relief sought, vacate our stay and order the trial court to make its findings of fact to support its decision.

The Real Party in Interest has also requested an award of attorney's fees in this matter. In the exercise of our discretion, we deny the request.

#### **CONCLUSION**

Based on the foregoing, we accept jurisdiction but deny relief and order the trial court to make findings of fact in support of its decision.

/s/

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MAURICE PORTLEY, Presiding Judge