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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

RENEE LUCIA TULLIANI, *Petitioner/Appellant*,

v.

DAVID G. LEACH, *Respondent/Appellee*.

No. 1 CA-CV 17-0235 FC
FILED 3-27-2018

Appeal from the Superior Court in Maricopa County
No. FC2013-052767
The Honorable Jay M. Polk, Judge

AFFIRMED

COUNSEL

Renee Lucia Tulliani, Cave Creek
Petitioner/Appellant

Stevens & Van Cott PLLC, Scottsdale
By Charles Van Cott
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Kent E. Cattani joined.

P E R K I N S, Judge:

¶1 Appellant Lucia Tulliani (“Mother”) appeals the superior court’s order dismissing her petition to prohibit her former spouse, David Leach (“Father”), from piloting an aircraft with their minor children aboard and denying her motion for a preliminary injunction. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 Mother and Father have three minor children for whom they share joint legal decision-making. In May 2016, while Father was pursuing his private pilot certification, Mother notified Father she was opposed to him piloting an aircraft with any of their children aboard. In October 2016, Father received his private pilot certification for single-engine aircraft. Sometime in December 2016, the children accompanied Father in an aircraft he was piloting.

¶3 On February 13, 2017, Mother filed a petition for a post-decree order barring Father from piloting an aircraft with the children aboard, absent Mother’s prior written approval, and sought a preliminary injunction, without notice, to prevent Father from flying with the children. She served neither on Father. Ten days later, the superior court dismissed her Petition and denied her motion for injunctive relief. Mother now appeals.

DISCUSSION

¶4 We review an order dismissing a petition for modification for abuse of discretion but review issues of law, including statutory interpretation, *de novo*. *Dressler v. Morrison*, 212 Ariz. 279, 281, ¶ 11 (2006). We review denial of a preliminary injunction for clear abuse of discretion and will affirm the superior court’s decision absent a clear error in factual findings or mistake of law. *Shoen v. Shoen*, 167 Ariz. 58, 62 (App. 1990).

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I. Dismissal of Mother’s Petition

¶5 Mother improperly relied on Arizona Revised Statutes (“A.R.S.”) section 25-403 and Arizona Rule of Family Law Procedure 91(H) in her Petition for an order limiting Father’s parental rights. Section 25-403 requires the superior court to determine legal decision-making and parenting time in a divorce decree or in response to a petition for modification pursuant to Rule 91(D). Rule 91(H), in contrast, authorizes any party seeking post-decree relief not addressed elsewhere in Rule 91 to file a petition pursuant to Rule 91(A) “setting forth detailed facts supporting the requested relief, together with the specific legal authority that . . . authorizes the superior court to grant the requested relief.” Ariz. R. Fam. Law P. 91(H). However, because we construe pleadings “as to do substantial justice,” we take Mother’s request to be a Rule 91(D) petition to modify legal decision-making pursuant to A.R.S. § 25-411. Ariz. R. Fam. Law P. 29(E).

¶6 Rule 91(D) prohibits setting a hearing for modification of legal decision-making absent compliance with A.R.S. § 25-411 and Rule 91(D). Rule 91(D) further directs the party seeking modification to certify whether the existing legal decision-making scheme requires the parties to pursue alternative dispute resolution prior to seeking relief from the court and detail what efforts have been made to comply with the dispute resolution process. Ariz. R. Fam. Law P. 91(D)(1)(a). Section 25-411, in turn, requires any party seeking modification to submit an affidavit or verified petition “setting forth detailed facts supporting the requested modification” and requires the court to deny the motion unless adequate cause is established by the pleadings. A.R.S. § 25-411(L).

¶7 Mother did not include “detailed facts” supporting her request, as required by Rule 91 and A.R.S. § 25-411. Similarly, Mother failed to discuss alternative dispute resolution as required by Rule 91(E) and to include the information required by Rule 91(A)(2). Instead, Mother alleged: (1) the children may suffer serious bodily injury or death if Father continues to take the children on flights; (2) her concerns were “reasonable and appropriate” given the “danger an inexperienced pilot *may* pose” (emphasis added); and (3) a single engine aircraft piloted by a man with his children aboard crashed near Payson at some point prior to her Petition. These bare assertions do not satisfy the “detailed facts” requirement of Rule 91 and A.R.S. § 25-411, nor do they establish “adequate cause” to hold a hearing. Accordingly, the superior court did not abuse its discretion in dismissing Mother’s Petition.

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II. Denial of Preliminary Injunction without Notice

¶8 Either party to a dissolution may file an independent motion, accompanied by an affidavit, requesting a temporary restraining order providing any “injunctive relief proper in the circumstances.” A.R.S. § 25-315(C). However, a motion for injunctive relief must be made in compliance with the Arizona Rules of Family Law Procedure and may only be issued without notice when “it clearly appears from specific facts shown by affidavit or by the verified motion that irreparable injury will result to . . . a minor child of the party” Ariz. R. Fam. Law P. 48(A)(1); A.R.S. § 25-315(D).

¶9 In her Motion, Mother explained that she “fears” a plane crash absent judicial intervention. Though Mother’s Motion recited the facts of her Petition, discussed *supra* at paragraph 7, it is void of specific facts clearly showing Father’s actions will result in harm to the children. Instead, the allegations in Mother’s Motion amount to an unsubstantiated fear of misadventure inherent in any number of leisure activities a parent may undertake with their children. Thus, the superior court did not abuse its discretion in finding Mother had failed to demonstrate irreparable injury was likely to occur unless injunctive relief was granted. Accordingly, we affirm the superior court’s denial of Mother’s Motion.

CONCLUSION

¶10 Based on the foregoing, we affirm the superior court’s dismissal of Mother’s Petition for Post-Decree Order and denial of Mother’s Motion for Preliminary Injunction Without Notice. Father may seek costs on compliance with Arizona Rule of Civil Appellate Procedure 21.



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