

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



DIVISION ONE
FILED: 11/18/10
RUTH WILLINGHAM,
ACTING CLERK
BY: DLL

SHAUNYETTA D. ASHFORD,)	1 CA-SA 10-0227
)	
Petitioner,)	
)	
v.)	Maricopa County
)	Superior Court
THE HONORABLE DANIEL J. KILEY,)	No. FC 2010-003875
Judge of the SUPERIOR COURT OF)	
THE STATE OF ARIZONA, in and for)	
the County of MARICOPA,)	
)	
Respondent Judge,)	
)	DECISION ORDER
HEATHER LEE SWANSON,)	
)	
Real Party in Interest.)	
_____)	

This special action came on for conference on November 17, 2010, before Presiding Judge Philip Hall, Judges Peter B. Swann and Sheldon H. Weisberg participating. For reasons that follow, we accept jurisdiction, but deny relief.

Shaunyetta Ashford ("Mother") filed this special action seeking relief from an order entered by the Honorable Daniel J. Kiley granting Heather Swanson's "Emergency Petition for *In loco Parentis* Custody" of Mother's minor child, pending a trial on her "Petition to Establish *In Loco Parentis* Custody and Child Support." The child has lived with Swanson for

approximately five years and Swanson seeks custody of her pursuant to A.R.S. § 25-415 (Supp. 2009). Mother objects and seeks to obtain custody of the child and move her to Texas where Mother now resides.

Mother claims the trial court erred in awarding temporary custody to Swanson because there was no evidence that "[i]t would be significantly detrimental to the child to remain or be placed in the custody of either of the child's living legal parents who wish to retain or obtain custody." A.R.S. § 25-415(A)(2). She alleges that the court applied an incorrect standard of "best interests of the child" in granting temporary custody of the child to Swanson pending the trial now set for December 8, 2010. A.R.S. § 25-403 (Supp. 2009). Mother also alleges that under Rule 47, Arizona Rules of Family Law Procedure ("Rule"), temporary orders under A.R.S. § 25-415 are not authorized because the Rule does not refer to that statute. Because Mother has no equally plain, speedy, and adequate remedy by appeal, we accept jurisdiction. Ariz. R. Spec. Act. 1(a); *DePasquale v. Superior Court (Thrasher)*, 181 Ariz. 333, 334, 890 P.2d 628, 629 (App. 1995) (interim custody order properly reviewed by special action).

Rule 47 provides in part that "[a] party seeking temporary orders under A.R.S. §§ 25-315, 25-324, 25-404, 25-408, 25-817 or 25-905, shall do so by filing a separate verified

motion with the court setting forth the legal and jurisdictional basis for the motion and specific relief requested." Under A.R.S. § 25-404(A)(2009), "[a] party to a custody proceeding may move for a temporary order [and] [t]he court may award temporary custody under the standards of § 25-403 after a hearing." Section 25-415 authorizes the filing of a "child custody proceeding" by a nonparent. Thus, contrary to Mother's assertion, a nonparent who seeks custody under A.R.S. § 25-415 may petition the court for a temporary custody order under A.R.S. § 25-404.

Although Swanson's emergency motion for temporary custody does not refer to A.R.S. § 25-404, the relief requested was to grant her "temporary legal custody pending an evidentiary hearing." She also asserts the trial court stated it was holding the initial hearing "for temporary relief, not permanent relief." Although the standard of "significantly detrimental to the child" in A.R.S. § 25-415 applies to the determination of final custody, the trial court applied the correct standard of "best interests of the child" under A.R.S. § 25-403 in determining temporary custody under A.R.S. § 25-404. The record indicates the court considered the factors set forth in A.R.S. § 25-403(A) and made the required findings under section 25-403(B). The trial court did not err in granting temporary custody of the child to Swanson.

Both parties have requested an award of costs and attorneys' fees incurred in this special action pursuant to A.R.S. § 25-324 and Rule 4(g), Arizona Rules of Special Actions. We decline to award them to either party; however, the trial court may consider costs and attorneys' fees incurred by Swanson in this proceeding when making its final determination in this matter.

IT IS ORDERED that the court of appeals, in the exercise of its discretion, accepts jurisdiction in this special action, but denies relief.

SHELDON H. WEISBERG, Judge