

**IN THE SUPREME COURT  
STATE OF ARIZONA**

IN RE TERMINATION OF  
PARENTAL RIGHTS AS TO  
M.N.

Supreme Court No. CR-24-0114-PR

Court of Appeals Division One  
No. 1 CA-JV 22-0227

Coconino County Superior Court  
No. S0300SV202100003

**APPELLANT'S RESPONSE TO PETITION FOR REVIEW**

Chad Joshua Winger, Esq.  
**HARRIS & WINGER, P.C.**  
6 E Aspen St., Suite 250 (physical)  
P.O. Box 100 (mailing)  
Flagstaff, Arizona 86001-4550  
Telephone: (928) 774-0011  
E-Mail: chad@azharrislaw.com  
State Bar No. 022767  
Attorney for Appellant/Father

THROUGH COUNSEL and pursuant to Rule 609, Ariz. R. P. Juv. Ct.,  
Appellant/Father hereby respond to Appellees, Adoption Choices of Arizona and  
counsel for the child's Petition for Review. Father respectfully requests that this  
Honorable Court deny Appellees' Petition for Review.

**SUMMARY OF RESPONSE**

1. Appellees Petition woefully fails to address the Court of Appeals legal  
analysis harmonizing the termination statutes regarding putative fathers and

potential fathers. Instead, Appellees ask this court to apply a holding that is inapposite. In arguing that the Court of Appeals erred because it did not apply *Frank R. v. Mother Goose Adoptions, Inc.* principles, Appellees ignore the glaring distinction between Appellant/Father and Frank R.

Unlike Mother Goose Adoptions, Appellees herein served Appellant/Father with A.R.S. § 8-106(G) Notice to Potential Fathers rendering *Mother Goose* inapposite.

2. The assertion that the Court of Appeals erred by making a factual finding that Father timely served his Petition for Paternity pursuant to A.R.S. § 8-106 hides from this Court the clear record in this matter. A judge of the Maricopa County Superior Court, after notice and opportunity to be heard, twice made factual findings that Father timely served his paternity petition.

In his Response to Motion for Summary Judgment regarding the putative father ground herein, Father's states the following facts, "[t]he Maricopa County Superior Court has twice rejected the argument that he was untimely in serving his petition for paternity. **See Exhibits 5 and 6.**" Appendix A, Response to Motion for Summary Judgment, p. 3.

Exhibit 5 attached to Father's Response to Motion for Summary Judgment regarding the putative father ground is an order from the Maricopa County Superior Court, Honorable Kevin B. Wein that reads,

The Court has received and reviewed Respondent/Mother's Motion to Dismiss Due to Non-Compliance with ARS 8-106(J). Both motions are DENIED. Mother is mistaken about Petitioner/Father's compliance with ARS 8-106(J).

According to both the Motions and the attached affidavit, Father had until May 23, 2021 to file a paternity action case and serve Mother, But, May 23, 2021 fell on a Sunday. Pursuant to Rule 4(a)(3) of the Arizona Rules of Family Law Procedure, when the last day to act falls on a Sunday, the period runs until the next day. According to both the Motion and Affidavit, the Paternity Petition was both filed and served by the extended deadline set forth in Rule 4—May 24, 2021. Both Motions are DENIED.

Appendix A, Exhibit 5, page 1.

Exhibit 6 attached to Father's Motion for Summary Judgment herein is a second order regarding timeliness of filing and service in response to a Motion to Reconsider the original finding of the Maricopa County Superior Court, Honorable Kevin B. Wein that reads,

The Court has received and reviewed the Respondent/Mother's Motion for Reconsideration of Denial of the Motion to Dismiss. The Court will give counsel the benefit of the doubt that they were unaware of binding statutory authority that addresses the issue cited in their motion. ARS § 1-243 and ARS § 1-301 provide for the same enlargement of time where the last day to act falls on a Sunday. These statutes have the same effect as the Rules of Procedure cited in the Court's original denial

For this reason, the Motion for Reconsideration is DENIED.

These judicial findings are in the record in this matter and were presented in Father's defense against the juvenile court's putative father finding. No other court made a contradictory finding regarding the timeliness of service. Appellees must have forgotten that these findings supported by the record herein were thoroughly set forth in Appellant's Opening Brief. OB, pp. 1, 3, 7, and 9.

The Court of Appeals can rely on the factual findings of the Maricopa County Superior Court that Father presented in his defense against the putative father ground. Appellees fail to cite any authority to support their claims of error.

Father will not argue about this point further. The remainder of this response will focus on the propriety of the Arizona Court of Appeals holding in this matter regarding the statutory distinction between potential fathers and putative fathers.

### **MATERIAL FACTS**

Within 30 days of M.N.'s ("Child") premature birth on 03/23/2021, C.C. ("Mother") identified Appellant, D.I. ("Father"), as a potential father pursuant to the A.R.S. §8-106(F) statutory obligation to identify. On 04/23/2021, the adoption agency Adoption Choices of Arizona ("Choices") served Father with an A.R.S. §8-106(G) Notice to Potential Birth Father. On Friday, 05/21/2021, Father filed Title 25 paternity proceedings in Maricopa County Superior Court ("Family Court"). Pursuant to A.R.S. § 8-106, Father timely served the paternity action on Mother

through mail to Choices' counsel on Monday, 05/24/2021. The Maricopa County Superior Court found that Father timely served his Petition for Paternity. Index of Record 40 at 42 (Exhibit 5 Father's Response to Motion for Summary Judgment).

### **FACTUAL AND PROCEDURAL BACKGROUND**

Father and Mother conceived the Child through a sexual encounter on 08/07/2020 in Phoenix, Arizona. Electronic Index of Record MOH Case Number S0300SV202100003 ("IR") Document 133, p. 4 ("severance judgment"); Exhibit Admitted at Termination Adjudication Hearing ("EX") No. 2, 00007 ("social study"). On 11/06/2020, Mother informed Father that she was pregnant. EX 2, 00008. When informed, Father asked Mother to live with him so he could take care of her during pregnancy. *Id.* Father also asked her to conduct a prenatal DNA test. *Id.* Mother declined because her boyfriend M.N. ("boyfriend") would not allow her to accept Father's support. *Id.* Mother and Father spent Thanksgiving of 2020 together with Mother's family. *Id.*

On 03/18/2021, Father called Mother to inquire whether she was still pregnant, and she informed him that she was due on 04/25/2021. *Id.* He again offered support. *Id.*

On 03/23/2021, Mother prematurely birthed the Child. *Id.*

On 04/05/2021, while the Child was still in the hospital, Mother contacted Father to reveal to him the premature birth. TR 06/01/2022, pp. 143-147; EX 2,

00008. On that same day, Father visited and held the Child at Arrowhead Hospital. *Id.* During his visit, Father asked an Arrowhead Hospital social worker about immediately performing DNA testing. *Id.* The hospital would not perform the DNA testing and directed Father to contact a private testing agency. *Id.* From the hospital parking lot, Father called Labcorp to perform DNA testing. *Id.*

On 04/06/2021, the Arrowhead Hospital social worker contacted and revealed to Choices, the 04/05/2021 conversation with Father at the hospital during which he asserted that he was the Child's father and had requested DNA testing. *Id.*; IR 133 at 5.

On 04/07/2021, two days after learning of the premature birth of the Child, Father spoke to Mother attempting to arrange a DNA test. IR 40 at 15 (Father's Affidavit RMSJ).

Choices located and served on Father an §8-106(G) Notice to Potential Fathers on 04/23/2021. IR 133 at 5.

On 05/21/2021, Father timely filed a *pro per* Petition for Court Ordered Paternity and Legal Decision-Making in Maricopa County Superior Court. IR 40 at 29-40 (Exhibit 4 RMSJ). On 05/24/2021, Father timely served his paternity petition on Mother by mail through Choices' counsel timely invoking his procedural due process rights in the statutory procedure set forth in §8-106(G). *Id.* at 42.

Mother, who according to Choices had disappeared after court approved expenses ran out, moved through counsel for dismissal of the paternity petition, arguing Father failed to timely serve her. IR 40 at 42 (Exhibit 5 RMSJ). In its ruling on a Motion to Reconsider denial of dismissal, the Family Court noted that the Motion to Dismiss was non-colorable regarding timing under the rules of procedure giving counsel the “benefit of the doubt” regarding ignorance of the law. *Id.* The Family Court set its first hearing on the paternity petition on 09/15/2021. *Id.*

At the 09/15/2021 Resolution Management Conference, the Family Court ordered paternity testing. *Id.* at 55 (Exhibit 7 RMSJ). DNA samples were finally collected from both Father and the Child on 11/08/2021. *Id.* at 71 (Exhibit 11 RMSJ). On 11/22/2021, DNA sample testing determined that Father’s probability of paternity was 99.99%. *Id.* LabCorp filed the paternity test in the Family Court on 12/06/2021. *Id.*

On 01/10/2022, the Juvenile Court held the initial hearing in the termination case. IR 23. Father appeared and the Juvenile Court referred to the Coconino County Legal Defender’s Office for appointment of counsel. *Id.* The Juvenile Court continued the initial hearing to 01/31/2022. *Id.* On 01/26/2022, Father’s appointed counsel appeared in the termination matter. IR 28. On 01/31/2022, the Juvenile Court ordered visitation between Father and the Child and concluded the

initial hearing as to Father. *Id.* Father enjoyed visits with the Child until the termination order issued. IR 131.

On 02/04/2022, Choices filed a Motion for Partial Summary Judgment arguing that there were no genuine issues of material fact and judgment as a matter of law should be entered regarding A.R.S. §8-533(B)(1)(Abandonment) and - 533(B)(6)(putative father's failure to register). IR 30.

After obtaining summary judgment on the putative father ground, Choices withdrew all remaining ground allegations against Father. The Juvenile Court dismissed the remaining grounds. IR 55.

On 05/04/2022, Father requested new counsel, citing a breakdown in the attorney/client relationship. IR 60. Following a hearing, the Juvenile Court granted new counsel on 05/10/2022. IR 71. Father's new counsel appeared on 05/18/2022. IR 74.

On 05/31/2022, in Juvenile Court, Father filed a Motion for Summary Judgment re: Paternity seeking a paternity order based on the Family Court DNA test. IR 90. On 07/26/2022, the Juvenile Court granted Father's Motion for Summary Judgment for an order of paternity establishing Father's paternity. IR 122.

### **REASONS FOR DENYING THE PETITION FOR REVIEW**

Father strictly complied with §8-106 making him a potential father.

The Maricopa Superior Court’s DNA testing in the paternity action filed and served pursuant to A.R.S. §8-106 confirmed he was the Father of the Child.

Choices thereafter served a termination case filed in Coconino County Juvenile Court (“Juvenile Court”).

Because Choices served on Father a §8-106(G) notice, and because Father timely filed and served his Family Court paternity case, *Frank R. v. Mother Goose Adoptions*, 243 Ariz. 111, 402 P.3d 966 (2016) is inapposite. The Juvenile Court’s reliance on *Frank R.* was a misapplication of the law and the Court of Appeals decision need not be reviewed.

*Frank R.* repeatedly notes that Frank R., whom the mother and the agency fraudulently and deplorably failed to serve §8-106(G) notice, was nevertheless a “putative” father. The *Frank R.* opinion is clear,

In this case, the required §8–106(G) notice was never served on Frank due to both Rachel and Mother Goose’s misrepresentations.

*Frank R.*, 243 Ariz. at 117, 402 P.3d at 1002.

Furthermore, the court notes that Frank R. “took a wait-and-see attitude” compared to Father in this case. Father availed himself of all reasonable opportunity to communicate with and support Mother during her pregnancy. He stepped forward on the very day he learned of the Child’s birth rushing to the hospital, speaking with a hospital social worker, and requesting a DNA test.

Father's actions resulted in service of a §8-106(G) notice one month after the Child's premature birth.

The plain language of A.R.S. §8-533(B)(6) is clear. It only applies to putative fathers. Father is not a putative father. He is a potential father pursuant to A.R.S. §8-533(B)(5), -106(G) because Appellees served the Notice to Potential Father on Father herein.

The Court of Appeals reversal is the correct application of the law and statutory interpretation.

The landmark U.S. Supreme Court case *Lehr v. Robertson* opens noting that the 1983 New York putative registry statutory framework distinguished putative fathers from possible fathers.

In addition to the persons whose names are listed on the *putative father* registry, New York law requires that notice of an adoption proceeding be given to several other *classes of possible fathers* of children born out of wedlock . . . who have been identified as the father by the mother . . . [Lehr] admittedly was not a member of any of those classes.

463 U.S. 248, 251-252, 103 S. Ct. 2985, 2988 (1983)(Emphasis added).

The plain language of Arizona's two termination procedural grounds expressly recognize *Lehr*'s distinction between putative and potential fathers. §8-533(B)(5) applies to "the *potential father* [that] failed to file a paternity action within thirty days of completion of service of notice as prescribed in §8-106, subsection G." (Emphasis added). A.R.S §8-533(B)(6) applies to "the *putative*

*father* [that] failed to file a notice of claim of paternity as prescribed in §8-106.01.” Harmonizing §8-106 and §8-106.01, *David C. v. Alexis S.*, 240 Ariz. 53, 57, 375 P.3d 945, 949 (2016) holds that persons served with §8-106(G) notice are not putative fathers. Regarding the interplay between §§8–106(G) and –106.01(E), *David C.* harmonized the statutes in the context of notice in adoption hearings,

[T]he registry requirement in A.R.S. § 8–106.01 supplements but does not supplant the provisions of the adoption statute, A.R.S. § 8–106. The two statutes provide different ways of recognizing fathers’ parental rights . . . . Section 8–106(G) provides notice when the mother identifies potential fathers, and § 8–106.01 is intended to provide notice when the putative father identifies himself. A potential father is entitled to notice under § 8–106(G) whether or not he registers with the putative fathers registry. A putative father must timely register . . . or he waives notice . . . . In either case, a father is entitled to bring an action to establish paternity if he does so within thirty days of the A.R.S. § 8–106(G) notice. This reading harmonizes A.R.S. §§ 8–106 and 8–106.01.

240 Ariz. at 57, 375 P.3d at 949.

Statutes that are *in pari materia* should be read together and harmonized.

*David C.*, 240 Ariz. at 55, 375 P.3d at 947 (2016). §8-533(B)(5) and (B)(6) can only be harmonized consistent with substantive and procedural due process thus: §8-533(B)(5) is a procedural ground for §8-106 potential fathers served §8-106(G) notice and §8-533(B)(6) is a procedural ground for putative fathers, an unidentified person who fails to identify themselves through the registry pursuant to §8-106.01. The Juvenile Court’s application §8-533(B)(6) herein would effectively mean that

the sole purpose of -533(B)(6) is to circumvent due process in §8-106 and 533(B)(5).

The legislature specifically quoted §8-106(G) in §8-533(B)(5) and the legislature specifically quoted §8-106.01 in §8-533(B)(6). §§8-106(G), -533(B)(5), -106.01, and §8-533(B)(6) have the same objective: to provide persons with paternity claims an opportunity to claim parental rights, to give potential adoptive parents notice of the putative or potential father's paternity claim early in the proceedings, and to preclude delayed claims of paternity. Here, §8-106 and Father's actions served the purposes of the statutory scheme.

When a statute adopts or refers to another statute by a specific reference, the "adoption takes the [adopted] statute as it exists at the time of adoption and does not include subsequent additions or modifications of the [adopted] statute unless it does so by express intent." *Nelson Machinery Co. v. Yavapai County*, 108 Ariz. 8, 9, 491 P.2d 1132, 1133 (1971).

### **CONCLUSION**

Appellee's contention that the Court of Appeals decision is incorrect because it did not apply principles in *Frank R. v. Mother Goose Adoptions* is not a basis to grant review of this matter. The Court of Appeals analysis that Father is not a putative Father is correct for the reasons set forth herein. Father is a potential

father within the statutory framework. Father is not a putative father. The Court of Appeals is correct in its holding,

[A] man may be both a putative and a potential father. 240 Ariz. at 58, ¶ 24. The common ground between the two definitions is that “paternity has not been established.” But the rights and responsibilities for each are quite different. For instance, a putative father who fails to file with the registry waives all rights, and an adoption can proceed without providing him notice. A.R.S. § 8-106.01(H). A potential father, by contrast, is entitled to notice of an adoption action and an opportunity to initiate proceedings under Title 25. A.R.S. § 8-106(G). Reading these statutes together, once Mother identified Father as a “potential father” the question of whether he filed a notice of claim of paternity became moot and A.R.S. § 8-106.01(E) and A.R.S. § 8-533(B)(6) were no longer applicable.

This Court has stated that paternity proceedings take precedence in cases involving dependency. *In re G.R.*, 255 Ariz. 444, 448, ¶ 21 (App. 2023). The same is true for private termination petitions. But, when a putative father does not assert his rights or cannot be located, A.R.S. §§ 8-106.01(H) and 8-533(B)(6) provide a mechanism for a termination to be finalized. Those are not the facts in this case. Here, Father sought to assert his rights as a potential father. Because this Court reads statutes together and seeks to harmonize them, termination of Father’s rights under A.R.S. § 8-533(B)(6) was improper because it conflicted with his rights as a potential father under A.R.S. § 8-106.

For the foregoing reasons, the Petition for Review should be denied.

**ADDITIONAL ISSUES ON APPEAL NOT DECIDED**  
**BY THE COURT OF APPEALS**

1. The statutes requiring Father to both initiate paternity proceedings and register with the putative father’s registry violate his procedural and substantive due process rights;

2. Father's counsel was ineffective by failing to obtain a paternity judgment in Juvenile Court;
3. The Court applied the wrong legal standard in analyzing the Child's best interests and failed to weigh all the evidence;
4. The Court failed to make sufficient findings of fact or conclusions of law; and
5. The findings it made contained critical factual errors.

*/s/*

---

Chad J. Winger, Harris & Winger, P.C., Attorney for Appellant

**IN THE SUPREME COURT  
STATE OF ARIZONA**

IN RE TERMINATION OF  
PARENTAL RIGHTS AS TO  
M.N.

Supreme Court No. CR-24-0114-PR

Court of Appeals Division One  
No. 1 CA-JV 22-0227

Coconino County Superior Court  
No. S0300SV202100003

**APPENDIX A**

Chad Joshua Winger, Esq.  
**HARRIS & WINGER, P.C.**  
6 E Aspen St., Suite 250 (physical)  
P.O. Box 100 (mailing)  
Flagstaff, Arizona 86001-4550  
Telephone: (928) 774-0011  
E-Mail: chad@azharrislaw.com  
State Bar No. 022767  
Attorney for Appellant/Father

Coconino County Legal Defender's Office  
Erika Arlington SBN 012617  
110 E. Cherry (mailing), 220 N. Leroux St (physical)  
Flagstaff, AZ 86001  
(928) 679-7740  
legaldef@coconino.az.gov  
Attorney for Father

E-FILED  
DATE AND TIME:  
3/7/2022 2:30 PM  
VALERIE WYANT, CLERK  
BY: KD, Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

In the Matter of

Case No. SV 2021-00003

MAGNIFICENT MARS NEAL

RESPONSE TO MOTION FOR  
SUMMARY JUDGMENT

A Person Under the Age of  
Eighteen Years.

Hon. Angela Kircher

---

The father, Delvagus Ivy, by and through counsel undersigned, hereby responds to Petitioner's Motion for Partial Summary Judgment on the grounds of abandonment and failure to register with the Arizona Putative Father Registry. Father disputes the Petitioner's version of several important facts supporting these grounds, responds to the facts and urges this Court to deny the Motion for the reasons outlined below.

**STATEMENT OF FACTS**

Father responds to Petitioner's Statement of Facts as follows:

Father incorporates the whole of his Affidavit into this statement of facts by reference. **See Exhibit 1.**

Father does not dispute the statements in paragraphs 1-3.

As to paragraph 4, Father disputes the allegation that he has never contacted the agency. The letter and information served on Father instructed him to contact their

1. Counsel has attached a scanned copy of the Affidavit and will file the original upon receipt.

1 attorney with any response or for any information. **See Exhibit 2, page 5.** Further,  
2 Father did make attempts to contact the agency. **See Exhibit 2, paragraphs 10, 11.** As  
3 to having no contact with the child, the Father notes that upon information and belief the  
4 child was taken to Texas to a confidential placement that Father had no way to contact.  
5 The same is true in regards to providing any funds. **See Exhibit 1, paragraph 9;**  
6 **Exhibit 3, page2.**

8 The Father also made attempts to hire counsel to help him with this matter but was  
9 not able to do so. **Exhibit 2, paragraph 8.**

11 Father does not dispute paragraphs 5, 6 or 7, other than to note that Mr. Neal was  
12 not actually the father of Magnificent Neal as he claimed to be. Indeed, the Mother lied  
13 to the adoption agency regarding the true information on paternity. Additionally, Father  
14 notes that he visited the hospital on or about April 5, 2021. **See Exhibit 1, paragraph 4.**  
15 He was able to see the baby but when he asked about getting a DNA test done to establish  
16 paternity the hospital would not perform the test and directed him to go to a private  
17 agency. **See Exhibit 1, paragraph 5.**

19 Father does not dispute the statements in paragraph 8 and notes this is consistent  
20 with his statements regarding visiting the hospital on or about the 5<sup>th</sup> of April, 2021.  
21 Additionally, Father notes that during the time between his visit and being served papers  
22 by Adoption Choices of Arizona he was unable to gather any information about his child.  
23 He was also unable to arrange for a paternity test as the child had been moved to Texas  
24 and Father was unable to have access to the child for purposes of having a paternity test  
25 done. **See Exhibit 1, paragraph 9.**  
26

1 Father does not dispute the statements in paragraphs 9., 10. and 11.. See Exhibit  
2 **4.**

3 Father disputes the statements in paragraph 12. and 13., and notes the Maricopa  
4 County Superior Court has twice rejected the argument that he was untimely in serving  
5 his petition for paternity. See Exhibits 5 and 6.

7 Father does not dispute that he has previously failed to file a notice of claim of  
8 paternity not realizing that this was a requirement. However, on February 22, 2022, he  
9 mailed the notice of claim to Vital Statistics as required and it was received on February  
10 23, 2022. See Exhibit 1, paragraph 17, Exhibit 7. Vital Statistics rejected his notice  
11 of claim as untimely. See Exhibit 8.

13 Additionally, Father notes that he made several attempts to contact the Petitioner  
14 after receiving the letter and notice from Petitioner's counsel. See Exhibit 1, paragraphs  
15 **11, 12.** Once paternity testing was ordered there was a significant delay in it actually  
16 getting done despite Father's best efforts. See Exhibit 1, paragraph 14, Exhibits 9, 10.

18 DNA testing was finally completed and results completed on November 22, 2021  
19 proving that Father was the biological Father of Magnificent Neal. See Exhibit 11.  
20 After DNA testing confirmed that Father was the biological Father, this petition for  
21 severance was filed and the paternity case was eventually stayed upon request of this  
22 Petitioner and the other Intervenors. See Exhibits 12,13,14.

24 Petitioner has actively opposed visitation with the Father and has only provided  
25 one contact after this Court's in-court order to do so. This was not arranged until after the  
26

1 Court denied the petitioner's motion to stay the ordered visits. See **Exhibit 2, paragraph**  
2 **20, Exhibit 15.**

3 **MEMORANDUM OF POINTS AND AUTHORITIES**  
4  
5 **SUMMARY JUDGMENT IN SEVERANCE PROCEEDINGS**

6 While summary judgment is allowed in severance proceedings, "...summary  
7 judgment is a drastic remedy and should be granted only when there are no genuine  
8 issues as to any material fact" *Kenneth T. v. Arizona Dept. of Economic Sec.*, 212 Ariz.  
9 150, 128 P.3d 773 (App. Div 1, 2006) citing to *People in the Interest of A.E.*, 914 P.2d  
10 534 (Colo.Ct.App.1996).

11  
12 In evaluating the propriety of the trial court's ruling, the evidence of the non-  
13 moving party must be believed, and all justifiable inferences must be drawn in favor of  
14 that party. *Margaret H. v. Arizona Dept. of Economic Sec.*, 214 Ariz. 101 (2006), citing  
15 to *Orme Sch. v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990)

16  
17 If there is more than a scintilla of evidence creating a dispute as to a material issue  
18 of fact, then summary judgment should not be granted. *Id.* at 102.

19 In order to be entitled to summary judgment as a matter of law the pleadings,  
20 discovery and other evidence must show that there is no genuine issue as to any material  
21 fact and that the party is entitled to judgment as a matter of law pursuant to Rule 46(D) of  
22 the Arizona Rules of Procedure for Juvenile Court and Rule 56 of the Arizona Rules of  
23 Civil Procedure. As the response to the Statement of Facts, the Exhibits, and the  
24 argument below indicate, there are numerous issues as to the material facts and the  
25  
26 Petitioner is not entitled to judgment as a matter of law.

1  
2  
3 **SUMMARY JUDGEMENT ON ABANDONMENT IS NOT APPROPRIATE**  
4

5 The evidence does not support the claim of abandonment. The Father upon  
6 receiving notice of the pending adoption filed a paternity action. Father's inability to  
7 have contact with his son was due to the Petitioner taking the son to Texas. This is not  
8 abandonment. If anything, Petitioner has interfered with Father's rights. "A parent may  
9 not restrict the other parent from interacting with their child and then petition to terminate  
10 the latter's parental rights for abandonment." *Calvin B. v. Brittany B.*, 232 Ariz. 292, 296-  
11 99 (App. 2013). While the adoption agency that removed this child is not a parent, the  
12 same standard should apply in terms of their actions in preventing Father from having  
13 contact.  
14

15  
16 The petitioner knew *before* the child was transported to Texas that Mr. Ivy not  
17 only existed but that he was seeking paternity testing to establish rights to his son. It was  
18 clear before the child was transported that Mother had lied about the paternity of her  
19 child. Despite this, the child was given to an out of state adoptive couple within a week of  
20 Mr. Ivy visiting him, forestalling any chance for Mr. Ivy to take steps to gain custody of  
21 his son.  
22

23 Father has not had custody or contact prior to this Court's orders because he was  
24 prevented from doing so. He did not have the contact information for the adoptive  
25 parents. He was specifically directed to deal with Petitioner's attorney and to file a  
26 paternity action, which he did. He contacted the adoption agency and was told he had no

1 rights to information about his son. Unfortunately, due to repeated motions to dismiss  
2 Father's request for paternity testing was not done until several months after he filed the  
3 paternity action. Father's paternity was not established until November due to delays  
4 outside Father's control in getting the testing done. Throughout this, Father was blocked  
5 from having contact with his son and told he was not entitled to insist on his visitation  
6 rights.  
7

8         Indeed, when this Court ordered visitation the Petitioner's did not immediately  
9 comply, but instead filed a motion to stay to continue to block Father's efforts to have  
10 visitation. To date, only one visit has taken place despite requests for more visitation.  
11

12         The definition of abandonment under A.R.S. § 8-531 (1), includes the statement  
13 that abandonment exists if a parent has made "*only minimal efforts to support and*  
14 *communicate with the child*" and further notes that prima facie evidence of abandonment  
15 is based on this failure being "*without just cause*". *See A.R.S. § 8-531 (1), (emphasis*  
16 *added)*. In this case, the Father contacted attorneys, filed a paternity action, pursued that  
17 action, attempted to make contact with his son, completed DNA testing and has  
18 participated in the severance proceeding requesting visitation at the first hearing. Nor  
19 can the Petitioner's claim that any failure to communicate of have a normal parental  
20 relationship was without just cause. Father submits that the cause of any failure in  
21 providing support or maintaining contact is due to actions by the Petitioner in challenging  
22 his rights to do these things. Whether or not abandonment exists in this case is a genuine  
23 issue of material fact that must be decided upon the evidence presented at trial in this  
24 matter. As noted in *Kenneth T.* , "(i)f, however, there are genuine issues of material fact,  
25  
26

1 summary judgment is inappropriate and the matter has to be resolved by the trier-of-fact  
2 by a termination adjudication hearing. *Kenneth T.* at 152 (*citation omitted*). Counsel  
3 submits there is a genuine issue of material fact in regards to whether or not Father  
4 “abandoned” his son in this case and requests the motion for summary judgment on the  
5 ground of abandonment be denied.  
6

7  
8 **SUMMARY JUDGMENT IN FAVOR OF THE PETITIONER ON**  
9 **FAILURE TO FILE WITH THE ARIZONA PUTATIVE FATHER REGISTRY IS**  
10 **NOT APPROPRIATE**

11 Counsel notes that the law as set forth in *Kent K. v. Bobby M.* is clear that parents  
12 enjoy a fundamental liberty interest in “the care, custody, and management” of their  
13 children. A court may terminate “parental rights under certain circumstances, so long as  
14 the parents whose rights are to be severed are provided with ‘fundamentally fair  
15 procedures’ that satisfy due process requirements.” *Kent K. v. Bobby M.*, 210 Ariz. 279,  
16 284, 110 P.3d 1013 (2005) (quoting *Santosky*, 455 U.S. at 754, 102 S.Ct. 1388). Counsel  
17 submits that the procedures in this matter to date have been fundamentally unfair to the  
18 Father.  
19  
20

21 A.R.S. §8-533(B) sets forth the possible grounds for termination that a Court may  
22 consider. One of those grounds is the failure to file a notice of claim of paternity under  
23 A.R.S. §8-533(B) (6) and evidence of this can be sufficient to justify termination of  
24 Father’s rights. However, The juvenile court retains great discretion in weighing and  
25  
26

1 balancing the interests of the child, parent, and state at a parental severance proceeding.

2 *Jennifer S. v. Department of Child Safety* (App. Div.1 2016) 240 Ariz. 282, 378 P.3d 725.

3 A.R.S. §8-106.01 states as follows:

4  
5 A. A person who is seeking paternity, who wants to receive notice of  
6 adoption proceedings and who is the father or claims to be the father of a  
7 child shall file a notice of a claim of paternity and of his willingness and  
8 intent to support the child to the best of his ability with the state registrar of  
9 vital statistics in the department of health services.

10 B. The notice of a claim of paternity may be filed before the birth of the  
11 child but shall be filed within thirty days after the birth of the child.

12 E. A putative father who does not file a notice of a claim of paternity as  
13 required under this section *waives his right to be notified of any judicial*  
14 *hearing regarding the child's adoption and his consent to the adoption*  
15 *is not required*, unless he proves, by clear and convincing evidence, both  
16 of the of the following:

17 1. It was not possible for him to file a notice of claim of paternity  
18 within the period of time specified in subsection B of this  
19 section.

20 2. He filed a notice of a claim of paternity within thirty days after  
21 it became possible for him to file.  
22 (*emphasis added*).

23 Father was notified by Petitioner's counsel that in order to contest the adoption he  
24 would need to file a paternity action and he did so. While A.R.S. §8-533 indicates that  
25 failure to file this claim with vital statistics under this statute is grounds for termination,  
26 A.R.S. §8-106.01 itself does not indicate that a Father's rights will be terminated if he  
doesn't file the notice. Instead, it states that his consent for adoption is not required, and  
the putative father won't be given notice of those proceedings. As the Father was  
provided with notice of the proceedings regarding his son, there was no reason for him to  
believe anything further was required. The Petitioner knew *before* the child was

1 transported to Texas that Mr. Ivy not only existed but that he was seeking paternity  
2 testing to establish rights to his son. The Petitioner also knew that Mother had been  
3 untruthful regarding paternity of this child. The filing of a claim by Father with Vital  
4 Statistics would have done nothing to change their knowledge or actions in this matter.  
5 The Petitioner had already moved the child before the deadline for filing the claim had  
6 even passed. The Petitioner provided Father notice of the proceedings which is the only  
7 requirement that the claim adds.  
8

9  
10 Counsel understands that the case of *Frank R. v. Mother Goose Adoptions*, 243  
11 Ariz. 111, 402 P.3d 996 (2017) in somewhat similar circumstances affirmed a lower court  
12 decision terminating a Father's rights based on this ground alone. However, Counsel  
13 submits that this case is factually and legally distinguishable on its facts in several ways.

14  
15 In *Mother Goose* parental rights of "John Doe" had been terminated the same day  
16 as Father filed his petition for paternity. *Mother Goose* at 113. Here, as far as counsel  
17 understands, while the first alleged father in this case consented to an adoption, no order  
18 terminating any father's or potential father's rights has been issued.

19  
20 Secondly, the first amended petition in this matter, while alleging failure to file a  
21 claim with the putative father's registry, also recognizes Mr. Ivy as a potential father and  
22 further states that there is no expectation that he will file a claim of paternity which  
23 actually ended up being served that same day. Unlike the originally unknown father listed  
24 as John Doe in *Mother Goose*, the Petitioner here knew about Mr. Ivy and his claims  
25 early on. Like the original adoption agency in *Mother Goose*, Petitioner could have early  
26

1 on refused to take on the child for adoption as a putative father willing to take custody  
2 was known to them before they took the child to Texas. See *Mother Goose* at 112.

3  
4 Counsel also notes that the purpose of Section 8–106.01 was noted in *Mother*  
5 *Goose* as being to protect the interest of adoptive parents in the finality of the adoption  
6 and assuring prospective adoptive parents that a final order of adoption is likely to remain  
7 final. *Mother Goose* at 116 The statute establishes a clear date after which an adoption is  
8 final and the child's placement with his or her new family is permanent. *Id.* In this case,  
9 the Petitioner, and by extension, the adoptive placement were aware of Father's claims  
10 and interests in this child before the child was even placed with them. Upon information  
11 and belief, the adoption is not final and has never been final. Father's paternity has been  
12 front and center from the beginning with or without the filing of the claim with Vital  
13 Statistics. Counsel notes that in this circumstance the purpose of Section 8–106.01 is not  
14 served and its requirements do nothing to further a just result.

15  
16  
17 Significantly, in *Mother Goose* the Court noted that the father in that matter did  
18 not file a claim under this section even within 30 days of having local counsel appointed,  
19 and therefore dismissed his due process claims. *Mother Goose* at 117. The Court in  
20 *Mother Goose* further noted,

21  
22 Thus, because Frank had actual notice of the proceedings and an opportunity to  
23 timely register, his procedural due process rights were not violated. As the juvenile  
24 court reasoned, “[T]he time limit [in which to register] began to run no later than  
25 October 8, 2014 when he was appointed Arizona counsel. As such, he was  
26 required to register no later than November 7, 2014”—giving Frank leeway to  
register...” *Mother Goose* at 118 .

1 In this matter counsel was appointed to Father with the notice of appearance filed  
2 on January 26, 2022. Within 30 days of that on February 23, 2022, Father did file the  
3 claim with Vital Statistics on advice of counsel. Counsel submits that after considering  
4 the due process rights of the Father as noted in *Kent K. v. Bobby M* and acknowledged in  
5 the *Mother Goose* case, this constitutes timely filing. The rejection of his claim does not  
6 negate his proper and timely action upon appointment of counsel to file the claim as  
7 required by A.R.S. §8-106.01.  
8

9  
10 Counsel also submits that since Father filed a timely paternity action before any  
11 rights were terminated his case is more akin to *David C. v. Alexis S.*, 240 Ariz. 53, 375 P.  
12 3d 945(2016), and urges the Court should find that his failure to file this notice should  
13 not result in a termination of his rights. Counsel is aware that *Mother Goose*  
14 distinguished *David C.* as being a case of adoption. However, as noted above, *Mother*  
15 *Goose* also hinted that had the father filed the claim after being appointed counsel they  
16 would likely reach a different conclusion. The Court noted in upholding severance on  
17 this ground that father failed to file the claim "... despite appearing in the Arizona  
18 severance case and having counsel appointed. .... Had Frank timely and properly  
19 registered with the putative fathers registry, this case would have a different outcome."  
20 *Mother Goose* at 117. Father took action after being appointed counsel to file the  
21 required claim and therefore his outcome should be different than the father's in *Mother*  
22 *Goose*.

23  
24  
25 Finally, Counsel notes that prior to the filing of the second amended petition that  
26 is currently the matter set for trial, Father was confirmed as the biological father of his

1 son Magnificent Neal. At that point, pursuant to the A.R.S. §25-814 A.2, Mr. Ivy was  
2 presumed to be the father as the DNA tests rebutted any presumption that Mr. Neal could  
3 be the father. Therefore, counsel submits that as of November 22, 2022, he is no longer a  
4 “putative” father and the requirement of A.R.S. §8-106.01 has expired. He has timely  
5 filed his paternity action, he has received notice of proceedings and he has been actively  
6 involved in the process of reclaiming custody of his son.  
7

8 The issue of whether Father’s rights should be terminated on this ground is  
9 therefore a contested legal issue that is not appropriate for summary judgment.  
10

11 Father contests the assertion that termination is in the child’s best interests, but  
12 notes that there is no current request for summary judgment in this regard. Father agrees  
13 the child is not an Indian Child under ICWA.  
14

### 15 CONCLUSION

16 There are genuine issues of material fact in regards to Petitioner’s claims that  
17 Father abandoned his son and Petitioner is not entitled to summary judgment as a matter  
18 of law. The issue of alleged abandonment needs to be decided in Court with additional  
19 witnesses who can support Father’s testimony regarding his actions since the birth of his  
20 son that show the opposite of abandonment.  
21

22 There is a genuine issue as to whether the facts in this case warrant judgment as a  
23 matter of law on the ground of failing to file a putative father claim. The Father through  
24 his affidavit and exhibits has produced more than a scintilla of evidence creating a  
25 dispute as to a material issue of fact that is relevant to this legal issue and summary  
26 judgment should therefore be denied.

1  
2 WHEREFORE, Father respectfully requests that the Court deny summary  
3 judgment and all relief requested by the Petitioner.  
4

5 RESPECTFULLY SUBMITTED this 7th day of March, 2022.

6 COCONINO COUNTY LEGAL DEFENDER

7  
8 

9 \_\_\_\_\_  
10 ERIKA ARLINGTON  
11 Legal Defender

12  
13  
14 Copies of the foregoing Motion mailed/delivered/emailed  
15 this \_\_\_\_\_ day of \_\_\_\_\_, 2022 to:

16 Hon. Angela Kircher  
17 Judge of Superior Court

18  
19 Jay McCarthy  
20 Attorney for the Petitioner

21 Sandra Diehl  
22 Attorney/GAL for Minor(s)

23 Delvagus Ivy  
24 2132 West Glenrosa Avenue #79A  
25 Phoenix, AZ 85015

26 By \_\_\_\_\_

# EXHIBIT 1

Coconino County Legal Defender's Office  
 Erika Arlington SBN 012617  
 110 E. Cherry (mailing), 220 N. Leroux St (physical)  
 Flagstaff, AZ 86001  
 (928) 679-7740  
 legaldef@coconino.az.gov  
 Attorney for Father

IN THE SUPERIOR COURT" SUPERIOR COURT" SUPERIOR COURT" SUPERIOR  
 COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF COCONINO

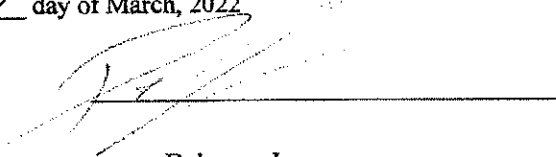
In the Matter of	Case No. SV 2021-00003
MAGNIFICENT MARS NEAL A Person Under the Age of Eighteen Years.	AFFIDAVIT OF FATHER DELVAGUS IVY
	Hon. Angela Kircher

- I, Delvagus Ivy, after being duly sworn, states as follows:
1. I am the biological Father of the minor Magnificent Mars Neal as confirmed by DNA testing on November 22, 2021.
  2. At some point in the fall of 2020, I became aware that I might be the Father of Colette Caime's expected child. I was informed that the due date was April 25, 2021. Prior to the birth of Magnificent Mars Neal, I attempted to contact Ms. Caime. I offered to let Ms. Caime stay with me but she declined.
  3. I learned of the birth of Magnificent Mars Neal from Ms. Caime on April 5, 2021.
  4. On or about April 5, 2021, I visited my child at Arrowhead Hospital. I was able to see Magnificent.
  5. While at the hospital on April 5, 2021, I asked about getting a DNA test done to establish paternity. The hospital indicated that they would not perform the test and directed me to go to a private agency.
  6. I called Labcorp as soon as I left the hospital. I talked to Ms. Caime again on the 7th to ask her about doing the DNA test and that is when she told me she signed adoption papers.
  7. After receiving that information, I called DCS and talked to a Debra who also told me I needed to get a DNA test before I could do anything. Upon information and belief, the adoption agency learned my name on or about April 9, 2022.
  8. After the visit to the hospital, I also contacted attorneys to represent me in getting my son. However, the cost of representation was very high and I was unable to attain counsel. Nor did anyone advise me regarding the putative father registry.
  9. During this time, I was unable to get any information about my son as I had no proof of paternity. I also learned at some point that my son had been taken to Texas on April 12, 2022 and I had no access to him to get a paternity test done.
  10. On April 23, 2021, I was served with the Arizona Notice to Potential Father by the attorney for Adoption Choices of Arizona. The letter and information served on me instructed me to contact their attorney with any response or for any information.

11. At some point after that, I attempted to reach a Muriel at Adoption Choices, but I couldn't get through on the phone. I asked for her number from Mother's attorney in the paternity case. I also emailed the adoption agency through their main website. I got no response from either at that time.
12. I was finally able to reach Muriel through the main line of Adoption Choices on the website. That is when she told me she said she never received any of my messages and that I would need to seek counsel in order to get any information about my son. My roommate Melissa was present during this conversation with Muriel. Muriel stated that my son was good.
13. In line with the information provided by this notice I filed a petition for paternity in Maricopa County Superior Court, Case No. FC2021-003152 on Friday, May 21, 2021. Mother was served on Monday, May 24, 2021. The Maricopa County Court has twice denied attempts to dismiss this matter based on allegedly late service. On that same day Petitioner filed an amended petition for termination and for the first time included me in the petition and stated in the petition that they did not expect anyone to file a paternity action.
14. After denying the dismissals the Court in the paternity action ordered DNA testing. Once paternity testing was ordered there was a significant delay in actually getting it done. I followed up with the Court several times regarding completion of this testing.
15. DNA testing was finally completed on November 22, 2021 and results were filed with the Maricopa Court on December 6, 2021. The results were not sent to me. I was made aware of the results in a hearing on December 8, 2021.
16. On December 2, 2022, after DNA testing confirmed that I was the biological Father, this petition for severance was filed. The paternity case in Maricopa was later stayed upon request of this Petitioner.
17. On January 26, 2022, Ms. Arlington was appointed as my attorney in this matter. On February 22, 2022, I mailed the notice of claim to Vital Statistics as required. I have been informed that it was received on February 23, 2022. However, it was rejected as being beyond 30 days after my son's birth.
18. At no time prior to the DNA confirmation was I informed that I could ask for visitation and instead my petition was attacked as untimely. I was repeatedly told that since paternity had not been established, I had no rights to visitation. Ms. Arlington was the first one to tell me I could get visitation. Even then, when this Court finally ordered visitation, the Petitioner's tried to have that order stayed.
19. Prior to appointment of Ms. Arlington, no one advised me regarding the requirement to file a notice of claim with the putative Father's registry. I was representing myself. I believed the filing of the paternity action protected my rights to my son.
20. Throughout this process I have spoken to various friends and family who have witnessed my attempts to gain access to and custody of my son. These people are available to testify at a trial in this matter.

Further Affiant sayeth naught.

Dated this 7 day of March, 2022




Delvagus Ivy

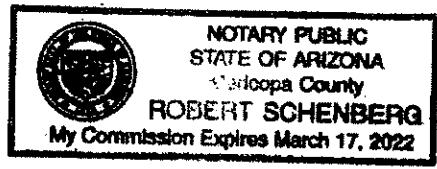
STATE OF ARIZONA )

County of Maricopa )

SUBSCRIBED AND SWORN TO before me this 7<sup>th</sup> day of March, 2022, by  
Delvagus Ivy.

  
Notary Public

My Commission Expires: 03/17/2022



# EXHIBIT 2

McCarthyWeston <sup>pllc</sup>  
ATTORNEYS AT LAW

*Via Hand Delivery*

ATTORNEYS AT LAW  
Philip (Jay) McCarthy, Jr.  
E. Duane Weston

Joseph Gutterman  
OF COUNSEL  
Estate and Trust Law  
Specialist Certified by  
State Bar of Arizona

April 23, 2021

Delvagus Evol Ivy  
(a.k.a. Delvegas Ivy,) (a.k.a. Blakk)  
2132 West Glenrosa Avenue, Apt. #79  
Phoenix, Arizona 85015

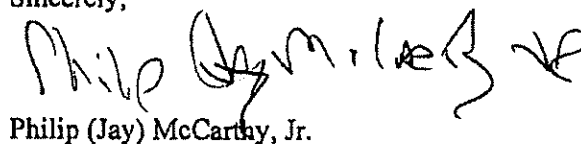
Dear Mr. Ivy:

I represent Adoption Choices of Arizona, a licensed adoption agency working with Colette Caime on her adoption plan. Please be advised that you have been named by Ms. Caime as the potential father of her child, Baby Boy Caime, born on March 23, 2021. Accompanying this letter, you will be served with the Arizona Notice to Birth Father ("Notice"). Please review this Notice carefully as it sets forth your legal rights and responsibilities.

If you do not object to Ms. Caime's adoption plan, it is not necessary for you to take any further action after receiving this Notice. If you decide to file a paternity action establishing that you are the father, you will be responsible for child support and any medical expenses for the child.

Thank you for your cooperation.

Sincerely,



Philip (Jay) McCarthy, Jr.

PJM/lp  
Enclosures



McCarthy Weston, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

1 NOTICE TO POTENTIAL BIRTH FATHER  
2 ARIZONA REVISED STATUTE §8-106(G)

3 TO: DELVAGUS EVOL IVY, (A.K.A. DELVEGAS IVY), (A.K.A. BLAKK)

4 Pursuant to A.R.S. §8-106(G), notice is given to DELVAGUS EVOL IVY, (A.K.A.  
5 DELVEGAS IVY), (A.K.A. BLAKK), that you have been identified by Colette Caime, residing  
6 in Phoenix, Arizona, as the potential father of Baby Boy Caime, born on March 23, 2021. A copy  
7 of A.R.S. §8-106 is attached.

8 You, DELVAGUS EVOL IVY, (A.K.A. DELVEGAS IVY), (A.K.A. BLAKK), have  
9 been named the potential biological father of this child. You are informed of the following:

10 1. The natural mother, Colette Caime, is planning to place her child for adoption  
11 through Adoption Choices of Arizona.

12 2. Under Arizona law, A.R.S. §8-106 and A.R.S. §8-107 you have the right, if you  
13 are the biological father of this child, to consent or withhold your consent to the proposed adoption.

14 3. Your written consent to the adoption is irrevocable once you sign it.

15 4. You have the right to seek custody of the child.

16 5. In the event that you wish to assert parental rights to the child described above,  
17 and/or if you wish to withhold your consent to the proposed adoption plan, your obligations are as  
18 follows:

19 A. If paternity has not been established, you must initiate a paternity action pursuant to  
20 title 25, chapter 6, article 1, and serve upon the mother the paternity action within thirty  
21 (30) days of completion of service of this Notice.

22 B. You have the obligation to proceed to judgment in the paternity action.

23 6. Once paternity is established, you must begin providing financial support for the  
child, and if paternity is not established until after the child is born, you may be responsible for  
past support. [A.R.S. §25-809(A)]

McCarthyWeston, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

1           7.     If you do not file a paternity action and do not serve upon the mother your  
2 paternity action within thirty (30) days after completion of service of this Notice and proceed  
3 to judgment in the paternity action, you are barred from bringing or maintaining any action  
4 to assert any interest in the child.

5           8.     The Indian Child Welfare Act may supersede the Arizona Revised Statutes  
6 regarding this adoption and paternity, if applicable to this adoption.

7           9.     For purposes of service of a paternity action, service may be made on the  
8 mother by serving Adoption Choices of Arizona, c/o Philip (Jay) McCarthy, Jr., Esq.,  
9 McCarthyWeston, PLLC, 508 North Humphreys Street, Flagstaff, Arizona 86001.

10          10.    THIS IS A LEGAL NOTICE. YOU MAY WISH TO CONTACT AN  
11 ATTORNEY TO ASSIST YOU IN RESPONDING TO THIS NOTICE.

12           You may obtain further information by contacting Philip (Jay) McCarthy, Jr.,  
13 McCarthyWeston, PLLC, 508 North Humphreys Street, Flagstaff, Arizona 86001, telephone  
14 number (928) 779-4252.

15  
16  
17  
18  
19  
20  
21  
22  
23

McCarthy Weston, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

- 1 8-106. Consent to adoption; waiver; consent to the release of information; notification to  
2 potential fathers
- 3 A. The court shall not grant an adoption of a child unless consent to adopt has been obtained  
4 and filed with the court from the following:
- 5 1. The child's birth or adoptive mother, if living.  
6 2. The child's father if any of the following is true:
- 7 (a) The father was married to the child's mother at the time of conception or at any time  
8 between conception and the child's birth unless his paternity is excluded or another man's  
9 paternity is established pursuant to title 25, chapter 6, article 1.  
10 (b) The father has adopted the child.  
11 (c) The father's paternity is established under title 25, chapter 6, article 1 or section 36-334.
- 12 3. A child who is twelve years of age or older and who gives consent in open court.  
13 4. Any guardian of the person of the child who is appointed by a court and who is given  
14 authority by it to consent to the child's adoption.  
15 5. An agency that has been given consent to place the child for adoption by the parent or  
16 parents whose consent would be necessary under paragraph 1 or 2 of this subsection, or that  
17 has been given authority in other legal proceedings to place the child for adoption.  
18 6. The guardian of any adult parent for whom a guardian is currently appointed.  
19 7. The division if it has been given consent to place the child for adoption by the parent or  
20 parents whose consent would otherwise be necessary pursuant to paragraph 1 or 2 of this  
21 subsection or if it has been given authority in other legal proceedings to place the child for  
22 adoption. The court may waive the requirement for consent if the court determines, after a  
23 hearing on actual notice to all persons who may be adversely affected, that waiving the  
requirement is clearly in the child's best interest.
- B. It is not necessary for a person to obtain consent to adopt from the following:
1. An adult parent for whom a guardian is currently appointed.  
2. A parent whose parental rights have been terminated by court order.  
3. A parent who has previously consented to an agency's or the division's placement of the  
child for adoption.  
4. A person whose consent is not required under subsection A of this section.
- C. The minority of the child or parent does not affect the child's or parent's competency to  
give consent in the instances set forth in this section.
- D. A consent to adopt is irrevocable unless obtained by fraud, duress or undue influence.
- E. An agency, the division or an attorney participating or assisting in a direct placement  
adoption pursuant to section 8-130 shall obtain from a birth parent, at the time consent for  
adoption is obtained, a notarized statement granting permission or withholding permission for  
the child being adopted, when the child reaches eighteen years of age, to obtain identifying  
and nonidentifying information about the child and the consenting birth parent. The agency,  
division or attorney shall inform the birth parent at the time of obtaining the notarized  
statement that the decision to grant permission or withhold permission may be changed at any  
time by filing a notarized statement with the court. The most recent notarized statement shall  
operate as consent for the court to grant or withhold identifying and nonidentifying  
information.
- F. A notarized affidavit signed by the mother listing all potential fathers shall be filed with the  
court. The affidavit shall attest that all of the information contained in the affidavit is  
complete and accurate.

McCarthyWeston, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

- 1 G. Notice shall be served on each potential father as provided for the service of process in  
2 civil actions. The notice shall be substantially in the form prescribed in subsection I of this  
3 section and shall inform the potential father of all of the following:
- 4 1. That adoption is planned.
  - 5 2. The potential father's right to consent or withhold consent to the adoption.
  - 6 3. The potential father's responsibility to initiate paternity proceedings under title 25, chapter  
7 6, article 1, and to serve the mother within thirty days of completion of service.
  - 8 4. The potential father's responsibility to proceed to judgment in the paternity action.
  - 9 5. The potential father's right to seek custody.
  - 10 6. The potential father's responsibility to begin to provide financial support for the child if  
11 paternity is established.
  - 12 7. That the potential father's failure to file a paternity action pursuant to title 25, chapter 6,  
13 article 1, and to serve the mother and proceed to judgment in the paternity action as prescribed  
14 by this section, bars the potential father from bringing or maintaining any action to assert any  
15 interest in the child.
- 16 H. Service on a mother of a title 25, chapter 6, article 1 paternity action pursuant to this  
17 section may be accepted by an attorney or agency that is licensed in this state and that is  
18 representing the mother. A mother may omit her address from the affidavit and notice to  
19 potential fathers if the address of her attorney or the agency is provided in the affidavit.  
20 Service on an attorney or agency pursuant to this subsection is limited to service of the initial  
21 verified petition and summons in the paternity action. Service on the attorney does not make  
22 the attorney the attorney of record for the mother in the paternity action and does not make the  
23 agency the agent for the mother in the paternity action.
- I. The notice required pursuant to subsection G of this section shall be in substantially the  
following form:
- Notice:
- Notice is given to \_\_\_\_\_ that you have been identified by  
\_\_\_\_\_, the natural mother, as a potential father of a child to be born  
or, born on \_\_\_\_\_, in \_\_\_\_\_.
- You are informed of the following:
1. \_\_\_\_\_, the natural mother, plans to place the child for adoption.
  2. Under sections 8-106 and 8-107, Arizona Revised Statutes, you have the right to consent or  
withhold consent to the adoption.
  3. Your written consent to the adoption is irrevocable once you give it.
  4. If you withhold consent to the adoption, you must initiate paternity proceedings under title  
25, chapter 6, article 1, Arizona Revised Statutes, and serve the mother within thirty days after  
completion of service of this notice.
  5. You have the obligation to proceed to judgment in the paternity action.
  6. You have the right to seek custody.
  7. If you are established as the child's father, you must begin to provide financial support for  
the child.
  8. If you do not file a paternity action under title 25, chapter 6, article 1, Arizona Revised  
Statutes, and do not serve the mother within thirty days after completion of the service of this  
notice and pursue the action to judgment, you cannot bring or maintain any action to assert  
any interest in the child.
  9. The Indian child welfare act may supersede the Arizona Revised Statutes regarding  
adoption and paternity.

McCarthyWeston, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

- 1 10. For the purposes of service of a paternity action under title 25, chapter 6, article 1,
- 2 Arizona Revised Statutes, service may be made on the mother at \_\_\_\_\_ or her
- 3 agency or attorney at \_\_\_\_\_.
- 4 11. You may wish to consult with an attorney to assist you in responding to this notice.
- 5 J. A potential father who fails to file a paternity action and who does not serve the mother
- 6 within thirty days after completion of service on the potential father as prescribed in
- 7 subsection G of this section waives his right to be notified of any judicial hearing regarding
- 8 the child's adoption or the termination of parental rights and his consent to the adoption or
- 9 termination is not required.
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

# EXHIBIT 3

1           **Bishop,**  
2 **Del Vecchio** | Law Office, P.C.  
3           **& Beeks** |

4 Erik C. Bergstrom, Esq. (#015627)  
5 Contract Counsel  
6 7210 North 16<sup>th</sup> Street  
7 Phoenix, Arizona 85020  
8 Phone: (602) 749-8500  
9 Fax: (602) 749-8502  
10 [ecbteam@bdblawfirm.com](mailto:ecbteam@bdblawfirm.com)  
11 Attorney for Intervenors  
12 John and Jane Doe

13                                   **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

14                                   **IN AND FOR THE COUNTY OF MARICOPA**

15 In re the Matter of:

Case No. FC2021-003152

16 DELVAGUS IVY,

**MOTION TO INTERVENE**

17                                   Petitioner,

18 and

(Assigned to the Honorable James Drake)

19 COLETTE CAIME,

20                                   Respondent.

21           Intervenors, John and Jane Doe (“the Does”)<sup>1</sup>, respectfully move this Honorable  
22 Court for its order permitting them to intervene in this action pursuant to Rule 33,  
*Arizona Rules of Family Law Procedure* (“ARFLP”) and A.R.S. §25-409. The Does are

---

<sup>1</sup> A *Motion for Confidential Designation of Intervenors* is filed simultaneously herewith, requesting that, as the prospective adoptive parents, their names be kept confidential.

1 the prospective adoptive parents of the minor child in this case, and they have had  
2 physical care and custody of the child since April 12, 2021.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **Factual and Procedural Background**

5 The minor child in this case was born on March 23, 2021. The biological mother,  
6 Colette Caime (Respondent in this action) placed the child for adoption with Adoption  
7 Choices of Arizona. Respondent signed a *Consent to Adoption and Relinquishment of*  
8 *Parenting Rights* on April 6, 2021. On the same date, the man identified by Respondent  
9 as the child's biological father also signed the same *Consent* form. As such, Adoption  
10 Choices of Arizona has had legal custody of the child since April 6, 2021. Adoption  
11 Choices of Arizona was previously granted permission to intervene in this matter. See  
12 minute entry dated September 15, 2021 (filed September 28, 2021).

13 Pursuant to the Adoption Plan with Adoption Choices of Arizona, the child was  
14 placed in the physical custody and care of the Does on April 12, 2021, and he has been  
15 in their care ever since that time.

16 Upon leave to intervene, the Does will file a *Petition for Third Party Custody*  
17 pursuant to A.R.S. §25-409.

18 **Legal Discussion**

19 Rule 33, ARFLP, specifically contemplates intervention by the Does in this case:

20 (a) Third-Party Rights. A person other than a legal parent may petition to  
21 intervene in an existing action pursuant to A.R.S. § 25-409.  
22

# EXHIBIT 4

Person Filing: Delvagus Ivy  
 Address (if not protected): 2132 W. Glenrosa Ave.79A  
 City, State, Zip Code: Phoenix AZ 85015  
 Telephone: 4802750435  
 Email Address: bookingdelvagus@gmail.com  
 ATLAS Number: \_\_\_\_\_  
 Lawyer's Bar Number: \_\_\_\_\_

JEFF FINE  
 Clerk of the Superior Court  
 By Christopher O'Neill, Deputy  
 Date 05/21/2021 Time 14:11:08

Description	Amount
CASE# FC2021-003152	
IV-D N PATRNTY/MATRNTY 622	344.00 D
TOTAL AMOUNT	0.00

Receipt# 28271521

Representing  Self, without a Lawyer or  Attorney for  Petitioner OR  Respondent

## SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

Delvagus Ivy  
 Name of Petitioner / Party A

Case Number: FC 2021-003152

Colette Caine  
 Name of Respondent / Party B

- PETITION FOR COURT ORDER FOR PATERNITY and** (check box below if applicable)
- LEGAL DECISION-MAKING (legal custody)
  - PARENTING TIME
  - CHILD SUPPORT
  - VITAL RECORDS (Check this box if the Department of Vital Records is ordered to change the birth records of a child born in Arizona.)

### A. STATEMENTS TO THE COURT:

#### 1. INFORMATION ABOUT ME:

Name: Delvagus Ivy  
 Address: 2132 W. Glenrosa Ave.79A  
 Date of Birth: 12/02/1980  
 Occupation: musician / artist / engineer

My relationship to the children listed in Petition:

- Mother
- Father (or may be the father)
- Other: (Explain) \_\_\_\_\_

**2. INFORMATION ABOUT OTHER PARTY:**

**Name:** Colette Caime  
**Address:** 508 North Humphreys Street Flagstaff AZ 86001  
**Date of Birth:** unknown (36 yrs old)  
**Occupation:** unknown

**Other Party's relationship to the children listed in this Petition:**

- Mother**
- Father (or may be the father)**
- Other: (Explain)** \_\_\_\_\_

**3. VENUE:** (Check here if the following statement is true):

- This is the proper court to bring this lawsuit under Arizona law because it is the county of residence of either party or of the minor children.**

**4. JURISDICTION: WHY I AM FILING THIS COURT CASE AGAINST THE OTHER PARTY IN ARIZONA:** (Place a check mark in the boxes that are true.)

- The person is a resident of Arizona
- I believe that I will personally serve the person in Arizona (see packet on service to know about this.)
- The person agrees to have the case heard here and will file written papers in the court case;
- The person lived with the minor child in this state at some time;
- The person lived in this state and provided pre-birth expenses or support for the minor child;
- The minor child lives in this state as a result of the acts or directions of the person;
- The person had sexual intercourse in this state as a result of which the minor child may have been conceived;
- The person signed an affidavit acknowledging paternity that is filed in this state;
- The person did any other acts that substantially connect the person with this state (see a lawyer to help you determine this).

**B. STATEMENTS ABOUT PATERNITY:****5. WHY YOU THINK THE PERSON IS THE FATHER OF THE MINOR CHILD(REN):**

(Check which box applies)

- AFFIDAVIT:** Both parties signed an **Affidavit of Paternity** acknowledging that  Party A or  Party B is the minor child(ren)'s natural father. A copy is attached.
- BIRTH CERTIFICATE:**  Party A or  Party B is named as the natural father on one or more minor child(ren)'s birth certificate(s). Copy (or copies) attached.
- BLOOD TEST:** DNA Testing indicates  Party A or  Party B is the minor child(ren)'s natural father. Report(s) of test results attached.
- PARTIES LIVING TOGETHER:** Parties A and B were not married to each other at any time during the ten months before birth of the minor child(ren). However, the parties lived together during the period(s) when the minor child(ren) could have been conceived.
- SEXUAL INTERCOURSE:** Parties A and B were not living together but had sexual intercourse at the probable date(s) of conception of the minor child(ren). The mother of the minor children did not have sexual intercourse with anyone else during the periods in which the minor child(ren) could have been conceived.
- OTHER:** (explain) \_\_\_\_\_

**6. ABOUT MARRIAGE** (if applicable, check one box.)

- Mother was not married** at the time minor child(ren) were born or conceived or at least 10 months before minor child(ren) were born or conceived, OR
- Mother was married** when minor child(ren) were born or conceived or at least 10 months before minor child(ren) were born or conceived, but the Mother's spouse is not a parent of the minor child(ren). (Mother's spouse is a party to this court case because of marriage.)

**C. INFORMATION ABOUT MINOR CHILDREN:**

**7. INFORMATION ABOUT CHILD SUPPORT FOR MINOR CHILDREN:**

There is an order for Child Support, dated \_\_\_\_\_ from  
(name of court) \_\_\_\_\_

This order  needs  does not need to be changed.

There is a pending child support petition or modification currently filed in this court or another.

To my knowledge there is no child support order for the minor child(ren) and the court should order child support in this case along with legal decision-making (custody), and parenting time

Party A  Party B made voluntary/direct support payments in the amount of \$ \_\_\_\_\_ that need to be taken into account, if past support is requested.

Party A  Party B owes past support for the period between:

the date this petition was filed and the date current child support is ordered. OR -

the date the parties started living apart, but not more than three years before the date of this petition was filed, and the date current child support is ordered. OR -

the date the parties started living apart, which is MORE THAN three years before the date of this petition was filed, and the date current child support is ordered. \* If you check this box, you must explain why the Court should award past support for this time period.

EXPLAIN: \_\_\_\_\_

**8. CHILD(REN)'S residence:**

A. Child's Name:	baby Caime	Gender:	<input type="checkbox"/> Female <input checked="" type="checkbox"/> Male
	Place of Birth: Maryvale Hospital	Date of Birth:	3-23-21
Current Address:	born March 23, 2021 unknown - Maryvale Hospital		
How long at this address:	County:		
Lived with	<input type="checkbox"/> Party A <input type="checkbox"/> Party B <input type="checkbox"/> Other (Name & Relation to Child):		

(If less than 5 years, provide 5 years previous address information for each child.)

Previous Address:	_____		
How long at this address:	Lived with <input type="checkbox"/> Party A <input type="checkbox"/> Party B <input type="checkbox"/> Other		
Previous Address:	_____		
How long at this address:	Lived with <input type="checkbox"/> Party A <input type="checkbox"/> Party B <input type="checkbox"/> Other		

**B. Child's Name:** \_\_\_\_\_ **Gender:**  Female  Male  
**Place of Birth:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_  
**Current Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **County:** \_\_\_\_\_  
 Lived with  Party A  Party B  Other (Name & Relation to Child): \_\_\_\_\_

(If less than 5 years, provide 5 years previous address information for each child.)

**Previous Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **Lived with**  Party A  Party B  Other  
**Previous Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **Lived with**  Party A  Party B  Other

**C. Child's Name:** \_\_\_\_\_ **Gender:**  Female  Male  
**Place of Birth:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_  
**Current Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **County:** \_\_\_\_\_  
 Lived with  Party A  Party B  Other (Name & Relation to Child): \_\_\_\_\_

(If less than 5 years, provide 5 years previous address information for each child.)

**Previous Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **Lived with**  Party A  Party B  Other  
**Previous Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **Lived with**  Party A  Party B  Other

**D. Child's Name:** \_\_\_\_\_ **Gender:**  Female  Male  
**Place of Birth:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_  
**Current Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **County:** \_\_\_\_\_  
 Lived with  Party A  Party B  Other (Name & Relation to Child): \_\_\_\_\_

(If less than 5 years, provide 5 years previous address information for each child.)

**Previous Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **Lived with**  Party A  Party B  Other:  
**Previous Address:** \_\_\_\_\_  
**How long at this address:** \_\_\_\_\_ **Lived with**  Party A  Party B  Other:

Continues on attached page(s) made part of this document by reference.

**9. COURT CASES INVOLVING PHYSICAL CUSTODY, LEGAL DECISION-MAKING (LEGAL CUSTODY) OR PARENTING TIME, RELATED TO CHILDREN UNDER 18 YEARS OLD: (Check one box)**

I HAVE  I HAVE NOT been a party or witness or participated in any court case involving the physical custody, legal decision-making (legal custody), or parenting time for any of the minor children named above in this state or in any other state (if you have, explain below, using extra pages if necessary. IF NOT, GO ON).

Name of each child: \_\_\_\_\_

Court State: \_\_\_\_\_ Court location (county/city): \_\_\_\_\_

Court case number: \_\_\_\_\_ Current case status: \_\_\_\_\_

Nature (type) of court proceeding: \_\_\_\_\_

Summary of any Court Order: \_\_\_\_\_

**10. COURT CASES NOT INVOLVING PHYSICAL CUSTODY, LEGAL DECISION-MAKING (LEGAL CUSTODY) OR PARENTING TIME RELATED TO THE CHILDREN UNDER 18 YEARS OLD: (check one box)**

I HAVE  I DO NOT HAVE information regarding any court action in this state or any other state involving the minor child(ren) listed above that could affect this case including court cases for enforcement and relating to domestic violence, protective orders, termination of parental rights and adoptions (if you have, explain below, using extra pages if necessary. IF NOT, GO ON.)

Name of each child: \_\_\_\_\_

Court State: \_\_\_\_\_ Court location (county/city): \_\_\_\_\_

Court case number: \_\_\_\_\_ Current case status: \_\_\_\_\_

How the minor children are involved: \_\_\_\_\_

Summary of any Court order: \_\_\_\_\_

11. **PHYSICAL CUSTODY, LEGAL DECISION-MAKING (LEGAL CUSTODY) OR PARENTING TIME CLAIMS OF ANY PERSON:** (check one box)

I KNOW  I DO NOT KNOW a person other than the Party A or the Party B who has physical custody or who claims legal decision-making (legal custody) or parenting time rights to any of the minor children named above. (If you do, explain below, using extra pages if necessary. **IF NOT, GO ON**).

Name of each child: \_\_\_\_\_  
Name of Person with the claim: \_\_\_\_\_  
Address of Person with the claim: \_\_\_\_\_  
Nature of the Claim: \_\_\_\_\_

**D. OTHER STATEMENTS TO THE COURT:**

12. **MEDICAL EXPENSES:**  There are OR  There are no unreimbursed medical expenses incurred by the mother, resulting from the birth of the minor child(ren). If there are, these costs and expenses should be awarded to  Party A OR  Party B according to law.

13. **OTHER EXPENSES:** The parties should be ordered to divide between them any uninsured medical, dental, or health expenses, reasonably incurred for the minor children, in proportion to their respective incomes.

14. **PARENT INFORMATION PROGRAM (PIP):** is required for persons seeking legal decision-making authority (legal custody) or parenting time.

I have  I have not (check one box) already **ATTENDED** the Parenting Information Program.

15. **DOMESTIC VIOLENCE:** (If you are asking for joint legal decision-making (joint legal custody), check one.)

Domestic Violence has not occurred between the parties. **OR**

There has been domestic violence in this relationship and no legal decision-making (legal custody) should be awarded to the party who committed the violence.

Domestic Violence has occurred but it was committed by both parties or it is otherwise still in the best interests of the minor child(ren) to grant joint or sole legal decision making (joint or sole legal custody) to a parent who has committed domestic violence *because:* (EXPLAIN)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**16. DRUG / ALCOHOL CONVICTION WITHIN LAST TWELVE MONTHS: (Check one box.)**

- Neither parent has been convicted for a drug offense or driving under the influence of drugs or alcohol in the last twelve (12) months, OR
- One or both parents have been convicted for a drug offense or driving under the influence of drugs or alcohol in the last twelve (12) months.
- Party A and/or  Party B was convicted, however, the legal decision-making (legal custody) and parenting time arrangement I am requesting appropriately protects the minor child(ren).

Explain how this arrangement appropriately protects the children. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**E. REQUESTS TO THE COURT:**

**1. PATERNITY: Order that (legal name of the father, as on his birth certificate, or his current legal name)**

First	Middle	Last
Delvagus	Evol Ivy	

→ establish paternity  
 IS the natural father of the minor child(ren).

**2. BIRTH CERTIFICATE:**

- Order that the name of the father listed in "A" above be added to each minor child's birth certificate:

\_\_\_\_\_

**3. NAME CHANGE: (check the box and fill in the blank if you want this):**

- Order each minor child's last name (only) be changed to:

\_\_\_\_\_

OR  Order as follows: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**4. PRIMARY RESIDENCE OF MINOR CHILDREN, PARENTING TIME, AND AUTHORITY FOR LEGAL DECISION-MAKING (LEGAL CUSTODY):**

**a. PRIMARY RESIDENCE: Declare which party's home shall be the main residence for each minor child:**

Declare NEITHER parent's home is designated as the primary residence, OR

Declare Party A's home as the primary residence for the following named children:

\_\_\_\_\_

Declare Party B's home as the primary residence for the following named children:

\_\_\_\_\_

**b. PARENTING TIME: Award parenting time as follows:**

Reasonable parenting time rights as described in the Parenting Plan, OR

Supervised parenting time between the children and  Party A OR  Party B, OR

No parenting time rights to the  Party A OR  Party B.

**Supervised or no parenting time is in the best interests of the child(ren) because:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Explanation continues on attached pages made part of this document by reference.

1. Name this person to supervise: \_\_\_\_\_

2. Order cost of supervised parenting time (if applicable) to be paid by:

Party A

Party B

Shared equally by the parties

3. Additionally restrict parenting time as follows: (Explain.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**c. LEGAL DECISION-MAKING (legal custody):**

**Award legal decision-making concerning the child(ren) as follows:**

- AWARD SOLE LEGAL DECISION-MAKING (sole legal custody) to:**  
 Party A     Party B

**OR**

- AWARD JOINT LEGAL DECISION MAKING (joint legal custody) to BOTH PARENTS.**  
 Party A and Party B will agree to act as joint legal decision-makers concerning the minor child(ren) and will submit a Parenting Plan and Joint Legal Decision-Making Agreement signed by the both parties. (For the court to order "joint" legal decision-making, there must have been no "significant" domestic violence according to Arizona law, A.R.S. § 25-403.03).

**(Check below if you are asking for a child support order or a change of child support in this case.)**

**5. CHILD SUPPORT:** Order that child support shall be paid by

- Party A    **OR**     Party B as follows, EITHER:

- in the amount set forth in the Child Support Worksheet filed with this Petition and incorporated by this reference.

**OR**

- in the amount of \$ \_\_\_\_\_, which is a deviation from the amount set forth under the Arizona Child Support Guidelines. I am requesting a deviation because: (EXPLAIN)

---



---

- Order that **past child support** for the period stated under #7 above, be paid by  Party A  Party B in an amount determined by using a retroactive application of the Arizona Child Support Guidelines taking into account any amount of temporary or voluntary / direct support that has been paid.

**6. MOTHER'S EXPENSES:** Order that  Party A **OR**  Party B pay a reasonable amount to cover unreimbursed expenses incurred by the mother related to the birth of each child(ren).

**7. MEDICAL, DENTAL and VISION CARE INSURANCE FOR MINOR CHILDREN:**  
**Order that:**

- Party A should be responsible for providing:  medical     dental     vision care insurance.
- Party B should be responsible for providing:  medical     dental     vision care insurance.
- Order that **both parties** pay for all reasonable unreimbursed medical, dental, vision care, and health-related expenses incurred for the minor child(ren) in proportion to their respective incomes as described on the Child Support Order, which shall be submitted with the Judgment and Order.

8. **TESTING and COSTS:** Order that if paternity is contested, Party A and Party B be ordered to submit to such blood and tissue tests as may be necessary by this Court to establish paternity, and that the other party must pay all costs and expenses of this lawsuit, if he/she contests these proceedings, including costs of the blood tests, other genetic testing; filing each child's birth certificate; attorneys' fees and court costs.

9. **TAX EXEMPTION.** Allocate tax exemptions for the minor child(ren) as determined by the Court under the Arizona Child Support Guidelines and in a manner that allows each party to claim allowable federal dependency exemptions proportionate to adjusted gross income in a reasonable pattern that can be repeated.

Under the Affordable Care Act, the parent who claims the child as a dependent on a federal tax return has the obligation to ensure that the child is covered by medical insurance and may be penalized by the IRS for failing to do so.

Parent entitled to claim	Name of minor child	in Tax Year
<input type="checkbox"/> Party A <input type="checkbox"/> Party B	_____	
<input type="checkbox"/> Party A <input type="checkbox"/> Party B	_____	
<input type="checkbox"/> Party A <input type="checkbox"/> Party B	_____	
<input type="checkbox"/> Party A <input type="checkbox"/> Party B	_____	

Pattern shall repeat for subsequent years.

10. **OTHER ORDERS I AM REQUESTING** (explain request here):

establish paternity so child is not awarded to adoption agency

\_\_\_\_\_

\_\_\_\_\_


\_\_\_\_\_

**F. SIGNATURES**

**UNDER OATH OR AFFIRMATION**

I swear or affirm under penalty of perjury that the contents of this document are true and correct to the best of my knowledge and belief.

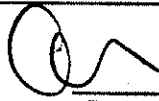
# 5/21/21  
Date \_\_\_\_\_

  
Signature \_\_\_\_\_

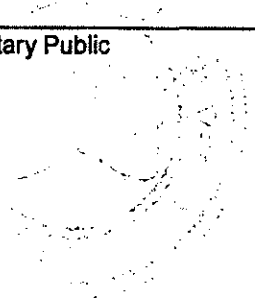
STATE OF AZ  
COUNTY OF ME

Subscribed and sworn to or affirmed before me this: MAY 21 2021  
(date) **JEFF FINE, CLERK**

By Del Negro 104

  
Deputy Clerk or Notary Public  
**C. O'Neill**  
Deputy Clerk

(notary seal)



# EXHIBIT 5

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

07/19/2021

HONORABLE KEVIN B. WEIN

CLERK OF THE COURT  
Y. Anchondo  
Deputy

IN RE THE MATTER OF  
DELVAGUS IVY

DELVAGUS IVY  
2132 W GLENROSA AVE #79A  
PHOENIX AZ 85015

AND

COLETTE CAIME

MARK S SIFFERMAN

JUDGE WEIN

**RESOLUTION MANAGEMENT CONFERENCE SET**

The Court has received and reviewed Respondent/Mother's Motion to Dismiss Due to Non-Compliance with ARS 8-106(J) and Motion for Summary Disposition of Motion to Dismiss Due to Non-Compliance with ARS 8-106(J). Both motions are DENIED. Mother is mistaken about Petitioner/Father's compliance with ARS 8-106(J). According to both the Motions and the attached affidavit, Father had until May 23, 2021 to file a paternity action case and serve Mother. But, May 23, 2021 fell on a Sunday. Pursuant to Rule 4(a)(3) of the Arizona Rules of Family Law Procedure, when the last day to act falls on a Sunday, the period runs until the next day. According to both the Motion and Affidavit, the Paternity Petition was both filed and served by the extended deadline set forth in Rule 4--May 24, 2021. Both Motions are therefore DENIED.

**IT IS ORDERED** setting a **Resolution Management Conference** regarding Father's Petition for Court Order for Paternity and Legal Decision-Making (legal custody), filed May 21, 2021 on **September 15, 2021 at 11:0 a.m. (30 minutes allowed)**.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

07/19/2021

**Effective August 31, 2021, all matters assigned to this Division before Judge Kevin Wein shall be assigned to a judicial officer to be named. All proceedings set for any date AFTER August 31, 2021 shall be conducted before the newly appointed judicial officer.**

The hearing will be held via video conference through Court Connect and Microsoft TEAMS. An invite to the TEAMS conference will be sent out to the email on file for each party or counsel of record. It is the party's responsibility to ensure receipt of the invitation prior to the hearing date.

**TO ATTEND THE HEARING** follow the instructions below:

**Judge Wein's Hearing Room**

**Please join my meeting from your computer, tablet or smartphone:  
[tinyurl.com/jbazmc-drj04](https://tinyurl.com/jbazmc-drj04)**

**You can also dial in using your phone**

**United States: +1 917-781-4590 United States, New York City (Toll)  
Conference ID: 371 873 544#**

**More information regarding Court Connect can be found at:**

**<https://superiorcourt.maricopa.gov/court-connect/>**

**MANDATORY RESOLUTION STATEMENT**

**IT IS FURTHER ORDERED** that each party shall fully complete and file a Resolution Statement as required by Rule 76(B), Arizona Rules of Family Law Procedure, in proper form without argument, narrative statements or other documents, and provide a copy to the adverse party and to this Division at least 5 judicial days before the Conference. The Court is required to consider the reasonableness of each party's positions, including the failure to take a position, in any subsequent requests for attorney's fees made pursuant to A.R.S. §§ 25-324 and 12-349. The Resolution Statement may be obtained through the Self Service Center or online at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/Forms/alphaList.asp#fam>

**PRE-CONFERENCE SETTLEMENT MEETING**

**IT IS FURTHER ORDERED** that the parties and counsel, if any, shall personally meet and confer prior to the Resolution Management Conference to resolve as many issues as possible. In the event the parties and counsel, if any, have not met prior to the Resolution Management Conference, they shall all be present and meet at the court one (1) hour prior to the scheduled

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

07/19/2021

Resolution Management Conference. If there is a current court order prohibiting contact of the parties or a significant history of domestic violence between the parties, the parties shall not be required to personally meet or contact each other in violation of the court order, but the parties and their counsel shall take all steps reasonable under the circumstances to resolve as many issues as possible prior to the RMC.

DISCLOSURE

**IT IS FURTHER ORDERED** that both parties shall complete the initial disclosure requirements of Rule 49 or 54, Arizona Rules of Family Law Procedure (ARFLP), as appropriate prior to the Resolution Management Conference. Pursuant to Rule 65(B), ARFLP, any party who fails to timely disclose information required by Rule 49 or 54 shall not be permitted to use such evidence in future motions, hearings or trials, except by leave of court for good cause shown, unless such failure is harmless.

PARENT EDUCATION PROGRAM

**IT IS FURTHER ORDERED** that in the event the parties have a natural or an adopted minor, unemancipated child in common, both parties shall have completed, or be scheduled to complete, an approved Parent Education Program in accordance with A.R.S. §25-351 et seq. prior to the Resolution Management Conference and file proof thereof prior to or at the time of the Conference.

Failure to obey this order in all respects may subject the offending party or counsel to all sanctions provided and allowed by court rule, statute or other law.

**NOTE:** All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

**NOTE:** For questions regarding a minute entry you have received from this Division or for questions regarding your case, you may email the judicial assistant of this Division at [Alyssa.Rodriguez@JBAZMC.Maricopa.Gov](mailto:Alyssa.Rodriguez@JBAZMC.Maricopa.Gov).

**NOTE:** If either party wishes to register and/or access their case via the Electronic Court Record, they may do so by visiting the following website: <https://ecr.clerkofcourt.maricopa.gov/login.aspx>

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

07/19/2021

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/>

# EXHIBIT 6

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

08/11/2021

HONORABLE KEVIN B. WEIN

CLERK OF THE COURT  
Y. Anchondo  
Deputy

IN RE THE MATTER OF  
DELVAGUS IVY

DELVAGUS IVY  
2132 W GLENROSA AVE #79A  
PHOENIX AZ 85015

AND

COLETTE CAIME

MARK S SIFFERMAN

JUDGE WEIN

**MOTION DENIED**

The Court has received and reviewed Respondent/Mother's Motion for Reconsideration of Denial of the Motion to Dismiss. The Court will give counsel the benefit of the doubt that they were unaware of binding statutory authority that addresses the issue cited in their motion. ARS § 1-243 and ARS § 1-301 provide for the same enlargement of time where the last day to act falls on a Sunday. These statutes have the same effect as the Rules of Procedure cited in the Court's original denial.

For this reason, the Motion for Reconsideration is DENIED.

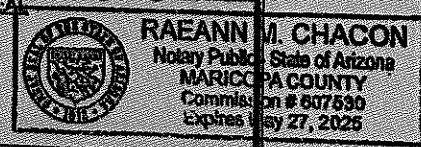
All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/>

# EXHIBIT 7

ARIZONA DEPARTMENT OF HEALTH SERVICES  
OFFICE OF VITAL RECORDS  
NOTICE OF CLAIM OF PATERNITY

**RECEIVED**  
FEB 23 2022

CHILD'S INFORMATION			
NAME OF CHILD (IF BORN)	FIRST <i>Magnificent</i>	MIDDLE <i>Mars</i>	LAST <i>Neal</i>
DATE OF BIRTH	MONTH <i>March</i>	DAY <i>23</i>	YEAR <i>20/21</i>
ESTIMATED DATE OF BIRTH (IF NOT BORN)	MONTH	DAY	YEAR
PLACE OF BIRTH	CITY <i>Phoenix</i>	COUNTY <i>Maricopa</i>	STATE <i>AZ</i>
MOTHER'S INFORMATION			
CURRENT LEGAL NAME OF MOTHER	FIRST <i>Collette</i>	MIDDLE	LAST <i>Carne</i>
MOTHER'S MAIDEN NAME (IF DIFFERENT)	FIRST	MIDDLE	LAST
MOTHER'S RESIDENCE ADDRESS (IF KNOWN)	NUMBER & STREET		
	CITY	STATE	ZIP CODE
FATHER'S INFORMATION			
NAME OF FATHER	FIRST <i>Delvagos</i>	MIDDLE <i>Evil</i>	LAST <i>Evy</i>
FATHER'S RESIDENCE ADDRESS	NUMBER & STREET <i>2132 W. Glenrosa</i>		
	CITY <i>Phoenix</i>	STATE <i>AZ</i>	ZIP CODE <i>85015</i>
	PHONE NUMBER <i>480) 275-0435</i>		
I hereby claim paternity of the child identified above. This is to signify my intention to prove paternity through further legal action and my willingness and interest to support this child to the best of my ability.			
SIGNATURE OF FATHER	SIGNATURE <i>[Signature]</i>		DATE <i>2/22/2022</i>
NOTARY PUBLIC			
STATE OF		COUNTY OF	
SUBSCRIBED AND SWORN TO BEFORE ME THIS		<i>22nd</i> DAY OF <i>February</i>	OF <i>2022</i>
NOTARY SIGNATURE	SIGNATURE <i>Raeann M. Chacon</i>		DATE <i>2-22-22</i>
MY COMMISSION EXPIRES	DATE <i>5/27/25</i>		SEAL
			
<b>MUST BE SIGNED IN THE PRESENCE OF NOTARY PUBLIC</b>			

Form #: VRCP1 (Rev: 10/30/08)

Revised: October 30, 2008

- Leadership for a Healthy Arizona -

# U.S. Postal Service™ CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

PHOENIX AZ 85005 MAIL US E

0084  
13

Certified Mail Fee \$3.75

- Extra Services & Fees (check box, add fee as appropriate) \$0.00
- Return Receipt (hardcopy) \$0.00
- Return Receipt (electronic) \$0.00
- Certified Mail Restricted Delivery \$0.00
- Adult Signature Required \$0.00
- Adult Signature Restricted Delivery \$0.00

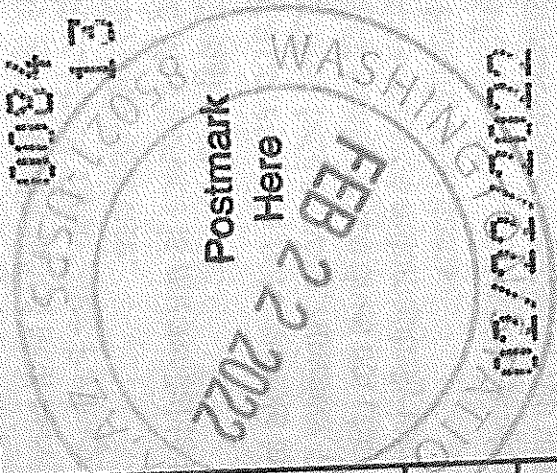
Postage \$8.95

Total Postage and Fees \$12.70

Sent To

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

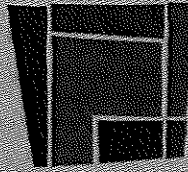


522 5257 7000 0560 7202

See Reverse for Instruction

PS Form 3800, April 2015 PSN 7530-02-000-9047

# EXHIBIT 8



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## LICENSING

February 24, 2022

Delvagus Ivy  
2132 W Glenrosa  
Phoenix, Arizona 85015

Dear Delvagus Ivy,

The Office of Vital Records has received your Notice of Claim of Paternity form that you submitted and had notarized on **02/23/2022**.

We are sorry to inform you that we are not able to add your name to the Registry as you requested for **Magnificent, Mars, Neal** due to the fact that the child's date of birth is not listed, or over the time frame that you have to file your claim and have your name added to the Registry. The Notice of Claim can be filed any time before the birth of the child but shall **be filed within 30 days after the birth of the child**. As you can see the 30 days you have to file your claim has expired. We apologize for any inconvenience this may cause.

For your reference, I have enclosed a copy of Arizona Revised Statutes §8-106 and information on how to establish paternity.

If you have any questions regarding the Putative Father Registry, please contact me at 602-364-2429.

Sincerely,

Cinthia Beltran  
Putative Father Registry Representative.  
State Office of Vital Records

Enclosures (3)

20220221815

Douglas A. Ducey | Governor Don Herrington | Interim Director

P.O. Box 6018, Phoenix, AZ 85005 P | 602-364-1300 F | 602-364-1257 W | azhealth.gov  
Health and Wellness for all Arizonans

# EXHIBIT 9

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

09/15/2021

HONORABLE JACKI IRELAND

CLERK OF THE COURT  
Y. Anchondo  
Deputy

IN RE THE MATTER OF  
DELVAGUS IVY

DELVAGUS IVY  
2132 W GLENROSA AVE #79A  
PHOENIX AZ 85015

AND

COLETTE CAIME

MARK S SIFFERMAN

ADOPTION CHOICES OF ARIZONA

PHILIP JAY MCCARTHY JR.

COMM. IRELAND

**PATERNITY TEST / STATUS CONFERENCE SET**

Courtroom 001 – Old Courthouse

11:35 a.m. This is the time set for a Resolution Management Conference regarding the Motion to Intervene Pursuant to Rule 24, ARCP and Rule 33, ARFLP, filed August 24, 2021. Petitioner/Father, Delvagus Ivy, is present by Court Connect on his own behalf. Respondent/Mother, Colette Caime, is not present but is represented by counsel, Mark S. Sifferman, appearing via Court Connect. Philip Jay McCarthy Jr., is present on behalf of Adoption Choices of Arizona.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held.

**IT IS ORDERED** granting the Motion to Intervene.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

09/15/2021

Father is sworn.

Discussion is further held.

**IT IS FURTHER ORDERED** referring this matter as directed in the Order to Submit to Paternity Testing signed by the Court and e-filed by the Clerk's Office.

**LET THE RECORD REFLECT** a copy of the aforementioned document is mailed to the parties by U.S. Mail.

**IT IS FURTHER ORDERED** if the Paternity Test results in Mr. Ivy not being the biological Father, Mr. Ivy shall be responsible for the cost of the test. If the result confirms Mr. Ivy is the biological Father, Adoption Choices of Arizona shall pay the cost of the test.

**STATUS CONFERENCE SET**

**IT IS ORDERED** setting a **Telephonic Status Conference** regarding the result of the Paternity Test and the status of the case for **November 23, 2021 at 2:30 p.m. (time allotted: 30 minutes)** before **Commissioner Jacki Ireland**.

The hearing will be held via video conference through Court Connect and Microsoft TEAMS. An invite to the TEAMS conference will be sent out to the email on file for each party or counsel of record. It is the party's responsibility to ensure receipt of the invitation prior to the hearing date.

**TO ATTEND THE HEARING** follow the instructions below:

**Comm. Ireland's Hearing Room**

**Please join my meeting from your computer, tablet or smartphone:  
[tinyurl.com/jbazmc-drj04](https://tinyurl.com/jbazmc-drj04)**

**You can also dial in using your phone**

**United States: +1 917-781-4590 United States, New York City (Toll)  
Conference ID: 371 873 544#**

**More information regarding Court Connect can be found at:**

**<https://superiorcourt.maricopa.gov/court-connect/>**

**NOTE:** All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

09/15/2021

is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

**NOTE:** For questions regarding a minute entry you have received from this Division or for questions regarding your case, you may email the judicial assistant of this Division at [Brenda.Lara@JBAZMC.Maricopa.Gov](mailto:Brenda.Lara@JBAZMC.Maricopa.Gov).

**NOTE:** If either party wishes to register and/or access their case via the Electronic Court Record, they may do so by visiting the following website: [ecr.clerkofcourt.maricopa.gov](http://ecr.clerkofcourt.maricopa.gov).

11:54 a.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/>

1 Mark S. Sifferman, AZ Bar. No. 006600  
2 Kelly A. Sifferman, AZ Bar No. 007118  
3 **THE SIFFERMAN LAW FIRM, P.L.L.C.**  
4 1850 North Central Avenue, Suite 1150  
5 Phoenix, Arizona 85004-0977  
6 Telephone: (602) 405-2443  
7 (602) 405-3443  
8 Email: [kelly@siffermanlaw.com](mailto:kelly@siffermanlaw.com)  
9 [mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)  
10 Attorneys for Respondent

11  
12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
13 **IN AND FOR THE COUNTY OF MARICOPA**  
14

15 DELVAGUS IVY,

Petitioner

v.

COLETTE CAIME,

Respondent.

Case No. FC2021-003152

**MOTION FOR ORDER *NUNC PRO***  
***TUNC* CORRECTING ORDER TO**  
**SUBMIT TO PATERNITY TESTING**

(Assigned to the Honorable Jacki Ireland)

16 Respondent moves this Court for a *Nunc Pro Tunc* Order correcting the “Order to  
17 Submit to Paternity Testing”<sup>1</sup> to conform with the Court’s rulings rendered on September  
18 15, 2021. Based upon the agreement of Petitioner and Intervenor Adoption Choices of  
19 Arizona, this Court at the September 15 hearing ordered that (a) Adoption Choices of  
20 Arizona is to pay the initial costs of the genetic testing, and (b) Petitioner will bear the  
21 ultimate cost of the testing if he is determined not to be the biological father of the minor  
22 child, but Adoption Choices of Arizona will bear the ultimate cost of the testing if  
23  
24

25  
26  
27 <sup>1</sup> The “Order to Submit to Paternity Testing” was distributed to Petitioner and  
28 Respondent by email on October 4. The Order has not yet appeared on the Clerk’s  
docket.

1 Petitioner is determined to be the biological father of the minor child. See *Minute Entry*  
2 filed September 28, 2021, page 2.<sup>2</sup>

3 Paragraph 4 of the “Order to Submit to Paternity Testing” erroneously makes  
4 Petitioner responsible for the initial costs of testing and makes Respondent Birth Mother  
5 responsible for the testing cost if Petitioner’s paternity is confirmed. The Order should  
6 be corrected *nunc pro tunc* to conform with the parties’ agreements and the Court’s  
7 rulings rendered at the September 15 hearing.  
8

9  
10 The “Order to Submit to Paternity Testing,” in its third paragraph, also  
11 erroneously requires that Respondent Birth Mother be tested along with Petitioner and  
12 the minor child. At the September 15 hearing, the Court ordered that test samples be  
13 provided by only Petitioner and the minor child (who is in legal custody of Adoption  
14 Choices of Arizona). There is no question of the minor child’s maternity. It is undisputed  
15 that Respondent is the minor child’s birth mother. Her testing is unnecessary.  
16

17 A *nunc pro tunc* order is warranted so that the “Order to Submit to Paternity  
18 Testing” accurately reflects the agreements made and the rulings rendered by this Court  
19 at the September 15 hearing. Where an entered Order does not correctly reflect the Order  
20 rendered by the Court, a *nunc pro tunc* order is appropriate.<sup>3</sup> *Wood's Pharmacy, Inc., v.*  
21 *Kenton*, 50 Ariz. 53, 56 (1937); *State v. Hanson*, 138 Ariz. 296, 304 (App. 1983); see *De*  
22  
23

---

24 <sup>2</sup> The undersigned this day confirmed these agreements with Petitioner and counsel  
25 for Adoption Choices of Arizona.

26 <sup>3</sup> The difference between the rendition and the entry of an order or judgment is the  
27 court renders the order or judgment and the clerk enters the order or judgment. *Valley*  
28 *Nat'l Bank v. Meneghin*, 130 Ariz. 119, 123, n.3 (1981); *Allen v. Allen*, 129 Ariz. 112,  
114 (App. 1981).

1 *Forest v. De Forest*, 143 Ariz. 627, 629-630 (App. 1985) (an order or judgment *nunc pro*  
2 *tunc* is appropriate to reflect what was actually done by the Court).

3  
4 A Court has inherent power to issue orders *nunc pro tunc* to make the record  
5 “speak the truth.” *State v. Johnson*, 113 Ariz. 506, 509 (1976). The type of mistake  
6 occurring here may be corrected by the Court at any time. *Rae v. Brunswick Tire*, 45  
7 Ariz. 135, 137 (1935);<sup>4</sup> *State v. Johnson*, sura, 113 Ariz. at 509.

8  
9 Respondent requests that an Order be entered *nunc pro tunc* correcting the “Order  
10 to Submit to Paternity Testing” so that it conforms with the agreements reached at and  
11 the Court’s rulings rendered on September 15, 2021. An Order, the form of which is  
12 attached hereto as Exhibit “A,” is being lodged with this Motion.

13  
14 **DATED** this 5<sup>th</sup> day of October 2021.

15 **THE SIFFERMAN LAW FIRM, P.L.L.C.**

16  
17 By: /s/ Mark S. Sifferman [SB# 006600]  
18 Kelly A. Sifferman  
19 Mark S. Sifferman  
20 Attorneys for Respondent

21 **THE FORGOING** filed through  
22 the Arizona Judicial Branch  
23 Statewide eFiling System this  
24 5<sup>th</sup> day of October 2021

25  
26 \_\_\_\_\_  
27 <sup>4</sup> “it is not merely the right but the duty of the court, when the matter is called to its  
28 attention, to order [an order or judgment] modified or changed in such manner that they  
do speak truthfully.” *Rae v. Brunswick Tire*, supra, 45 Ariz. at 137.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COPY** of the forgoing  
served by e-mail this  
5<sup>th</sup> day of October 2021 on:

Delvagus Ivy  
2132 W. Glenrosa Ave., Apt. 79A  
Phoenix, AZ 85015  
bookingdelvagus@gmail.com  
Petitioner

Philip (Jay) McCarthy, Jr.  
**MCCARTHYWESTON, PLLC**  
508 N Humphreys  
Flagstaff, AZ 86001  
jay@mccarthyweston.com  
Attorney for Intervenor  
Adoption Choices of Arizona

/s/ Mark S. Sifferman [SB# 006600]

CLERK OF THE SUPERIOR COURT  
FILED

10-22-2021 8:34am  
Y. Anshanda, Deputy

1 Mark S. Sifferman, AZ Bar. No. 006600  
2 Kelly A. Sifferman, AZ Bar No. 007118  
3 **THE SIFFERMAN LAW FIRM, P.L.L.C.**  
4 1850 North Central Avenue, Suite 1150  
5 Phoenix, Arizona 85004-0977  
6 Telephone: (602) 405-2443  
7 (602) 405-3443  
8 Email: [kelly@siffermanlaw.com](mailto:kelly@siffermanlaw.com)  
9 [mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)  
10 Attorneys for Respondent

11  
12  
13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 DELVAGUS IVY,

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Petitioner

v.

COLETTE CAIME,

Respondent.

Case No. FC2021-003152

**ORDER CORRECTING *NUNC PRO TUNC* ORDER TO SUBMIT TO PATERNITY TESTING**

(Assigned to the Honorable Jacki Ireland)

Respondent having filed a Motion for Order *Nunc Pro Tunc* Correcting Order to Submit to Paternity Testing, and good cause appearing,

**IT IS HEREBY ORDERED** that the Order to Submit to Paternity Testing previously entered in this matter is amended *nunc pro tunc* as follows:


1. Paragraph 4 is corrected to provide that (a) Adoption Choices of Arizona is to pay the initial costs of the genetic testing, and (b) Petitioner will bear the ultimate cost of the testing if he is determined not to be the biological father of the minor child, but Adoption Choices of Arizona will bear the ultimate cost of the testing if Petitioner is determined to be the biological father of the minor child.

2. The requirement in Paragraph 3 that the Respondent Birth Mother be tested

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

is eliminated.

Except as amended hereby, the Order to Submit to Paternity Testing remains in full force and effect. *The Court notes that its electronic order does not give the Court the ability to leave Mother off of the testing order.*  
**DATED** this 21 day of October 2021.

By:   
Commissioner of the Superior Court

Honorable Jackl Ireland  
Maricopa County Superior Court

# EXHIBIT 10

correspondence to judges assistant

----- Forwarded message -----

From: **Delvagus Ivy** <[bookingdelvagus@gmail.com](mailto:bookingdelvagus@gmail.com)>  
Date: Tue, Oct 5, 2021 at 8:12 AM  
Subject: paternity test / Delvagus Ivy  
To: Brenda Lara (SUP) <[Brenda.Lara@jbazmc.maricopa.gov](mailto:Brenda.Lara@jbazmc.maricopa.gov)>

Good morning. I spoke to you yesterday and you emailed me the info for the paternity testing. I called Labcorp and they do not have the court order. She said to get ahold of you so the order can get put into Labcorp.

The case number is FC 2021-003152. Also they cannot set an appt until the payment is made. The other party is supposed to pay the initial payment. Please let me know how I should proceed or when the court order is in so we can make the appt.

Thank you so much.



Virus-free. [www.avast.com](http://www.avast.com)

Please send any personal, non-professional emails to [marksifferman@gmail.com](mailto:marksifferman@gmail.com)

**From:** Delvagus Ivy <[bookingdelvagus@gmail.com](mailto:bookingdelvagus@gmail.com)>  
**Sent:** Tuesday, October 5, 2021 8:43 AM  
**To:** Mark S. Sifferman <[mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)>  
**Subject:** Re: Paternity Action FC2021-003152

Good morning.

Thank you. I called the court yesterday to get the order because I had not received any information on how to proceed. It was my understanding the adoption agency would be covering the initial cost of the testing. Labcorp doesn't have the court order yet and an appt cannot be made until it is paid. I emailed Brenda to get this corrected and let her know the order has not been sent to Labcorp yet. Could you please contact the agency to set up the appointment and payment or do I need to call them (the adoption agency) directly?



Virus-free. [www.avast.com](http://www.avast.com)

On Tue, Oct 5, 2021 at 8:23 AM Mark S. Sifferman <[mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)> wrote:

Mr. Ivy – attached is an “Order to Submit to Paternity Testing” I received from the court yesterday by email. I am forwarding it to you to make sure you receive it.

I forwarded it to Jay McCarthy, the attorney for the adoption agency. He was not listed as a recipient on the 3<sup>rd</sup> page of the Order.

Mark S. Sifferman

THE SIFFERMAN LAW FIRM, P.L.L.C.

1850 North Central Avenue, Suite 1150

Phoenix, Arizona 85004-0977

Telephone: (602) 405-2443

Email: [mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)

The information contained in this e-mail message is considered confidential and may be legally privileged. If the recipient of this message is not the intended recipient, please notify me immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Please send any personal, non-professional emails to [marksiffernan@gmail.com](mailto:marksiffernan@gmail.com)

The information contained in this e-mail message is considered confidential and may be legally privileged. If the recipient of this message is not the intended recipient, please notify me immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Please send any personal, non-professional emails to [marksifferman@gmail.com](mailto:marksifferman@gmail.com)

**From:** Delvagus Ivy <[bookingdelvagus@gmail.com](mailto:bookingdelvagus@gmail.com)>  
**Sent:** Monday, October 25, 2021 4:23 PM  
**To:** Mark S. Sifferman <[mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)>  
**Subject:** Re: Paternity Action FC2021-003152

Hi Mark. I still haven't received any word from the court on how to proceed at this time. I've called labcorp several times and the court hasn't even sent in the order.

I don't see the number for the adoption agency in my paperwork so I can just call them directly but maybe I'm overlooking it. Can you please forward me their information.

Thank you.

Delvagus Ivy

On Tue, Oct 5, 2021 at 8:54 AM Mark S. Sifferman <[mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)> wrote:

My memory also is that the agency would pay the cost upfront. I am confirming this with the agency's attorney. If so, I will be filing a formal motion asking the court to correct the order.

Mark S. Sifferman

THE SIFFERMAN LAW FIRM, P.L.L.C.

1850 North Central Avenue, Suite 1150

Phoenix, Arizona 85004-0977

Telephone: (602) 405-2443

Email: [mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)

The information contained in this e-mail message is considered confidential and may be legally privileged. If the recipient of this message is not the intended recipient, please notify me immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Phoenix, Arizona 85004-0977

Telephone: (602) 405-2443

Email: [mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)

The information contained in this e-mail message is considered confidential and may be legally privileged. If the recipient of this message is not the intended recipient, please notify me immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

Please send any personal, non-professional emails to [marksifferman@gmail.com](mailto:marksifferman@gmail.com)

**From:** Delvagus Ivy <[bookingdelvagus@gmail.com](mailto:bookingdelvagus@gmail.com)>  
**Sent:** Tuesday, October 26, 2021 2:29 PM  
**To:** Mark S. Sifferman <[mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)>  
**Subject:** Re: Paternity Action FC2021-003152

Ok, thank you. I spoke to a different judges assistant Friday and he said he would pass the info as well

But have not heard anything yet

On Tue, Oct 26, 2021 at 2:16 PM Mark S. Sifferman <[mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)> wrote:

I will get you the contact information for the agency. First, I am going to contact the Judicial Assistant for the assigned Commissioner informing them of your contacts with LabCorp and asking them to issue the revised Order and get it to LabCorp. I will copy you on the email with the Court.

Mark S. Sifferman

THE SIFFERMAN LAW FIRM, P.L.L.C.

1850 North Central Avenue, Suite 1150

Phoenix, Arizona 85004-0977

Telephone: (602) 405-2443

Email: [mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)

----- Forwarded message -----

From: **Delvagus Ivy** <[bookingdelvagus@gmail.com](mailto:bookingdelvagus@gmail.com)>

Date: Thu, Aug 26, 2021 at 3:14 PM

Subject: Re: FC 2021-003152

To: Leann Picard <[Leann@mccarthyweston.com](mailto:Leann@mccarthyweston.com)>

I received your email. I was notified by both Ms. Caime and her attorney that I was a potential biological father of baby Caime so until I have obtained a paternity test that says otherwise, I fully intend to exercise all my rights as though I am his father. Attached is the resolution paperwork requested from the court for the hearing on September 15 at 11am. I have filed it with the courts as well. See you then.

On Tue, Aug 24, 2021 at 3:36 PM Leann Picard <[Leann@mccarthyweston.com](mailto:Leann@mccarthyweston.com)> wrote:

Good afternoon,

Attached, please find copies of the Entry of Appearance, Motion to Intervene, and proposed Order dated August 24, 2021.

Sincerely,

***Leann Picard***



Paralegal to

Philip "Jay" McCarthy, Jr.

508 N. Humphreys St.

Flagstaff, Arizona 86001

Ph: (928) 779-4252

Fax: (928) 779-0243

# EXHIBIT 11



P.O. Box 2230 Burlington, NC 27216 Telephone: (336) 584-5171 Relationship Report

**Account Information**

Account Number: 02698090  
 SUPERIOR COURT OF ARIZONA  
 Acct Ref 1: FC2021-003152  
 Acct Ref 2: \_\_\_\_\_  
 Acct Ref 3: \_\_\_\_\_  
 PHOENIX, AZ 85003

LabCorp Case # CIC-018516

Relationship	Party	Race	Date Collected
Child	NEAL, MAGNIFICENT	1BB-2194-0	11/08/2021
Alleged Father	IVY, JR, DELVAGUS	IBC-2357-0 Black	11/08/2021

**DNA Analysis**

	D3S1358	D7S820	vWA	D12S381	FGA	D8S1179	D21S11	D18S51	D5S818	D13S317
C	15, 17	8, 13	16, 18	18, 23	21	10, 14	28, 29	13, 18	11, 13	10, 13
AF	15, 18	12, 13	16, 18	16, 23	21, 23	14, 15	28, 29	13	13	12, 13
PI	0.86	12.68	18.95	4.23	0.73	2.42	11.39	2.10	1.64	

**DNA Analysis**

	D16S539	TH01	TPOX	CSF1PO	D2S1338	D19S433	D22S1045	D28441	D10S1248
C	9, 11	6, 9.3	8, 12	7, 9	16, 20	12, 15	15, 16	11, 14	12, 14
AF	9	6, 8	11, 12	7	16, 25	15, 15.2	15	11	12
PI	2.42	1.90	8.14	8.20	4.78	3.81	2.05	1.40	3.87

**DNA Analysis**

	D1S1656	D6S1043	DYS392
C	11, 16	11, 19	11
AF	11, 15	13, 19	11
PI	4.23	7.15	1.35

CLERK OF THE SUPERIOR COURT  
 FILED

*12-6-2021 3:20pm*  
 P. Noell, Deputy

**Conclusion:**

Combined Paternity Index: 154,637,079,954 to 1 Probability of Paternity: 99.99% (Prior Probability = 0.5)

The alleged father, DELVAGUS IVY, JR, cannot be excluded as the biological father of the child, MAGNIFICENT NEAL, since they share genetic markers. Using the above systems, the probability of paternity is 99.99%, as compared to an untested, unrelated man of the Black population.

I, the undersigned, upon being duly sworn on oath, do depose and state that I read the foregoing report on the analysis of specimens from the above named individuals, signed by myself, and under penalties for perjury it is my belief that the facts and results therein are true and correct.

*[Signature]*  
 Gary M Stuhlmiller, Ph.D.

PATRICIA DANN  
 NOTARY PUBLIC  
 ALAMANCE County  
 North Carolina  
 My Comm. Expires June 21 2025

State of North Carolina  
 County of Alamance

I, *Patricia Dann*, certify that Gary M Stuhlmiller, Ph.D. personally came before me this day and acknowledged that he (or she) is a person authorized by Laboratory Corporation of America Holdings, a corporation, to execute the foregoing on behalf of the corporation.

Subscribed and sworn to [or affirmed] before me this *22 Nov 2021* at Burlington, NC.

*[Signature]*  
 Notary Public

Laboratory Corporation of America Holdings is accredited by the AABB.

# EXHIBIT 12

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

12/08/2021

HONORABLE JAMES DRAKE

CLERK OF THE COURT  
Y. Anchondo  
Deputy

IN RE THE MATTER OF  
DELVAGUS IVY

DELVAGUS IVY  
2132 W GLENROSA AVE #79A  
PHOENIX AZ 85015

AND

COLETTE CAIME

MARK S SIFFERMAN

PHILIP JAY MCCARTHY JR.  
JUDGE DRAKE

**MOTIONS GRANTED / STATUS CONFERENCE SET**

Courtroom 001 – Old Courthouse

4:01 p.m. This is the time set for a Status Conference regarding the paternity test results. Petitioner/Father, Delvagus Ivy, is present by Court Connect on his own behalf. Respondent/Mother, Colette Caime, is not present but is represented by counsel, Mark S. Sifferman, appearing via Court Connect. Philip Jay McCarthy Jr., is present via Court Connect on behalf of Adoption Choices of Arizona. Erik Berstrom, is present on behalf of the prospective adoptive parents, known as the “Intervenors” or “the Does.”

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

12/08/2021

Two Motions were filed with the Court since our last status conference on November 23, 2021. John and Jane Doe, the prospective adoptive parents filed a Motion to Intervene on December 6, 2021.

**IT IS ORDERED** granting the Motion to Intervene.

Additionally, John and Jane Doe filed a Motion to have the true names of the Intervenors remain confidential.

**IT IS ORDERED** granting the Motion to have the true names of the Intervenors remain confidential. The Court determines that confidentiality is proper under 8-107, ARS; Rule 13(e)(2) Arizona Rules of Family Court Procedure; and, Supreme Court Rule 123.

Discussion is further held.

Father is sworn and testifies.

Court is made aware of a pending juvenile matter in Coconino County and therefore, has set a status conference for this matter approximately sixty days from today's hearing.

**STATUS CONFERENCE SET**

**IT IS ORDERED** setting a **Telephonic Status Conference** regarding the status of the juvenile case for **February 7, 2022 at 3:00 p.m. (time allotted: 30 minutes)** before **The Honorable James Drake**.

The hearing will be held via video conference through Court Connect and Microsoft TEAMS. This new and innovative program allows Court participants to appear in an online, rather than a physical, courtroom. **All parties shall appear via videoconference.** Lawyers (and self-represented litigants) are responsible for distributing this notice to anyone who will be appearing on their behalf. All participants must use the web link or the dial in information below to participate. **Counsel and self-represented parties shall appear promptly at the scheduled time.** An invite to the TEAMS conference will be sent out to the email on file for each party or counsel of record. It is the party's responsibility to ensure receipt of the invitation prior to the hearing date.

**TO ATTEND THE HEARING** follow the instructions below:

**Judge Drake's Hearing Room**

Please join the meeting from your computer, tablet or smartphone:

1. Click [www.tinyurl.com/jbazmc-drj04](http://www.tinyurl.com/jbazmc-drj04) or enter it in the browser of your device.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

12/08/2021

2. Enter full name and role in name field for facilitator to admit you to the proceeding (note that you may wait to be admitted and the Court may not be able to communicate while you wait).

Self-represented litigants may dial in using your phone if internet access is not available  
United States: +1 917-781-4590 United States, New York City (Toll)  
Conference ID: 371 873 544#

**More information regarding Court Connect can be found at:**  
**<https://superiorcourt.maricopa.gov/court-connect/>**

**NOTE:** All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

**NOTE:** For questions regarding a minute entry you have received from this Division or for questions regarding your case, you may email DRJ04@jbazmc.maricopa.gov.

**NOTE:** If either party wishes to register and/or access their case via the Electronic Court Record, they may do so by visiting the following website: ecr.clerkofcourt.maricopa.gov.

4:27 p.m. Matter concludes.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/>

# EXHIBIT 13

1 Philip (Jay) McCarthy, Jr.  
Arizona State Bar No. 013059  
2 **McCARTHYWESTON, PLLC**  
508 N. Humphreys  
3 Flagstaff, Arizona 86001  
4 (928) 779-4252  
5 *Email: [courts@mccarthyweston.com](mailto:courts@mccarthyweston.com)*  
*Attorneys for Adoption Choices of Arizona*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
7 **IN AND FOR THE COUNTY OF MARICOPA**

8 **In re the Matter of:**

9 **DELVAGUS IVY,**

10 **Petitioner,**

11 **v.**

12 **COLETTE CAIME,**

13 **Respondent.**

**No. FC 2021-003152**

**MOTION TO STAY  
PATERNITY/CUSTODY  
CASE**

**(Assigned to the Honorable James Drake)**

**McCARTHYWESTON, PLLC**  
*Attorneys at Law*  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

14  
15 COMES NOW Adoption Choices of Arizona, a licensed Arizona adoption  
16 agency, by and through counsel, Philip (Jay) McCarthy, Jr., McCarthyWeston, pllc, and  
17 hereby request this Court stay this case.

18 On December 2, 2021, Adoption Choices of Arizona filed a Second Amended  
19 Petition to Terminate Parental Rights with the Coconino County Superior Court, Cause  
20 No. SV 2021-00003, seeking to terminate the parental rights of the potential father,  
21 Delvagus Ivy, as to the minor child, Magnificent Mars Neal, (a.k.a Not Named Caime),  
22 (a.k.a. Baby Boy Caime), date of birth, March 23, 2021.  
23  
24  
25

McCARTHYWESTON, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

1 Adoption Choices of Arizona requests this Court stay this case until the  
2 termination of parental rights case is completed. A stay of this case is in the best interests  
3 of the minor child.

4 This Motion is supported by the accompanying Memorandum of Points and  
5 Authorities.

6 RESPECTFULLY SUBMITTED this 23rd day of December 2021.

7  
8 MCCARTHYWESTON, PLLC

9  
10 /s/ PHILIP (JAY) MCCARTHY, JR.  
11 Philip (Jay) McCarthy, Jr.  
12 Attorney for Adoption Choices of Arizona

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 On December 2, 2021, Adoption Choices of Arizona filed a Second Amended  
15 Petition to Terminate Parental Rights with the Coconino County Superior Court, Cause  
16 No. SV 2021-00003, between the minor child, Magnificent Mars Neal and the potential  
17 father, Delvagus Ivy. Mr. Ivy was served the Second Amended Petition to Terminate  
18 Parental Rights on December 19, 2021. The initial hearing is scheduled for January 10,  
19 2021. (See a copy of the Affidavit of Service and the Order scheduling the initial hearing,  
20 attached as Exhibits A and B).

21 This case and all proceedings related to the Petition for Paternity and Custody of  
22 the child should be stayed. Pursuant to A.R.S. §8-202(F), the Juvenile Court proceeding  
23 takes precedence over this family court case and therefore, this case should be stayed.  
24

25

McCARTHYWESTON, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

1 This case involves a very young child, who is only nine (9) months old and has  
2 no relationship with the Petitioner, Mr. Ivy.

3 It is clearly in the best interests of the child not to proceed with the paternity case,  
4 until such time, as the Coconino County Superior Court, Juvenile Division, has  
5 determined whether or not Mr. Ivy has abandoned the child and if his parental rights are  
6 terminated.

7 For the foregoing reasons, it respectfully requested the Court enter an Order  
8 staying this paternity proceeding, and any hearings on the Petition for Paternity and  
9 Custody.

10 RESPECTFULLY SUBMITTED this 23rd day of December 2021.

11  
12 **McCARTHYWESTON, PLLC**  
13 **BY /s/ PHILIP (JAY) MCCARTHY, JR.**  
14 Philip (Jay) McCarthy, Jr.  
Attorney for Adoption Choices of Arizona

15  
16 ORIGINAL of the foregoing E-Filed this  
23rd day of December 2021, to:

17 Clerk of the Court  
18 Maricopa County Superior Court

19 Copies of the foregoing E-Mailed and First Class Mail  
this 23rd day of December 2021, to:

20 The Honorable James Drake  
21 Maricopa County Superior Court

22 Delvagus Ivy  
23 2132 West Glenrosa Avenue, #79A  
Phoenix, Arizona 85015  
24 bookingdelvagus@gmail.com  
Petitioner

25

McCARTHYWESTON, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

1 Mark S. Sifferman, Esq.  
2 The Sifferman Law Firm, PLLC  
3 1850 North Central Avenue, Suite 1150  
4 Phoenix, Arizona 85004  
5 [mark@siffermanlaw.com](mailto:mark@siffermanlaw.com)  
6 Attorney for Respondent

7 Erik C. Bergstrom, Esq.  
8 Bishop, Del Vecchio & Beeks  
9 7210 North 16<sup>th</sup> Street  
10 Phoenix, Arizona 85020  
11 [ecbteam@bdblawfirm.com](mailto:ecbteam@bdblawfirm.com)  
12 Attorney for Intervenors

13 By: \_\_\_\_\_  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# EXHIBIT 14

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

01/13/2022

HONORABLE JAMES DRAKE

CLERK OF THE COURT  
N. Brandenburg  
Deputy

IN RE THE MATTER OF  
DELVAGUS IVY

DELVAGUS IVY  
2132 W GLENROSA AVE #79A  
PHOENIX AZ 85015

AND

COLETTE CAIME

MARK S SIFFERMAN

ERIK C BERGSTROM  
PHILIP JAY MCCARTHY JR.  
JUDGE DRAKE

STAY OF PROCEEDINGS

The Court has received Intervenor, Adoption Choices of Arizona's *Motion to Stay Paternity/Custody Case* filed December 23, 2021 and Intervenors, Jane and John Doe's *Notice of Joinder in Motion to Stay Paternity/Custody Case* filed December 27, 2021. For good cause appearing,

**IT IS ORDERED** granting the above motions in part and denying in part.

**IT IS FURTHER ORDERED** that all proceedings pending in this matter are stayed pending final determination in the Termination of Parental Rights case in Coconino County Juvenile Court. Accordingly,

**IT IS FURTHER ORDERED** vacating the Status Conference set for February 7, 2022 at 3:00 p.m. in this Division.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2021-003152

01/13/2022

**IT IS FURTHER ORDERED** placing this matter on the Inactive Calendar for dismissal on **July 13, 2022** pending the final determination in the Termination of Parental Rights case in Coconino County Juvenile Court.

**IT IS FURTHER ORDERED** denying Intervenors' requests for attorney fees and costs pending the conclusion of this case.

All parties representing themselves must keep the Court updated with address changes.

A form may be downloaded at:

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/>

# EXHIBIT 15

McCARTHYWESTON, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

1 Philip (Jay) McCarthy, Jr.  
Arizona State Bar No. 013059  
2 **McCARTHYWESTON, PLLC**  
508 N. Humphreys  
3 Flagstaff, Arizona 86001  
(928) 779-4252  
4 *Email: [courts@mccarthyweston.com](mailto:courts@mccarthyweston.com)*  
5 *Attorneys for Adoption Choices of Arizona*

6 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

7 **IN AND FOR THE COUNTY OF COCONINO**

8 **JUVENILE DIVISION**

9 **In the Matter of:**

10 **MAGNIFICENT MARS NEAL,**  
11 **(A.K.A. NOT NAMED CAIME),**  
12 **(A.K.A. BABY BOY CAIME),**

13 **D.O.B. 03/23/2021**

14 **Minor Child.**

**No. SV 2021-00003**

**MOTION TO STAY FATHER,  
DELVAGUS EVOL IVY'S  
VISITS WITH THE MINOR  
CHILD**

**(The Honorable Angela Kircher)**

15  
16 COMES NOW Petitioner, Adoption Choices of Arizona, a licensed Arizona  
17 adoption agency, by and through counsel, Philip (Jay) McCarthy, Jr., McCarthy Weston,  
18 pllc, and hereby request this Court stay Mr. Delvagus Evol Ivy's visits with the minor  
19 child, Magnificent Mars Neal, date of birth March 23, 2021, until determination by the  
20 Court as to the Petitioner's Motion for Partial Summary Judgment and further order of  
21 the Court.

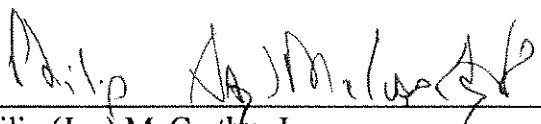
22 The Petitioner requests this Court stay visitation until the Petitioner's Motion for  
23 Partial Summary Judgment is ruled upon. A stay of visitation is in the best interests of  
24 the minor child.  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

This Motion is supported by the accompanying Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of February 2022.

**MCCARTHYWESTON, PLLC**

  
Philip (Jay) McCarthy, Jr.  
Attorney for Petitioner

**MEMORANDUM OF POINTS AND AUTHORITIES**

At the initial hearing, on January 31, 2022, counsel for Mr. Ivy made a verbal request for Mr. Ivy to have visitation. The Petitioner, Adoption Choices of Arizona opposed the visitation given this is a termination of parental rights case and not a dependency case. Therefore, visitation should not have been awarded herein. On January 31, 2022, this Court ordered visitation between Mr. Ivy and the minor child, Magnificent Mars Neal, date of birth March 23, 2021. Since the child's birth, Mr. Ivy has never had custody or any visitation with the child. The child does not know Mr. Ivy and has no relationship with Mr. Ivy.

It is clearly in the best interests of the child to not proceed with visits between Mr. Ivy and the minor child, Magnificent Mars Neal, date of birth March 23, 2021, until such time, as the Coconino County Superior Court, Juvenile Division, has ruled upon the Petitioner's Motion for Partial Summary Judgment.

For the foregoing reasons, it respectfully requested the Court enter an Order staying visits, at this time, between Mr. Ivy and the minor child, Magnificent Mars Neal,

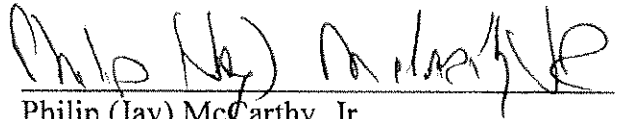
McCARTHYWESTON, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

date of birth March 23, 2021.

RESPECTFULLY SUBMITTED this 4<sup>TH</sup> day of February 2022.

MCCARTHYWESTON, PLLC



Philip (Jay) McCarthy, Jr.  
Attorney for Petitioner

ORIGINAL of the foregoing filed electronically this 4<sup>th</sup> day of February 2022, to:

Clerk of the Court  
Coconino County Superior Court  
Juvenile Division  
Flagstaff, Arizona 86001  
[coconinot36@courts.az.gov](mailto:coconinot36@courts.az.gov)

COPIES of the foregoing delivered this 4<sup>th</sup> day of February 2022, to:

Honorable Angela R. Kircher  
Coconino County Juvenile Court  
1001 E. Sawmill Rd.  
Flagstaff, Arizona 86001  
[DSchwecke@courts.az.gov](mailto:DSchwecke@courts.az.gov)  
(VIA EMAIL)

Sandra Diehl, Esq.  
Coconino County Public Defender's Office  
Attorney for Mother  
[sdiehl@coconino.az.gov](mailto:sdiehl@coconino.az.gov)  
(VIA EMAIL)

Muriel McCraney-Gonzalez  
Aubrey Luma  
Adoption Choices of Arizona  
[mmccraneygonzalez@adoptionchoicesofarizona.org](mailto:mmccraneygonzalez@adoptionchoicesofarizona.org)  
[aluma.adoptionchoices@gmail.com](mailto:aluma.adoptionchoices@gmail.com)  
(VIA EMAIL)

McCARTHYWESTON, PLLC  
Attorneys at Law  
508 N. Humphreys  
Flagstaff, Arizona 86001  
(928) 779-4252

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Erika Arlington, Esq.  
Coconino County Public Legal Defender's Office  
Attorney for Father  
earlington@coconino.az.gov  
(VIA EMAIL)

By: 