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SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

PAUL PENZONE, an individual,

Plaintiff,

v.

JOSEPH ARPAIO and AVA ARPAIO,
husband and wife,

Defendants.

No. CV 2016-015464

COMPLAINT (Defamation)

Introduction

With recent polls showing Paul Penzone ahead of Joe Arpaio in the race to become Maricopa County Sheriff, Arpaio has resorted to blatant lies to smear Penzone's reputation and bolster Arpaio's re-election bid. Unable to unearth any substantive dirt about Penzone, Arpaio has resorted to digging up old ads from his 2012 campaign that claim Penzone physically abused his former wife. But those ads were fact-checked and debunked, not only by the media but even by Penzone's ex-wife, who went on record in a sworn statement saying that Arpaio's ad was a lie.

Worse than simply providing false information to the voting public, Arpaio has knowingly lied. To ensure Arpaio and his campaign did not unwittingly provide false information to the voting public, Penzone provided the correct information—including his ex-wife's sworn statement—stating that the 2012 ad was blatantly wrong and urging Arpaio not to rerun it. Nevertheless, when polls started showing the sheriff's race was tightening (some polls even showed Penzone winning), Arpaio and his campaign took to the airwaves, recycling the

1 same smear. The only material difference is that this time, Arpaio had already been provided
2 with actual proof that this ad was blatantly false. As a long-time law enforcement officer,
3 charged with investigating and ensuring allegations have merit, Arpaio knows that he should
4 investigate the facts before making public accusations that affect people's lives and livelihood.
5 Nevertheless, with actual knowledge that the claims in his ad are false, Arpaio is once again
6 maliciously lying to the voters of Maricopa County to wrongly sully Penzone's reputation at a
7 critical time in the election cycle. Both Penzone and the voting public deserve better than this,
8 and particularly from their Sheriff.

9 **The Parties**

10 1. At all times material herein, Plaintiff Paul Penzone has resided in Maricopa
11 County, Arizona.

12 2. Upon information and belief, at all times material herein, Defendants Joseph
13 Arpaio and Ava Arpaio were a married couple residing in Maricopa County, Arizona. The
14 wrongful conduct of Defendant Joseph Arpaio was engaged in for the benefit of the marital
15 community, thereby rendering his spouse and marital community liable for such conduct.

16 3. The true names, capacities, and relationships, whether individual, corporate,
17 partnership, or otherwise of all John Doe, Jane Doe, Black & White Corporations, and Black &
18 White Partnership Defendants are unknown to Plaintiff at the time of filing this Complaint, and
19 Plaintiff therefore sues these defendants through fictitious names. Plaintiff will ask leave of
20 court to amend this Complaint to reflect true names, capacities, and relationships of these
21 unknown defendants when they have been ascertained. Plaintiff further alleges that all of the
22 fictitiously named Defendants were jointly and severally responsible for the events, actions,
23 and conduct underlying this action and that they caused injuries and damages to Plaintiff as
24 stated in this Complaint.

25 4. Arpaio caused acts or events to occur in Maricopa County that caused damage to
26 Plaintiff.

27 5. This Court has personal jurisdiction over the parties in this lawsuit. This Court
28

1 has jurisdiction over the subject matter of this action pursuant to Article VI, §14 of the Arizona
2 Constitution and A.R.S. § 12-123.

3 **The Facts**

4 6. In the 2012 election campaign for Maricopa County Sheriff, Arpaio aired several
5 television ads alleging that Penzone struck his former wife. The intent of the ad was plainly to
6 portray Penzone as a terrifying and abusive husband.

7 7. The allegations in the 2012 ads stem from a dispute in which Penzone was
8 involved with his estranged wife, Susan Hubbard, in 2003 before their divorce.

9 8. At the time, Penzone was taking his son to a hockey game. His son had left his
10 hockey gear at Hubbard's home, so Penzone went to the home to pick up the hockey gear.

11 9. Penzone and Hubbard became involved in a verbal dispute. Hubbard went inside
12 to fetch her son's hockey gear. When she came out of the house, she passed the hockey gear to
13 Penzone accidentally hitting Penzone in the face with the hockey stick, leaving a mark.

14 10. As a law enforcement officer who had just been involved in an altercation,
15 Penzone followed protocol, calling his supervisor to report the incident, and was advised to file
16 a police report.

17 11. Penzone filed the report and sought a restraining order against Hubbard to
18 eliminate the possibility of any future incidents.

19 12. A week later, Hubbard sought her own restraining order against Penzone as a
20 retaliatory measure. The court initially issued both orders as a matter of course, but both were
21 dismissed shortly thereafter because the court concluded that Hubbard and Penzone were able
22 to amicably resolve their differences and that neither party was a danger to the other.

23 13. Since that time, Penzone and Hubbard have amicably shared custody of their son.
24 In fact, when Hubbard filed her Petition for Dissolution of Marriage, she left blank the box that
25 would have indicated that "Domestic Violence . . . occurred during the marriage." *See* Petition,
26 attached as **Exhibit 1**.

27 14. Thus, the portrayal of events in Arpaio's ad were entirely false.
28

1 15. On October 11, 2012, the website Arizona's Politics fact-checked the allegations
2 in the ad, and found them to be utterly false. See article located at
3 <http://arizonaspolitics.blogspot.com/2012/10/fact-check-arpaiio-ad-accusing-penzone.html>
4 attached as **Exhibit 2**.

5 16. On April 20, 2016, with Penzone preparing to once again run for Sheriff,
6 Hubbard signed an affidavit stating among other things that "Arpaio's campaign commercial
7 portraying [Penzone] as physically aggressive during our marriage was inaccurate and
8 misleading. It was, in my opinion, dirty politics and the use of family against an opponent is
9 totally off-base." See Affidavit, attached as **Exhibit 3**.

10 17. Hubbard further stated that she had "wanted to clarify the record" in 2012, but
11 did not do so because she did not want to be in the public eye.

12 18. To ensure Arpaio and his campaign did not innocently run this smear again,
13 Penzone sent a copy of the affidavit to Arpaio, the Reelect Sheriff Joe Arpaio Campaign,
14 Campaign Manager Chad Willems, and every media outlet, warning them not to air these or
15 similar ads in the 2016 campaign and putting all on notice that the allegations of domestic
16 violence were utterly false.

17 19. On June 28, 2016, Penzone held a press conference at which he answered
18 questions about the 2003 incident and once again put Arpaio on notice that the allegations in
19 Arpaio's 2012 ads were utterly false.

20 20. Nevertheless, the Reelect Sheriff Joe Arpaio Campaign is currently airing an ad
21 on Channel 12 news that once again alleges that Penzone physically abused his wife and states
22 that Penzone is "Too Dangerous: Wrong for Sheriff" (the "Defamatory Ad"). Willems knew
23 the true facts, yet he and Arpaio decided to run the Defamatory Ad anyway.

24 21. The ad says, "Penzone assaulted his ex-wife."

25 22. In reality, Penzone did not assault Hubbard.

26 23. The ad says, "The judge found Penzone to be a threat to her safety, or even her
27 life."

24. In reality, the judge made no such factual findings. Moreover, Penzone is not and was not a threat to Hubbard's safety or her life.

Count 1

(Defamation)

25. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

26. Arpaio published the Defamatory Ad knowing that its allegations are utterly false and knowing that he has no privilege to air such a false and deceptive message.

27. The allegations in the Defamatory Ad are false, bring Penzone into disrepute and contempt, and impeach his honesty, integrity, virtue and reputation.

28. In fact, Arpaio maliciously ran the ads precisely to bring Penzone into disrepute, contempt, and public ridicule at a critical time in the political campaign.

29. As a result of Arpaio's false and defamatory conduct, Penzone's reputation and the reputation of his campaign have been harmed, and he has been forced to incur costs associated with mitigating the damage caused by the Defamatory Ad.

Count 2

(False Light)

1. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

2. Arpaio published the Defamatory Ad specifically intending to place Penzone in a false light.

3. The light in which Arpaio placed Penzone is highly offensive to a reasonable person.

4. Arpaio knew that the false light attributed to Penzone through the Defamatory Ad was highly offensive. Indeed, that was Arpaio's malicious objective in creating and airing the ad.

5. As a result of the Defamatory Ad's intentional false light, Penzone has been

1 highly offended and suffered emotional harm. Penzone's reputation and the reputation of his
2 campaign have been harmed, and he has been forced to incur costs associated with the
3 Defamatory Ad.

4 **Remedies**

5 Plaintiff request the following relief against Arpaio:

- 6 A. Compensatory and punitive damages; and
7 B. All other relief the Court deems just and proper.

8 RESPECTFULLY SUBMITTED this 29th day of September, 2016.

9 **STINSON LEONARD STREET LLP**

10
11 By: 

12 Michael C. Manning
13 James E. Holland
14 1850 North Central Avenue, Suite 2100
15 Phoenix, Arizona 85004-4584
16 Attorneys for Plaintiff

17 ORIGINAL filed this 29th day of
18 September, 2016:

19 Clerk of the Court
20 Maricopa County Superior Court
21 101/201 West Jefferson
22 Phoenix, Arizona 85003
23
24
25
26
27
28

Exhibit 1

MICHAEL K. JEANES
Clerk of the Superior Court

Name: Susan B. Penzone
Address: 6586 W. Oraibi Dr.
Glendale, AZ 85308
Telephone: 623-362-8562
Petitioner Pro Per

By ROBERT HILL, Deputy
Date 08/05/2002 Time 10:29 AM
Description Qty Amount
----- CASE# FC2002-008637 -----
DIVORCE W/CHILD 601 001 231.00
02 PRO PER
COPIES 004 2.00
TOTAL AMOUNT 233.00
Receipt# 00004892244

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In re the Marriage of)
Susan B. Penzone)
Petitioner,)
and)
Paul J. Penzone)
Respondent)

No. FC2002-008637

PETITION FOR DISSOLUTION
OF MARRIAGE

With Children

THE PETITIONER ALLEGES AS FOLLOWS:

1. That Petitioner or Respondent have been domiciled or stationed while a member of the Armed Forces in Arizona for 90 days prior to the commencement of this action. This Court has jurisdiction under A.R.S. §§ 25-401 and 25-1031 et seq., to decide child custody matters, if applicable.

2. That this marriage is irretrievably broken and there is no reasonable prospect of reconciliation. Conciliation proceedings have ☐ have not ☒ been filed. The parties' marriage is not a Covenant Marriage.

3. ☐ That Domestic Violence has occurred during the marriage.

4. That the following facts are known to the Petitioner regarding the parties:

Date of marriage [REDACTED] Place of marriage Phoenix, AZ

FACTS - Petitioner

Name Susan B. Penzone Age [REDACTED]

Address [REDACTED]

Occupation Sales SOC [REDACTED]

Length of domicile in Arizona 34 years+-

I do _____ do not X know of any person who is not a party to this proceeding who has physical custody or claims to have custody or visitation rights with respect to any child named above. (If so, state the name and address of the person asserting custody rights or visitation rights, or has physical custody, and the name of each child involved)

6. ☒ That Petitioner _____ ☐ is ☒ is not pregnant
Child is due on: _____

7. ☐ _____ is entitled to spousal maintenance.

8. ☐ There is **no** community property.

9. ☐ There is **no** community debt.

10. ☒ The community property and community debt should be divided as suggested below.

WHEREFORE, I request the Court enter its orders as follows:

☒ Decree a Dissolution of this marriage;

☐ Restore _____ to former name of: _____

☒ Award the parties the joint custody of the parties' minor child in accordance with the parties' Joint Custody parenting Plan.

☒ Award the appropriate parent child support in a reasonable amount as determined by the current Arizona Child Support Guidelines to commence on the date of the filing of the Petition for Legal Separation in accordance with A.R.S. § 25-320.A. Provide these support payments, plus the payment for the past care and support, and the fee for handling, be paid through the Clerk of this Court and be collected by automatic Wage Assignment;

☐ Award reasonable parenting time to the non-custodial parent;
or,

☐ Award restricted parenting time to the non-custodial parent, only in the presence of a third party nominated by: _____;

☐ Order no parenting time to the non-custodial parent pursuant to A.R.S. §25-408;

☒ Order ☐ Petitioner ☒ Respondent to provide medical, dental and health insurance for the benefit of the minor children of the parties, and, Order the parties to pay any reasonable medical,

dental, or health related costs incurred for the minor children, which are uninsured, in proportion to their respective incomes;

[X] Award Petitioner the following community property as that person's sole and separate property:

[X] Real Estate _____

Legally Described as: _____

[X] Household furniture
In her possession

[X] Household furnishings
In her possession

[] Other: _____

[X] Pension/Retirement fund/Profit sharing/Stock plan Her own
retirement benefits and other benefits as an employee of _____

[X] Income tax refund ½ 2002

[] Life Insurance _____

[X] Motor vehicles: Make 2001 Chevrolet Model Tahoe

VIN 1GNEK13T91R128866

[X] Award the Respondent the following community property as that person's sole and separate property:

[] Real Estate _____

Legally Described as: _____

[X] Household furniture
In his possession

[X] Household furnishings
In his possession

[X] Other: 2000 Carson Trailer; 2001 Polaris ATV Sportsman; 2001
Polaris ATV Trail Boss

[X] Income tax refund ½ 2002

[] Life Insurance _____

[X] Pension/Retirement fund/Profit sharing/Stock plan His own as
an employee of the Phoenix Police Department

[X] Motor vehicles: Make 2001 Ford Model F-150 Pickup Tk
VIN 1FTRW08L31KC34630

[X] Order Petitioner to pay and hold Respondent harmless from the
community debts to:

| Creditor | Amount owed | Creditor | Amount owed |
|--------------------------|-----------------------|---------------------|----------------------|
| <u>Countrywide Mort.</u> | <u>\$ 134000.00+-</u> | <u>Sun West FCU</u> | <u>\$ 34000.00+-</u> |
| <u>City Bank VISA</u> | <u>6500.00+-</u> | | |
| | | | |
| | | | |

[X] Order Respondent to pay and hold Petitioner harmless from
these community debts to:

| Creditor | Amount owed | Creditor | Amount owed |
|-------------------|----------------------|-------------------------|----------------------|
| <u>Truck Loan</u> | <u>\$ 30000.00+-</u> | <u>Desert Schls FCU</u> | <u>\$ 10000.00+-</u> |
| | | | |
| | | | |
| | | | |

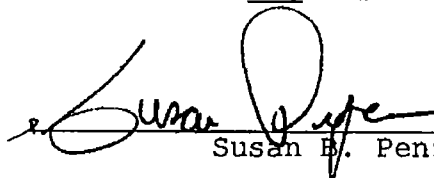
and [X] any community debts unknown to Petitioner;

[X] Assign each party his or her separate property;

[] Grant other relief as follows: _____

2002.

RESPECTFULLY SUBMITTED this 26 day of July

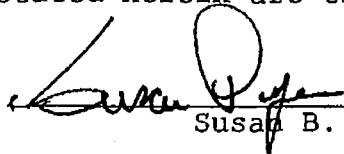


Susan B. Penzone

VERIFICATION

STATE OF ARIZONA)
) ss.
County of Maricopa)

I have read the foregoing Petition and know of my own knowledge that the facts stated herein are true and correct.



Susan B. Penzone

SUBSCRIBED AND SWORN to before me this 26 day of
July 2002.



NOTARY PUBLIC

My Commission Expires: 12/22/05

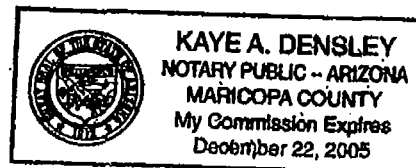
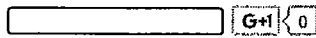


Exhibit 2



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Arizona's Politics

News and info regarding Arizona's politics. U.S. Senate, Congress, Governor, statewide offices, initiatives, and - where we can - county and local. We attempt to present objective information (unless labeled as "commentary") and do original reporting. Drop us an e-mail with tips, comments, questions, etc - at info-at-arizonaspolitics-dot-com. Twitter: @AZs_Politics, phone:602-799-7025. Want to join our team? Inquire within. (Or, by email.)

Home

FOLLOWING MONEY IN 2016 PRESIDENTIAL POLITICS

Thursday, October 11, 2012

FACT CHECK: Arpaio Ad Accusing Penzone Of Domestic Abuse: We Deserve Better Than That

Maricopa County Sheriff Joe Arpaio began running a powerful new ad against his Democratic opponent Paul Penzone today. Watch it here.

Here is the text of the ad, as transcribed by *Arizona's Politics*, with a description of the visuals in parentheses:

For years, Paul Penzone was the face of Silent Witness. (*Black/white photo of Penzone, his name gets typed in.*)
 But, in 2003, Paul Penzone pushed his then-wife against a door, injuring her in front of their child. (*Ominous photo of man at top of stairs with what looks like a saw in hand, woman below with black eye. Then, typed out quotes from Ms. Penzone's application for Order of Protection: "He was intimidating and terrifying me", "He pushed me into the door."*)
 He's tried to explain it away, but there's no excuse for hitting a woman. (*Penzone photo, with police lights flashing.*)
 Now, the only silent witness is his ex-wife. (*Photo of woman with head in hands.*)
 We deserve better than that. (*"We deserve better than Paul Penzone. If you or a loved one has been the victim of domestic violence, call your local police."*)

Here is a copy of the statement from the Arpaio campaign:

Statement from Arpaio Campaign re: Penzone
 The Glendale Police Department incident report and the Maricopa County Superior Court order of protection speak for themselves.
 The Re-Elect Joe Arpaio 2012 campaign firmly stands by their latest ad informing voters about candidate Paul Penzone's history of domestic violence. The ad is based in fact and references the exact words from his excuse during the altercation.
 Sheriff Arpaio has been running positive ads about his record and his policies and has intended to continue doing so. However, both the Penzone campaign and its allies have been running vicious and distorted personal attack ads against the Sheriff for months now.
 The voters of Maricopa County deserve to know about the candidates they will choose for Domestic violence is a serious issue, and one that the voters should consider when choosing the vital law enforcement officer of this county.

Here is a copy of the police report, which was also provided by the Arpaio campaign this afternoon. And, here is the portion of Susan Penzone's Petition For Order of Protection that was used by the Arpaio campaign:

About Me

Mitch M.

[View my complete profile](#)

There was an error in this gadget

There was an error in this gadget

Amazon SearchBox

Search Amazon.com:

Keywords:

Search Now and Used
amazon.com.

Blog Archive

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- 2015 (156)
- 2014 (371)
- 2013 (298)
- ▼ 2012 (256)
 - December (29)
 - November (27)
 - ▼ October (39)
 - WATCH: New Ad With Mitt Romney Endorsing Jeff Flak...
 - WATCH, AS SEEN ON TV: New, Old Ads Blur Together O...
 - WATCH: American Future Fund's \$500K Last Minute A...

1. In an effort to maintain privacy, accuracy, and to ensure that all information is correct, we are asking you to provide the following information:

☐ No ☒ Yes

2. My personal information is confidential and I do not want it shared with anyone else.

☐ No ☒ Yes

3. I understand that my information will be used for the following purposes:

☐ To contact me about the survey ☐ To share my information with other researchers ☐ To use my information for marketing purposes ☐ To use my information for other purposes

4. I understand that my information will be used for the following purposes:

☐ To contact me about the survey ☐ To share my information with other researchers ☐ To use my information for marketing purposes ☐ To use my information for other purposes

5. I understand that my information will be used for the following purposes:

☐ To contact me about the survey ☐ To share my information with other researchers ☐ To use my information for marketing purposes ☐ To use my information for other purposes

6. I understand that my information will be used for the following purposes:

☐ To contact me about the survey ☐ To share my information with other researchers ☐ To use my information for marketing purposes ☐ To use my information for other purposes

7. I understand that my information will be used for the following purposes:

☐ To contact me about the survey ☐ To share my information with other researchers ☐ To use my information for marketing purposes ☐ To use my information for other purposes

8. I understand that my information will be used for the following purposes:

☐ To contact me about the survey ☐ To share my information with other researchers ☐ To use my information for marketing purposes ☐ To use my information for other purposes

9. I understand that my information will be used for the following purposes:

☐ To contact me about the survey ☐ To share my information with other researchers ☐ To use my information for marketing purposes ☐ To use my information for other purposes

10. I understand that my information will be used for the following purposes:

☐ To contact me about the survey ☐ To share my information with other researchers ☐ To use my information for marketing purposes ☐ To use my information for other purposes

There are several problems with Arpaio's powerful ad:

- 1) The basic details of the incident are very much in dispute. It was a he-said, she-said situation, no charges were filed, Paul Penzone was the one who called the police while his then-estranged wife said that she had started to but decided to talk with her attorneys first, she did not tell the officers that day about being "intimidat(ed) and terrif (ied)", the dueling Orders of Protection were quashed, the parties were awarded joint custody. This ad states the push as an adjudged fact, when it is far from that.
- 2) The powerful visual of the violent man and the towered-over woman with a black eye is an extremely prejudicial image and is unwarranted given the Penzone narrative.
- 3) Ad claims he had no excuse for "hitting a woman", but the alleged push is not the same. An exaggeration should not have been necessary.
- 4) Claiming the "only silent witness is his ex-wife" makes it appear that Susan (then) Penzone has somehow been silenced. She has not, although she did decline the New Times' request for a comment several months ago.
- 5) The final graphic about domestic violence is designed to add a public service announcement element to this negative ad. Clever, but also an exaggeration that implies that there was a verdict against Penzone.

Presenting a disputed and unadjudicated incident as fact - without indicating that there is doubt - is a problem. That is different than airing an opinion, which everyone should welcome. This is a candidate becoming a judge and jury, and finding serious and emotional accusations against an individual to be fact. The parties themselves and the legal system did not adjudicate the competing narratives and, thus, found them to be in dispute.

This misrepresentation is serious enough. But, to then exaggerate the accusations to make it even more dramatic was unnecessary, egregious and designed to inflame the new jury (i.e. the voters).

The ad concludes by saying that voters deserve better than Penzone. Voters deserve better ads than this. Arpaio earns a "D-" for this ad.

We welcome your comments about this post. Or, if you have something unrelated on your mind, please e-mail to info-at-arizonapolitics-dot-com or call 602-799-7025. Thanks.

Posted by Mitch M. at 5:18 PM

 Recommend this on Google

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Exhibit 3

**AFFIDAVIT OF CLARIFICATION
AND SUPPORT OF PAUL PENZONE
FROM SUSAN HUBBARD**

I, Susan Hubbard, swear or affirm:

Paul Penzone and I were married for 12 years. In 2003 we had an incident at our home resulting in Paul filing a police report. There were a lot of highly emotional issues going on at the end of the marriage placing strain on both of us.

Sheriff Arpaio's campaign commercial portraying Paul as physically aggressive during our marriage was inaccurate and misleading. It was, in my opinion, dirty politics and the use of family against an opponent is totally off-base.

In 2012, when this occurred, the coverage was unfair, overwhelming and intimidating. Although I wanted to clarify the record at the time, I did not believe my personal life should be a public topic. I cannot allow this dishonest representation to repeat itself; therefore I have chosen to provide this statement. This letter will serve as my only public statement as my privacy and the wellbeing of my family is an absolute priority.

Paul and I are very proud of the mutual commitment we have in co-parenting our son during our marriage and since the divorce. We always put his interest in our decision-making first and, like many other divorced parents, we worked through challenging moments.

I wish Paul the very best as he campaigns. He was a great policeman and will be a great sheriff.

Further affiant saith not.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

4/20/2016 Susan Hubbard
Date Susan Hubbard

STATE OF ARIZONA
COUNTY OF MARICOPA

I, the undersigned Notary Public, do hereby affirm that Susan Hubbard personally appeared before me on the 20th day of April 2016, and signed the above Affidavit as his free and voluntary act and deed.

Daniel S. Hartley
Notary Public

