

DOYLE LAW GROUP

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

REBECCA BEASLEY, individually as the
surviving spouse of ORVILLE THOMAS
BEASLEY III, and as personal representative
of the ESTATE OF ORVILLE THOMAS
BEASLEY III; and ORVILLE THOMAS
II and ANNA ELIZABETH BEASLEY,
husband and wife, and parents of ORVILLE
THOMAS BEASLEY III.

Plaintiffs,

v.

JOHN C. STUART and JANE DOE STUART,
a married couple; JOHN and JANE DOES I-V;
BLACK & WHITE CORPORATIONS VI-X;
and ABC PARTNERSHIPS XI-XV;

Defendants.

CASE NO. CV2010-050624

**PLAINTIFFS' MOTION FOR
CLARIFICATION RE: APRIL 14, 2011
MINUTE ENTRY**

(Tort: Non-Motor Vehicle)

(Assigned to the Honorable Linda Miles)

Plaintiffs submit their Motion for Clarification Regarding the Court's April 14, 2011 Minute Entry. Plaintiffs' request the Court clarify its April 14, 2011 Minute Entry as to the Court's position on Plaintiff Rebecca Beasley's request under Ariz.R.Civ.P. 56(d) to have her Statement of Facts deemed established due to Defendant's failure to contest Plaintiff's Statement of Facts under Ariz.R.Civ.P. 56(c)(2).

I. Factual Background

On October 8, 2010, Plaintiff Rebecca Beasley submitted a Motion for Summary Judgment and a Statement of Facts. (*See* Exhibit 1 and 2). On December 23, 2010, Defendant responded to Plaintiff's Motion for Summary Judgment, however, Defendant did not contest any of Plaintiff's

1 Statement of Facts as required by Rule 56(c)(2) . (See Exhibit 2 and 3). On January 27, 2011,
2 Plaintiff submitted a Reply in Support of Her Motion for Summary Judgment. (See Exhibit 4 and
3 5). In Plaintiff’s Reply she requested that her Statement of Facts be admitted as true under Rule
4 56(d) due to Defendant’s failure to controvert such statements under Rule 56(c)(2). (See Exhibit 4,
5 Plaintiff’s Reply, Section IV, page 10, lines 21-23). On April 14, 2011, the Court issued a Minute
6 Entry regarding Plaintiff’s Motion for Summary Judgment. The Minute Entry denied Plaintiff’s
7 Motion for Summary Judgment but did not address Plaintiff’s request to have her Statement of
8 Facts admitted under Rule 56(d). (See Exhibit 6).

9 **II. Legal Background**

10 Under Rule 56(c)(2) of Arizona Rules of Civil Procedure, in part, states:

11 “Any party opposing a motion for summary judgment shall file a statement in the
12 form prescribed by this Rule, specifying those paragraphs in the moving party’s
13 statement of facts which are disputed, and also setting forth those facts which
14 establish a genuine issue of material fact...”

14 Rule 56(d) of Arizona Rules of Civil Procedure states:

15 If on motion under this Rule judgment is not rendered upon the whole case or for
16 all the relief asked and a trial is necessary, the court at the hearing of the motion,
17 by examining the pleadings and the evidence before it and by interrogating
18 counsel, shall if practicable ascertain what material facts exist without substantial
19 controversy and what material facts are actually and in good faith controverted. It
20 shall thereupon make an order specifying the facts that appear without substantial
21 controversy, including the extent to which the amount of damages or other relief
22 is not in controversy, and directing such further proceedings in the action as are
23 just. Upon the trial of the action the facts so specified shall be deemed
24 established, and the trial shall be conducted accordingly.

22 “Facts are only ‘deemed established’ under Rule 56(d) when they are determined to be
23 ‘without substantial controversy.’” *Smith v. Beesley*, 226 Ariz. 313, 247 P.3d 548, 554 (Ariz. Ct.
24 App. 2011), reconsideration denied (Feb. 10, 2011).

25 Here, Defendant’s Response did not dispute Plaintiff’s Statement of Facts. Instead,
26 Defendant’s offered different events that occurred during the same time period as Plaintiff’s
Statement of Facts. The events alleged in Defendant’s Statement of Facts are not the same events

1 Plaintiff set forth in her Statement of Facts. Defendant both failed to respond to Plaintiff's
2 Statement of Facts and failed to provide evidence to controvert Plaintiff's Statements. As a result,
3 Plaintiff's Statement of Facts are "without substantial controversy." *Id.*

4 It is important that Plaintiff's Statement of Facts be deemed established as Defendant has
5 asserted his Fifth Amendment rights in this case. Unless Defendant decides to testify at trial,
6 Plaintiff will be unable to examine Defendant regarding Plaintiff's Statement of Facts.
7

8 **III. Conclusion**

9 Plaintiffs request clarification from the Court regarding its April 14, 2011 Minute Entry and
10 the Court's position on Plaintiff's request to have her Statement of Facts deemed admitted under
11 Rule 56(d).
12

13 RESPECTFULLY SUBMITTED this 26th day of May, 2011.

14 **DOYLE LAW GROUP**

15 /s/ John C. Doyle, Esq.

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21 **ORIGINAL** of the foregoing electronically
22 filed this 26th day of May, 2011 with:

23 Clerk of Court
24 Maricopa Superior Court

25 **COPY** of the foregoing distributed by electronic
26 filing this 26th day of May, 2011 to:

The Honorable Linda Miles
Maricopa Superior Court

1 **COPY** of the foregoing emailed
this 26th day of May, 2011 to:

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6 By: /s/ Whitney Stricker
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