

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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ANGELICA R., *Petitioner,*

*v.*

THE HONORABLE SIGMUND POPKO, Commissioner of the SUPERIOR  
COURT OF THE STATE OF ARIZONA, in and for the County of  
MARICOPA, *Respondent Commissioner,*

JAKE V., *Real Party in Interest.*

No. 1 CA-SA 21-0248  
FILED 3-31-2022

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Petition for Special Action from the Superior Court in Maricopa County  
No. JS519752

The Honorable Sigmund G. Popko, Judge *Pro Tempore*

**JURISDICTION ACCEPTED AND RELIEF DENIED**

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COUNSEL

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OPINION

Judge Randall M. Howe delivered the opinion of the court, in which Presiding Judge Jennifer B. Campbell and Judge James B. Morse Jr. joined.

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HOWE, Judge:

¶1 In this special action proceeding, Angelica R. challenges the Juvenile Court’s order denying her motions contesting Jake V.’s motion to set aside an order terminating his rights to their child, Z.R., filed more than six months after the termination order. She argues that, unlike its Arizona Rule of Civil Procedure counterpart, the Arizona Rule of Juvenile Court Procedure (“Rule”) 46(E)<sup>1</sup> places a strict six-month time limit on any motion to set aside, including for claims of fraud upon the court and voidness.

¶2 We accept jurisdiction because Angelica has no adequate remedy by appeal, Ariz. R.P. Spec. Act. 1(a), this dispute involves the best interests of a child, *Dep’t of Child Safety v. Beene*, 235 Ariz. 300, 303 ¶¶ 6–7 (App. 2014), and presents a purely legal question of public importance that is likely to arise again, *Green v. Nygaard*, 213 Ariz. 460, 462 ¶ 6 (App. 2006). We deny relief, however, because Rule 46(E) does not limit a court’s inherent authority to set aside a judgment for fraud upon the court or to vacate a void judgment.

FACTS AND PROCEDURAL HISTORY

¶3 Angelica gave birth to Z.R., in May 2018. On October 6, 2020, Angelica petitioned the family court to establish that Jake was Z.R.’s father and determine legal decision making, parenting time, and child support. The next day, she submitted a stipulation that adjudged Jake the child’s father, awarded her sole decision-making authority, and restricted Jake’s parenting time. The stipulation contained what purported to be Jake’s notarized signature. The family court entered the stipulation as an order.

¶4 On December 2, 2020, Angelica petitioned to terminate Jake’s parental rights in juvenile court. She attached a consent to terminate

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<sup>1</sup> In December 2021, the supreme court restyled and renumbered the Rules of Juvenile Court Procedure effective July 1, 2022. Ariz. Sup. Ct. Order R-20-0044 (Dec. 8, 2021). Rule 46(E) has been renumbered as Rule 318 but is substantively the same as Rule 46(E). *Id.*

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parental rights and a waiver of notice and appearance, both apparently signed by Jake. The juvenile court appointed counsel to represent Jake. Jake's counsel, however, never contacted him to discuss the matter. Angelica's counsel had emailed Jake's counsel a copy of a letter containing what purported to be Jake's notarized signature that claimed that Jake knew about the pending termination and its hearing date, had consented and waived notice, and did not want his attorney to contact him.

¶5 The juvenile court held a termination hearing without Jake present on February 9, 2021. Only Angelica testified. She claimed that Jake had "completely consented" to the termination. When asked if Jake had signed a consent, she testified, "Yes, and they're all notarized[.]" When asked if Z.R. had met her paternal grandparents, she said "No." She also testified that Jake did not abuse the child in any way and that she wanted termination so that, if she later married, her husband could adopt the child. The juvenile court terminated Jake's parental rights to Z.R. on the evidence presented at the hearing.

¶6 Six and a half months later, on September 8, 2021, Jake moved the juvenile court to reconsider and, alternatively, for a new trial, to alter or amend the judgment, or set aside the judgment. Jake claimed that he did not know until August 30, 2021, that Angelica had petitioned to terminate his parental rights or that the court had done so. He stated that he had been involved in Z.R.'s life from birth, lived in Angelica's family home while Angelica was pregnant and for the first two months after Z.R.'s birth, and continued to visit Z.R. after he had moved out of the home. He alleged that he did not sign some of the documents submitted to the juvenile court, and those that he did sign had been under the pretenses of a material misrepresentation and mistake of fact. He claimed that he had never seen the substance of any court documents Angelica claimed he had signed, and that Angelica's father showed him only the signature page and said that he needed to sign this "if there's a medical emergency and we can't reach you." He also asserted that Angelica had committed perjury and fraud in the termination hearing by submitting forging documents and lying about his family's involvement with Z.R.

¶7 Angelica opposed Jake's motions and sought declaratory relief, arguing that his motions were untimely under the Rule 46(E) and lacked merit. Jake replied that the termination order was void for lack of consent and violated his due process rights. He also argued that Angelica had perpetrated a fraud on the court. In support, Jake attached photographs, documents, and affidavits from friends and family evidencing Jake's and his family's extensive relationship with Z.R.

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¶8 After further briefing and argument, the juvenile court denied Jake’s motions for reconsideration and a new trial or to alter or amend a judgment because no Rule of Juvenile Procedure authorized such motions in termination proceedings. It found, however, that Jake’s motion to set aside was timely. It acknowledged that Rule 46(E) specified the time to file a motion to set aside a judgment at six months generally and three months for certain grounds. It also recognized, however, that the rule otherwise followed the requirements of Arizona Rule of Civil Procedure 60 (“Civil Rule 60”), and Arizona courts had interpreted Civil Rule 60 to not apply time limits to motions challenging judgments on the grounds of fraud on the court or voidness. Because Jake had moved to set aside the judgment on those grounds, the court found Rule 46(E)’s general time limits did not apply.

¶9 The juvenile court consequently denied as moot Angelica’s motions for declaratory relief and to dismiss and expressed its intention to conduct further proceedings on Jake’s motion to set aside. Angelica brought this special action challenging that ruling.

**DISCUSSION**

¶10 Angelica argues that the court erred in denying her motions because Jake’s motion to set aside was untimely under Rule 46(E). The granting or denying a motion to set aside a judgment is reviewed for an abuse of discretion, *Aloia v. Gore*, No. 1 CA-CV 20-431, 2022 WL 45006, at \*2 ¶ 11 (Ariz. App. Feb. 15, 2022), but the interpretation of a procedural rule is a question of law reviewed de novo, *id.*; *In re Reymundo F.*, 217 Ariz. 588, 590 ¶ 5 (App. 2008). This court employs principles of statutory construction when interpreting procedural rules, *State v. Harden*, 228 Ariz. 131, 132 ¶ 6 (App. 2011), and construes a rule consistently with the state and federal constitution, *see, e.g., Jones v. Sterling*, 210 Ariz. 308, 315 ¶ 27 (2005). The court should consider “the system of related [rules] of which it forms a part.” *Reymundo F.*, 217 Ariz. at 590 ¶ 5. The “judicial interpretation of a court rule becomes as much a part of the rule as if the words were originally included therein.” *State v. Baca*, 187 Ariz. 61, 63 (App. 1996). Accordingly, a rule should also not be interpreted to deny, preempt, or abrogate common-law principles unless the rule’s text or history shows an explicit intent to reach such a severe result. *Hayes v. Continental Ins. Co.*, 178 Ariz. 264, 273 (1994). The intent of the drafters as indicated by the plain language of a rule is paramount, *Fragoso v. Fell*, 210 Ariz. 427, 430 ¶ 7 (App. 2005), but text should not be read in isolation, *Reymundo F.*, 217 Ariz. at 590 ¶ 5.

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¶11 The juvenile court did not err in finding Jake’s motion timely. Courts can relieve a party from a judgment when, by fraud on the court, the other party has prevented a real contest before the court or has committed some intentional act or conduct that has prevented the unsuccessful party from having a fair submission of the controversy. *See Alvarado v. Thomson*, 240 Ariz. 12, 16–17 ¶¶ 17–23 (App. 2016). Fraud on the court “vitiates everything it touches[,]” *Damiano v. Damiano*, 83 Ariz. 366, 369 (1958), and is “the most egregious conduct involving a corruption of the judicial process itself[,]” *Lake v. Bonham*, 148 Ariz. 599, 601 (App. 1986). Courts therefore have inherent authority to take corrective measures at any time when a party commits or attempts to commit fraud upon them. *See Green v. Lisa Frank, Inc.*, 221 Ariz. 138, 151 ¶ 35 (App. 2009); *McNeil v. Hoskyns*, 236 Ariz. 173, 177 ¶ 15 (App. 2014) (“A judgment resulting from fraud on the court may be set aside by motion or by independent action.”). Courts have this authority even in cases addressing parentage and adoption. *See Alvarado*, 240 Ariz. at 16–17 ¶¶ 17–23 (parentage); *In the Matter of the Adoption of Hadtrath*, 121 Ariz. 606, 610 (1979) (adoption).

¶12 The same is true regarding void judgments. Courts have inherent power to vacate void judgments for lack of jurisdiction over the parties. *Preston v. Denkins*, 94 Ariz. 214, 219 (1963). The right to hear such challenges “does not depend upon rules of the court or statute.” *Id.* If a judgment is void for lack of jurisdiction, a court has no discretion but to vacate it. *Id.*

¶13 Because courts have inherent power to consider vacating judgments for fraud on the court and lack of jurisdiction, Rule 46(E) does not limit the juvenile court’s authority to consider Jake’s motion. The rule specifies the time for filing such a motion—six months after judgment generally and three months if certain listed grounds are alleged. But it also provides that the motion “shall conform to the requirements of [Civil] Rule 60(b)-(d).” And Civil Rule 60 “does not limit the court’s power to . . . set aside a judgment for fraud on the court,” Civil Rule 60(d)(3), recognizing the court’s inherent authority to hear such a motion at any time. Courts routinely consider motions to set aside judgments for fraud on the court without regard to any time limit. *See Rogone v. Correia*, 236 Ariz. 43, 48 ¶ 11 (App. 2014) (“[T]he court may set aside a judgment for fraud on the court at any time.”); *Cypress on Sunland Homeowners Ass’n v. Orlandini*, 227 Ariz. 288, 299–300 ¶ 43 (App. 2011) (same); *see also McNeil*, 236 Ariz. at 178 ¶ 21 (App. 2014) (a claim for fraud on the court does not require due diligence); 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Fed. Prac. & Proc.* § 2870 (2d ed. 1995) (“[t]here is no time limit on setting aside a judgment on th[e basis of fraud on the court], nor can laches bar

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consideration of the matter”) (footnotes omitted). Consequently, Rule 46(E) cannot be read to limit a court’s ability to set aside a judgment for fraud on the court.

¶14 The same is true for claims that a judgment is void. Arizona courts have long held that void judgments may be challenged even if a party delays unreasonably. *Ruffino v. Lokosky*, 245 Ariz. 165, 168–69 ¶ 10 (App. 2018); *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 74 ¶ 19 (App. 2004); *Martin v. Martin*, 182 Ariz. 11, 14 (App. 1994). This is especially true when the claim of voidness is based on a lack of proper service, as is claimed in this case. See *Ruffino*, 245 Ariz. at 168 ¶ 10. Without proper service, a court has no jurisdiction over a party. *Koven v. Saberdyne Sys., Inc.*, 128 Ariz. 318, 321 (App. 1980); *Marquez v. Rapid Harvest Co.*, 99 Ariz. 363, 365 (1965) (stating that a judgment is void for lack of proper service). For this reason, this court has considered whether lack of proper service voided a parental-rights termination order that was more than seven years old. *James M. v. Silvia M.*, No. 1 CA-JV 20-0289, 2021 WL 1923655, at \*1–3 ¶¶ 7–15 (Ariz. App. May 13, 2021) (unpublished). The juvenile court consequently properly denied Angelica’s motions arguing that Jake’s motion to set aside was untimely so that it may consider the merits of Jake’s claims.

¶15 Angelica gainsays this analysis, arguing that Rule 46(E)’s time limit must be strictly applied without exception. Her argument ignores, however, Rule 46(E)’s requirement that motions filed must “conform to the requirements of [Civil] Rule 60(b)–(d),” expressly recognizing the court’s inherent power to consider claims of fraud on the court. Civil Rule 60(d)(3). Interpreting the rule as Angelica suggests would make that language superfluous and inoperative, violating a cardinal rule of interpretation. See *State v. Brock*, 248 Ariz. 583, 596 ¶ 40 (App. 2020). Angelica’s argument also fails to account for the court’s inherent authority to vacate judgments void for lack of jurisdiction, regardless of any rule or statute. See *Preston*, 94 Ariz. at 219; *Ruffino*, 245 Ariz. at 168 ¶ 10.

¶16 Angelica’s interpretation would also create a juvenile court anomaly, allowing a party to engage in fraud on the court to obtain a judgment if the fraud goes undetected for six months and a day, a result that would not occur in other courts. For example, in *Alvarado*, a man paid a woman to list him as the father of her child on an acknowledgment of paternity filed with the family court. 240 Ariz. at 13 ¶ 3. The fraud came to light more than three years later during the man’s divorce proceedings, and the child’s actual father moved to set aside the acknowledgment under Arizona Rule of Family Law Procedure 85(C) (the equivalent to Civil Rule 60). *Id.* at 14 ¶ 5. The family court overruled an untimeliness objection and

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found the acknowledgment of paternity fraudulent, *id.* at ¶ 7, a ruling this court affirmed on special action review, *id.* at 15 ¶ 16.

¶17 Under Angelica’s interpretation, the correct outcome depends on whether the juvenile court or the family court heard the matter. Because the fraud in *Alvarado* was discovered in family court proceedings, the actual father obtained relief. Had the fraud been discovered in juvenile court proceedings, however, the actual father would have been out of luck. Such a result is untenable, especially because “[a]lthough each superior court can have departments and divisions to manage cases, the superior court is not a system of jurisdictionally segregated departments, but rather a single unified trial court of general jurisdiction.” *State v. Patterson*, 222 Ariz. 574, 580 ¶ 20 n.7 (App. 2009) (citations and internal quotation marks omitted); *see also Peterson v. Speakman*, 49 Ariz. 342, 348 (1937) (“Its separation into divisions is purely imaginary and for convenience only.”). A party should receive the appropriate relief regardless of the division or department in which the case is heard. The issue in *Alvarado*—and in the case at bar—is the child’s paternity; the father and the child certainly do not care which department or division makes that decision.

¶18 Angelica justifies this interpretation by stressing the need for finality and swift resolution in juvenile matters, which is generally in children’s best interests. This is reflected in the deadlines for many motions and actions established in the Child Safety statutes of Arizona Revised Statutes Title 8 and the Juvenile Rules of Procedure. But while permanency and finality indeed usually serve children’s best interests, other concerns, which also affect children’s best interests, may take precedence. The child in this case, for example, has a great interest in being parented by her father, and in not having that relationship taken away through fraudulent or improper means. Jake also has a fundamental right to parent his child, *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Jessie D. v. DCS*, 251 Ariz. 574, 575 ¶ 8 (2021), that cannot be taken away except by appropriate due process, *Jessie D.*, 251 Ariz. at 575 ¶ 8. And the courts have an interest in a fair system that furthers the legitimate interests of all involved, including the best interests of children, and not allowing litigants to fraudulently obtain a judgment that they may not be entitled to. *Lake*, 148 Ariz. at 601 (fraud on the court a corruption of the judicial process). This is why fraud on the court and voidness—which strike at judicial legitimacy and litigants’ fundamental right to due process—stand outside normal procedural time limits.

¶19 Because these grounds are so crucial to determining parties’ rights and the validity of court processes, courts of other states have also

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recognized that their rules and statutes do not displace the court’s inherent authority to set aside judgments for fraud on the court or jurisdictional defects, even after termination of a parent’s rights and adoption of the child. *See In re C.L.S.*, 252 P.3d 556, 561 (Colo. App. 2011) (vacating termination and adoption judgment based on fraud on the court and voidness grounds despite untimeliness of motion under procedural rule); *Jones v. Weller*, 362 N.E.2d 73, 76–77 (Ill. App. 1977) (recognizing that a judgment procured by “perjurious” misrepresentation to the court is subject to collateral attack); *In re Paternity of Tompkins*, 518 N.E.2d 500, 507 (Ind. App. 1988) (recognizing that paternity judgment may be set aside for fraud on the court at any time); *Matter of Adoption of M.M.B.*, 376 N.W.2d 900, 902 (Iowa 1985) (stating that rules prohibited untimely motion to vacate termination but for allegations of “fraud in the execution”); *Doe v. Smith*, 200 So. 3d 1028, 1035 ¶ 24 (Miss. 2016) (setting aside an adoption for fraud on the court); *Wimber v. Timpe*, 818 P.2d 954, 958 & n.7 (Or. App. 1991) (recognizing court’s inherent authority to set aside adoption for fraud on the court); *McGee v. Gonyo*, 140 A.3d 162, 167 ¶ 19 (Vt. 2016) (vacating voluntary acknowledgment of parentage issued years before current litigation on the ground of fraud on the court).

¶20 Angelica presents Minnesota as an example of a state that strictly applies its time limits for motions to set aside in juvenile matters, citing *In re Welfare of Child. of S.C.*, 656 N.W.2d 580 (Minn. App. 2003). In that case, the Minnesota Court of Appeals affirmed a ruling that a mother’s motion to set aside a parental termination order as void was untimely because she had filed her motion more than 90 days after the termination judgment. *Id.* at 584. Minnesota’s applicable juvenile rule specified that any motion to vacate a final order or judgment for voidness “shall be made within a reasonable time, but ‘in no event’ shall such a motion be made ‘more than ninety (90) days following the filing of the court’s order[.]’” *id.* at 583 (quoting Minn. R. Juv. P. 81.02 renumbered to Minn. R. Juv. Prot. 22.02), and does not incorporate its civil rule in its text, *id.* But Rule 46(E)—and new Rule 318—expressly incorporates Civil Rule 60 and does not include the Minnesota rule’s “in no event” language. Moreover, Rule 46(E) still must be read in light of Arizona’s rule that void judgments may be attacked at any time. *Preston*, 94 Ariz. at 219; *Ruffino*, 245 Ariz. at 168 ¶ 10. And despite *In re Welfare of Child. of S.C.*, Minnesota nevertheless recognizes a court’s inherent authority to vacate judgments for fraud on the court in juvenile matters. *In re Welfare of Child. of R.A.J.*, 769 N.W.2d 297, 303 (Minn. App. 2009).

¶21 Angelica also relies on the Arizona Supreme Court decisions in *Frank R. v. Mother Goose Adoptions*, 243 Ariz. 111 (2017), and *Cox v. Ponce*



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*in & for Cty. of Maricopa*, 251 Ariz. 302 (2021), to argue that regardless of any alleged unfairness to Jake, Z.R.’s need for finality and permanency requires strict enforcement of Rule 46(E)’s time limit. Those decisions—which address paternity and adoption statutes not relevant here—do not support her position for three reasons, however. First, those decisions involved men attempting to establish parentage. *Frank R.*, 243 Ariz. at 113 ¶ 8; *Cox*, 251 Ariz. at 304 ¶ 2. Jake has already been adjudged Z.R.’s father—by Angelica’s own legal action—and thus, unlike the men in *Frank R.* and *Cox*, has fundamental rights that can be terminated only by appropriate due process. *Jessie D.*, 251 Ariz. at 575 ¶ 8. Second, in each of those decisions, the men were aware of adoption proceedings of the children they claimed as theirs, had legal actions available to them to contest those proceedings, and failed to take them. *Frank R.*, 243 Ariz. at 117 ¶ 32, 118 ¶ 35; *Cox*, 251 Ariz. at 305 ¶ 10. Jake, in contrast, alleges that he had no knowledge of Angelica’s legal actions to strip his parental rights from him; unlike the men in those decisions, he could take no legal action to preserve rights he did not know he had lost. Third, the rationale in *Frank R.* and *Cox* for strictly applying the paternity statutes is to safeguard the finality and permanency of adoption proceedings, to prevent the children from being uprooted from their adoptive parents. *Frank R.*, 243 Ariz. at 118 ¶ 36; *Cox*, 251 Ariz. at 307 ¶ 19. That rationale does not apply here. Jake is not seeking to disrupt Z.R.’s legal relationship with a new family but to reassert his parental relationship with her that he alleges has been improperly severed. *Frank R.* and *Cox* do not help resolve this case.

¶22 The juvenile court correctly ruled that the time limit of Rule 46(E) does not bar its consideration of the merits of Jake’s motion to set aside the judgment terminating his parental rights to Z.R. The juvenile court consequently also correctly denied Angelica’s motion for declaratory relief and motion to dismiss the motion to set aside. This court expresses no opinion on the validity of either party’s factual allegations in this dispute. That is a matter for the juvenile court to determine.

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**CONCLUSION**

¶23  
relief.

For the foregoing reasons, we accept jurisdiction and deny



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