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SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

<p>JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE; as Trustee of the Kenneth Page and Catherine Page Trust,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>DONALD COX and CATHERINE COX, husband and wife, et al., et ux.,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No. P1300CV20030399</p> <p style="text-align: center;">RULING</p>	<p style="text-align: right;">FILED</p> <p>DATE: <u>JUN 10 2015</u> <u>11:24</u> O'Clock <u>A</u> M.</p> <p style="text-align: right;">DONNA McQUALITY, CLERK</p> <p>BY: <u>J. HARSHMAN</u> Deputy</p>
<p>HONORABLE JEFFREY G. PAUPORE</p>		<p>BY: Tiffany Kolar, Judicial Assistant</p> <p>DATE: June 9, 2015</p>
<p>DIVISION PRO TEM A</p>		

The Court has reviewed Defendant Coxes' *Motion for New Trial re: Award of Attorneys' Fees to Cundiff and in the Alternative, Motion to Alter or Amend Judgment*, Plaintiff Cundiff's *Objection to Defendants' Coxes Motion for New Trial, re: Award of Attorneys' Fees to Cundiff Plaintiffs and in the Alternative Motion to Alter or Amend Judgment with Cross-Motion to Alter or Amend Judgment pursuant to Rule 59(l)* and Defendants' *Coxes Reply Objecting to Defendants' Coxes Motion for New Trial, re: Award of Attorneys' Fees to Cundiff-Plaintiffs and in the Alternative Motion to Alter or Amend Judgment with Coxes Motion to Strike Plaintiffs' Cross Motion to Alter or Amend Judgment pursuant to Rule 59(l)*.

Coxes seek a new trial based upon alleged inconsistent findings of fact, namely: awarding the Wilhelmeson attorneys' fees and costs but denying Coughlin's attorneys' fees and costs. Cundiffs oppose a new trial and move the Court to amend the Judgment to allow the Coughlin's attorneys' fees and costs pursuant to Rule 59(l).

Coxes oppose Cundiff's Motion to Alter or Amend the Judgment because it is time barred by Rule 59(l). Although Cundiffs did not argue Coxes Motion to Alter or Amend the Judgment was also time barred by Rule 59(l), the facts apply to both sides.

Both parties freely acknowledge the awarding of attorneys' fees and costs is within the discretion of the Court.

On April 7, 2015, the Court awarded Plaintiffs attorneys' fees and costs in the amount of \$263,104.26 against Defendant Coxes. Plaintiffs were seeking an additional \$93,944.50 for the Coughlin's attorneys' fees and

costs. The Coughlin's attorneys' fees and costs were denied in part because "the client" was identified as Alfie Ware and because the Court determined the amount that was awarded was reasonable.

Defendants Coxes position that the award was inconsistent is unfounded. The Court determined the award of attorneys' fees and costs based upon the totality of the case, including but not limited to, the complexity of issues, the length of litigation, the pleadings, rulings, attorney's billing statements, affidavits, and previous awards of attorney fees. The fact that Alfie Ware advanced litigation costs was one factor in the Court's decision.

IT IS THEREFORE ORDERED Defendant Coxes Motions for New Trial and to Amend the Judgment is DENIED.

IT IS FURTHER ORDERED Defendant Coxes Motion to Strike Plaintiff's Cross Motion to Amend the Judgment is GRANTED.

There are no further matters pending and this is a Final Judgment pursuant to Rule 54(c).

DATED: JUNE 9th, 2015


Honorable Jeffrey G. Paupore

cc: J. Jeffrey Coughlin – electronically via Clerk's Office
Jeffrey R. Adams – electronically via Clerk's Office
Mark W. Drutz/Sharon M. Flack – Musgrove, Drutz & Kack – electronically via Clerk's Office
David K. Wilhelmsen/Lance B. Payette – Favour & Wilhelmsen – electronically via Clerk's Office
Robert E. Schmitt – Murphy, Schmitt, Hathaway & Wilson – electronically via Clerk's Office
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William H. "Bill" Jensen, 14556 Howard Mesa Loop, Williams, AZ 86046
Gary and Sabra Feddema- 9601 East Far Away Place, Prescott Valley, AZ 86315
William R. and Judith K. Stegeman Trust- 9200 East Far Away Place, Prescott Valley, AZ 86315
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Linda J. Hahn- 10367 W. Mohawk Lane, Peoria, AZ 85382
Sergio Martinez and Susana Navarro- 10150 N. Lawrence Lane, Prescott Valley, AZ 86315
Lloyd E. and Melva J. Self- 9250 E. Slash Arrow Drive, Prescott Valley, AZ 86315
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James C. and Leslie M. Richie- 9800 E. Plum Creek Way, Prescott Valley, AZ 86315 - NO CURRENT ADDRESS
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