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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CRISTOBAL BARRAZA, *Plaintiff/Appellee*,

v.

ALEXANDER WARFIELD, *Defendant/Appellant*.

No. 1 CA-CV 16-0362
FILED 5-9-2017

Appeal from the Superior Court in Pima County
No. C20155207
The Honorable Gus Aragon, Judge

JURISDICTION ACCEPTED; RELIEF DENIED

COUNSEL

Rusing Lopez & Lizardi, PLLC, Tucson
By Mark D. Lammers
Counsel for Defendant/Appellant

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MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

C A T T A N I, Judge:

¶1 Alexander Warfield appeals the superior court's continuation of an injunction against harassment obtained by Cristobal Barraza and the court's denial of his motion for new trial or relief from judgment. For reasons that follow, we accept jurisdiction of this matter as a special action, but deny relief.

FACTS AND PROCEDURAL BACKGROUND

¶2 On July 28, 2015, Barraza filed in justice court a petition for injunction against harassment against his neighbor Warfield. Among other allegations, the petition asserted that Warfield had installed an outdoor light pointed toward Barraza's bedroom window and had installed several cameras directed at Barraza's bedroom and a bathroom used by the whole family. The justice court entered an ex parte injunction that same date.

¶3 Warfield requested a hearing, but he failed to appear on time, and the justice court decided the injunction against harassment should remain in effect. Although Warfield arrived just over 15 minutes late, the justice court declined to reopen the matter. After the justice court denied his motion for new trial, Warfield timely appealed to superior court.

¶4 The superior court determined that the justice court had improperly denied Warfield's request for a new trial and, in the interest of judicial economy, set an evidentiary hearing on the injunction against harassment rather than remanding the matter to the justice court. At the hearing, Barraza testified that Warfield's outdoor light was illuminated all night every night for the year before he filed his petition, and that it was aimed directly at his bedroom window.

¶5 Barraza further testified that Warfield had installed security cameras near the roofline of his house that pointed directly into Barraza's bedroom and bathroom windows, as well as one pointing at Barraza's porch. He noted that he could see a red light on the cameras indicating they were functioning, and that Warfield had installed the cameras during the

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year before Barraza filed the petition; although Warfield sometimes moved them, the cameras were active for weeks or more at a time. On cross-examination, Barraza acknowledged that he had installed security cameras on his own house, but stated that his cameras were not pointed at Warfield's house.

¶6 The superior court continued the injunction as amended to prohibit contact by Warfield, require Warfield to stay at least 25 feet away except when on his own property, and require that Warfield's "security cameras and outdoor lights [] not be pointed at [Barraza's] residence." Warfield moved for new trial, contesting the sufficiency of the evidence, and concurrently requested relief from judgment, alleging substantial injustice. The superior court denied the motion, and Warfield timely appealed.

DISCUSSION

I. Preliminary Matters.

¶7 Absent circumstances not at issue here, this court generally lacks jurisdiction over an appeal taken from the superior court's judgment on appeal from justice court. *See Sanders v. Moore*, 117 Ariz. 527, 528 (App. 1977). Here, however, the superior court in effect became the trial court when it granted Warfield's request for a new trial from the justice court's determination and conducted the evidentiary hearing itself. Because Warfield otherwise would be deprived of appellate review of the order continuing the injunction, we exercise our discretion to treat this appeal as a special action and accept jurisdiction. *See* Ariz. Rev. Stat. ("A.R.S.") § 12-120.21(A)(4); *Lloyd v. State Farm Mut. Auto. Ins. Co.*, 189 Ariz. 369, 375 (App. 1996); *cf.* Ariz. R. Prot. Order P. 42(b)(2).¹

¶8 The injunction expired during the pendency of this appeal, which suggests the appeal may be moot. *See Cardoso v. Soldo*, 230 Ariz. 614, 617, ¶ 5 (App. 2012). But mootness is a prudential, discretionary consideration, and we may decline to dismiss on this basis if, for example, a party may continue to suffer collateral consequences resulting from the otherwise-moot issue. *Id.* at 617-18, ¶¶ 5, 9. Here, because even an expired injunction against harassment – which remains a part of the court record

¹ Absent material revisions after the relevant date, we cite a statute's current version.

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and is easily located—may carry collateral consequences of stigma or reputational harm, we decline to dismiss the appeal as moot.²

II. Injunction Against Harassment.

¶9 We review the superior court’s entry and continuation of the injunction against harassment for a clear abuse of discretion. *See LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 10 (App. 2002). Reversal is warranted under this standard “when the record, viewed in the light most favorable to upholding the trial court’s decision, is devoid of competent evidence to support the decision.” *Mahar v. Acuna*, 230 Ariz. 530, 534, ¶ 14 (App. 2012) (citation omitted). We similarly review for an abuse of discretion the court’s denial of (1) Warfield’s motion for new trial in which he asserted that the decision was not supported by the evidence and (2) Warfield’s request for relief from judgment based on his claim of substantial injustice. *See Styles v. Ceranski*, 185 Ariz. 448, 450 (App. 1996); *Skydive Arizona, Inc. v. Hogue*, 238 Ariz. 357, 364, ¶ 24 (App. 2015).

¶10 As relevant here, a court may issue an injunction against harassment if it finds “reasonable evidence of harassment of the plaintiff by the defendant during the year preceding the filing of the petition.” A.R.S. § 12-1809(E). If the defendant challenges the injunction through a contested hearing, the court may continue the injunction if the plaintiff proves a basis for the protective order by a preponderance of the evidence. *See Ariz. R. Prot. Order P. 38(g)*. For these purposes, “harassment” is defined as “a series of acts over any period of time that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person and serves no legitimate purpose.” A.R.S. § 12-1809(S).

¶11 Warfield argues that the superior court erred by continuing the injunction because no evidence established any acts of harassment. He claims that the court’s decision was based not on evidence, but merely on Barraza’s unsubstantiated allegations. But Barraza testified at the hearing,

² Barraza failed to file an answering brief on appeal. Although we could consider this an implied confession of reversible error, in our discretion we decline to do so. *See Nydam v. Crawford*, 181 Ariz. 101, 101 (App. 1994).

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and his testimony regarding Warfield's outdoor light and security cameras provided the requisite evidentiary basis for the injunction.³

¶12 Warfield argues that the outdoor light did not constitute harassment because it was installed more than a year before Barraza's petition, it was not directed at Barraza, and it served a legitimate purpose. Even if the light was originally installed outside of the relevant one-year time period, Barraza testified that it turned on every night during the year before he filed his petition. *See* A.R.S. § 12-1809(E). Although Warfield now asserts that the light was pointed at plants in his yard, Barraza testified that the light was aimed directly at his bedroom window and, on cross-examination, expressly disputed that the light was pointed at Warfield's plants. *See* A.R.S. § 12-1809(S); *LaFaro*, 203 Ariz. at 486, ¶ 13 (noting that the statute "requires a harassing act to be 'directed at' the specific person complaining of harassment"). And although an outdoor light may serve the legitimate purposes Warfield advances (facilitating aesthetic enjoyment of his yard at night and enhancing home security), an outdoor light aimed into his neighbor's bedroom does not.

¶13 Warfield further argues that his installation of security cameras cannot constitute harassment because the cameras serve a legitimate purpose and were not directed at Barraza. He also notes that Barraza similarly installed security cameras on his own house. But Barraza testified that Warfield's cameras were pointed directly into his bedroom and bathroom windows, and that Barraza's own cameras were not pointed at Warfield's house. *See LaFaro*, 203 Ariz. at 486, ¶ 13. And although Warfield claims there was no evidence that the cameras were functional or in use, Barraza testified that he could see a red light on each camera indicating it was functioning.

¶14 Accordingly, the record provides an adequate basis for the superior court's decision continuing the injunction against harassment. For the same reasons, the court did not err by denying Warfield's motion for new trial contesting the sufficiency of the evidence or by denying Warfield's request for relief from judgment premised on substantial injustice stemming from the allegedly tenuous basis for the injunction. *See* Ariz. R. Civ. P. 59(a)(1)(H), 60(b)(6). Given our resolution of the matter, we deny Warfield's request for an award of attorney's fees under A.R.S. § 12-349.

³ Warfield also challenges several other acts alleged in Barraza's petition and addressed at the evidentiary hearing. But the superior court expressly declined to consider the other acts, and we do not address them.

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CONCLUSION

¶15 Treating this appeal as a special action, we accept jurisdiction but deny relief.



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