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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 05-18-2010  
PHILIP G. URRY, CLERK  
BY: GH

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

AMY L. ARISS, ) Nos. 1 CA-CV 09-0360  
) 1 CA-CV 09-0361  
Plaintiff/Appellee, ) (Consolidated)  
)  
v. )  
) DEPARTMENT A  
ARAYA WOLDE-GIORGIS, )  
) **MEMORANDUM DECISION**  
Defendant/Appellant.)  
\_\_\_\_\_) (Not for Publication -  
) Rule 28, Arizona Rules of  
ARAYA WOLDE-GIORGIS, ) Civil Appellate Procedure)  
)  
Plaintiff/Appellant, )  
)  
v. )  
)  
AMY L. ARISS, )  
)  
\_\_\_\_\_) Defendant/Appellee.)

Appeal from the Superior Court in Maricopa County

Cause Nos. CV2009-011059 & CV2009-091290

The Honorable Wesley E. Peterson, *Judge Pro Tempore*

**AFFIRMED**

\_\_\_\_\_  
Kercsmar & Feltus Scottsdale  
By Christopher M. Goodman  
Attorneys for Appellee

\_\_\_\_\_  
Araya Wolde-Giorgis Scottsdale  
*In propria persona*

J O H N S E N, Judge

¶1 Araya Wolde-Giorgis appeals from the superior court's rulings granting Amy Ariss's petition for an injunction against harassment against Giorgis and denying Giorgis's petition for an injunction against Ariss. For the reasons that follow, we affirm both orders.

**FACTUAL AND PROCEDURAL BACKGROUND**

¶2 Ariss, an audiologist, treated Giorgis at a medical facility. During a telephone conversation after the appointment, Giorgis proposed "discussion . . . after medical treatment is completed if [Ariss] has an open mind to learn about entelligence [sic], race, and other cultures." Ariss declined to see Giorgis again, and additional appointments Giorgis made to see Ariss were cancelled.

¶3 Giorgis believed Ariss refused to see him because of his race. He concluded Ariss is "an extreme racist." Giorgis wrote an email to Ariss dated March 16, 2009. In his email, he accused Ariss of being dishonest with him. He complained that although he proposed a "possible friendly relationship" with Ariss, she "interpreted that wrongly as if [Ariss is] the only woman in the world and as if [Giorgis is] obsessed with" Ariss. His email acknowledged that he had telephoned Ariss "several

times," even though she did not return his calls. His email continued,

[Y]ou misunderstood what I told you. I discussed about the possibility of pure friendship to start with, and see where it takes us. I never asked you for a date or I never told you that I am in love with you and I never even mentioned that I had any affection [sic] for you. . . . I could have changed a therapist if you had a race problem and if you are afraid of being raped by black people as some white women do. . . . Lastly, please relax and understand that you are not that beautiful and sexy that normal people would find you so attractive [sic] and sexy, people would resort to rape you in broad day light in a clinic where there are so many people around.

Giorgis copied his email to two of Ariss's superiors at her place of work.

¶4 Three days later, Giorgis sent another email with the subject line of "The issue of Discrimination" to the president of the medical facility, copying Ariss. In this email Giorgis asserted Ariss had discriminated against him based on race and asked that measures be taken "so that in the future black people will not be treated like wild animals because certain white women are paranoid and have irrational fear and hate towards black people and are afraid of being raped by black people in broad day light even when there are many people around." He concluded the email by demanding an apology from Ariss.

¶15 Citing the two emails, Ariss sought and obtained an injunction against harassment issued April 7, 2009. The injunction barred Giorgis from committing any act of harassment toward Ariss and from having any contact with her "except through attorneys, legal process, [and] court hearings."

¶16 On April 20, 2009, Giorgis filed his own petition for an injunction against harassment against Ariss. In his petition, Giorgis alleged Ariss had telephoned him three times -- on March 23, 25 and 30, 2009 -- and "threatened [his] life" "if he files a lawsuit against her." According to Giorgis's petition, Ariss told him during one of the calls, "If you file a lawsuit, you will be ruining my career and I can't allow that to happen."

¶17 The superior court consolidated its hearing on Giorgis's petition for an injunction and the return hearing on Ariss's injunction. Ariss was not present at the hearing but was represented by counsel, and Giorgis appeared *in propria persona*.

¶18 While testifying regarding Ariss's injunction, Giorgis admitted sending the two emails, which were admitted in evidence at the hearing. He stated he was insulted by Ariss's "very agitated" and nervous conduct. "I deserve to be respected, not to be treated like a wild animal because I'm a black man," he said. In support of his own injunction, Giorgis testified that

Ariss had called him repeatedly and threatened "if he proceed[ed] with the lawsuit . . . [he would] pay for it with [his] life."

¶9 After hearing Giorgis's testimony and reviewing the two emails, the court found the emails to be "clearly harassing in nature" and concluded that the injunction Ariss sought was "extraordinarily well taken." Furthermore, the court found Giorgis's testimony regarding Ariss's alleged threats to be "wholly incredible testimony." Accordingly, the court sustained the injunction Ariss sought and denied the injunction sought by Giorgis.

¶10 Giorgis timely appealed both rulings.<sup>1</sup> We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(F)(2) (2003).

#### DISCUSSION

¶11 We review orders granting or denying injunctions for a clear abuse of discretion. *LaFaro*, 203 Ariz. at 485, ¶ 10, 56 P.3d at 59.

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<sup>1</sup> The injunction issued on April 7, 2009, did not include an expiration date, but pursuant to A.R.S. § 12-1809(J) (Supp. 2009), an injunction "expires one year after service on the defendant." Neither party argues the issues presented on appeal are moot, however. See *LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 9, 56 P.3d 56, 59 (App. 2002) (court may exercise its discretion to address injunction that may be moot).

¶12 Injunctions against harassment are governed by A.R.S. § 12-1809. The statute defines "harassment" to mean "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(R). An injunction against harassment protects victims from repeated harassing conduct. *LaFaro*, 203 Ariz. at 485, ¶ 12, 56 P.3d at 59. For an injunction to issue, there must be more than one incident directed at the person seeking the injunction. *Id.* at 486, ¶ 14, 56 P.3d at 60.

¶13 At the hearing, through counsel, Ariss presented the emails Giorgis sent her. This evidence, along with Giorgis's admissions made under oath, constitute sufficient evidence of harassment to support the court's orders.<sup>2</sup> Giorgis argues the court should have ruled against Ariss because she failed to

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<sup>2</sup> At the hearing, Ariss's counsel offered what he called a "verified" petition for injunction as evidence in support of the injunction. The verification, however, was not valid because it was not made under oath, as required by A.R.S. § 12-1803(B) (2003). For this reason, the allegations of the petition, by themselves, could not support the injunction. Nevertheless, even assuming the superior court relied on the "verified" petition in granting Ariss's injunction, such reliance was harmless error because Giorgis's own testimony that he sent the emails, along with the court's conclusions as to his credibility, constitute a sufficient basis for the court's decision. See Ariz. R. Civ. P. 61.

appear. But even though she did not appear personally at the hearing, Ariss was represented at the hearing by her counsel, who offered evidence on her behalf. As we have held, that evidence, along with Giorgis's own testimony, supported the court's rulings.

¶14 Giorgis also argues the injunction restricts his First Amendment right to free speech by prohibiting him from bringing a racial discrimination claim. But the injunction the court issued does not preclude him from pursuing judicial relief for any grievance he may have. It contains an explicit exception that permits Giorgis to contact Ariss "through attorneys, legal process, [and] court hearings."<sup>3</sup>

¶15 Giorgis also argues the court improperly denied his petition for an injunction against Ariss. While Giorgis testified Ariss had called him three times to threaten his life if he proceeded with a racial discrimination lawsuit, the court found this testimony to be "wholly incredible." Besides Giorgis's own statements, there was no other evidence to support his allegations. Indeed, the balance of evidence presented at the hearing suggested Giorgis's petition for an injunction was

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<sup>3</sup> Giorgis cites *LaFaro* in arguing the injunction violates his First Amendment rights. In that case, we construed the definition of harassment in A.R.S. § 12-1809 to "exclude pure political speech . . . to prevent future improper application . . . to protected political speech." *Id.* at 488-89, ¶ 23, 56 P.3d at 62-63 (emphasis omitted). The emails Giorgis sent in this case do not contain political speech.

in retaliation for the injunction Ariss had obtained against him rather than a legitimate request for protection against harassment.

¶16 Finally, Giorgis alleges the superior court acted with an improper racial motive. Giorgis offers no evidence to support this contention, however, and the evidence presented in the record supports the court's ruling. After reviewing the evidence and the transcript of the hearing, we see nothing in the record to suggest the court acted with an improper racial motive.

¶17 For these reasons, the superior court acted within its discretion in affirming the injunction sought by Ariss and by denying the injunction sought by Giorgis. In our discretion, we decline Ariss's request that we enter sanctions against Giorgis for bringing these appeals.

/s/\_\_\_\_\_  
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/\_\_\_\_\_  
DANIEL A. BARKER, Presiding Judge

/s/\_\_\_\_\_  
LAWRENCE F. WINTHROP, Judge