

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



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FILED: 06-01-2010
PHILIP G. URRY, CLERK
BY: GH

LORIANN ROWE,)	1 CA-CV 09-0485
)	
Plaintiff/Appellee,)	DEPARTMENT C
)	
v.)	MEMORANDUM DECISION
)	(Not for Publication -
LAWRENCE CLARK,)	Rule 28, Arizona Rules
)	of Civil Appellate
Defendant/Appellant.)	Procedure)
)	
)	

Appeal from the Superior Court in Maricopa County

Cause No. CV 2009-019774

The Honorable Steven Holding, Commissioner

AFFIRMED

Lawrence Clark
In Propria Persona

Phoenix

K E S S L E R, Judge

¶1 Defendant-Appellant Lawrence Clark ("Clark") appeals the superior court's order continuing an injunction against harassment. For the reasons that follow, we affirm the order of the superior court.

FACTUAL AND PROCEDURAL HISTORY

¶12 Loriann Rowe ("Rowe") filed a petition for an injunction against harassment, alleging that Clark made threatening statements to her, including the statement "I am going to . . . kill you, and sue you" The superior court issued the injunction. Clark requested a hearing, which the superior court promptly held.

¶13 At the hearing, the superior court permitted each party to testify. Rowe testified that Clark approached her outside of her workplace and yelled incoherently at her. Clark then yelled that he would sue Rowe. Clark then culminated his yelling by threatening to kill Rowe.

¶14 Clark testified that he did not yell the statements Rowe accused him of yelling and that he would not behave that way because he had a pending petition with Child Protective Services to be reunited with his son. The commissioner asked Clark about his prior relationship with Rowe and whether he had any legitimate need to contact her. Clark stated that he did not have any need to contact Rowe.

¶15 The superior court gave Clark the final opportunity to speak, and he repeated his contention that he would not conduct himself the way Rowe alleged because it would jeopardize his CPS case. Clark also argued that the conduct Rowe described was a single incident that did not legally constitute harassment.

¶16 The superior court ordered that the injunction remain in effect. Clark filed a timely notice of appeal. This Court has jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(F)(2) (2003).

ANALYSIS

¶17 On appeal, Clark contends that we should overrule the superior court because 1) the superior court did not permit Clark to testify, 2) the superior court incorrectly applied the statutory definition of harassment, and 3) there was no evidence supporting a finding of harassment. Rowe did not file an answering brief. We decline to treat her failure to file an answering brief as a confession of error because the issues in this appeal are not reasonably debatable. See *Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982) ("Although we may regard [the] failure to respond as a confession of reversible error, we are not required to do so."). *Bugh v. Bugh*, 125 Ariz. 190, 191, 608 P.2d 329, 330 (App. 1980) (holding that failure to file an answering brief is treated as a confession of error when "debatable issues are raised").

I. The Superior Court Permitted Clark to Testify

¶18 Clark alleges that the superior court did not permit him to testify or make a legal argument. We disagree. Clark did testify. He stated that Rowe's factual contentions were false. He also presented legal argument. In particular, he

argued that the conduct described by Rowe did not meet the statutory definition of harassment. The superior court afforded Clark an opportunity to be heard and his contention to the contrary is plainly at odds with the record.

II. The Superior Court Applied the Correct Legal Standard

¶9 Clark contends that the superior court improperly applied the statutory definition of harassment. We disagree. “[H]arassment’ means 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) (Supp. 2009). The superior court quoted this definition at the beginning of the proceeding. The superior court applied the correct definition of harassment.

III. Substantial Evidence Supported the Superior Court’s Finding That Harassment Took Place

¶10 Clark contends that the superior court’s finding of harassment is not supported by any evidence in the record because all of the allegedly offensive conduct took place in a single occurrence and therefore there was no evidence that he engaged in a “series of acts” as required by A.R.S. § 12-1809(R). We disagree. We review a superior court’s order granting an injunction against harassment for a “clear abuse of

discretion." *LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 10, 56 P.3d 56, 59 (App. 2002) (citation omitted). Harassment requires a "series of acts" which may take place over "any period of time." A.R.S. § 12-1809(R). The superior court did not clearly abuse its discretion in finding that the three separate utterances in a brief period was a series of acts.

¶11 *LaFaro* does not clearly require a contrary result. *LaFaro* overturned a superior court's finding of harassment when the only conduct directed at the plaintiff occurred during a single occasion. 203 Ariz. at 486, ¶ 14, 56 P.3d at 60. However, testimony in that case indicated that the allegedly harassing act consisted of a single utterance.¹ Rowe's testimony indicates that she endured multiple hostile utterances. Rowe testified that at first she heard indiscernible utterances from Clark. Then, she turned around before Clark howled that he would sue her. Rowe described the death threat against her as yet another act, preceding her description of it with the transition "then." The transcript of Rowe's testimony indicates that at least three separate acts occurred in sequence. The

¹ A witness reported the utterance as "[y]ou're a bigot, *LaFaro*." *LaFaro*, 203 Ariz. at 486, ¶ 14, 56 P.3d at 60 (internal quotation marks omitted). *LaFaro* reported that the defendant called him a "bigot, homophobe, fascist, and Nazi." *Id.* (internal quotations marks omitted). The Court's description of both testimonial accounts indicates a single utterance, although one version involved an utterance that strung together multiple vituperations.

