IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

DAMARYS HEREDIA,
Petitioner/Appellant,

and

ADRIAN HEREDIA,
Respondent/Appellee.

No. 2 CA-CV 2015-0201
Filed December 29, 2016

Appeal from the Superior Court in Santa Cruz County
No. DO201200187
The Honorable Kimberly A. Corsaro, Judge Pro Tempore

AFFIRMED IN PART; REVERSED IN PART

COUNSEL

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MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Judge Espinosa concurred and Presiding Judge Howard concurred in part and dissented in part.

S T A R I N G, Judge:

¶1 Damarys Heredia appeals from the trial court's award of attorney fees to her former spouse Adrian Heredia. We affirm in part and reverse in part.

Factual and Procedural Background

¶2 We review the record in the light most favorable to upholding the trial court's ruling and will affirm if any reasonable evidence in the record supports its decision. *Johnson v. Johnson*, 131 Ariz. 38, 44, 638 P.2d 705, 711 (1981). The parties married in 2002 and have one minor child, A.H. Damarys petitioned for dissolution of the marriage in August 2012. Adrian was served and subsequently defaulted for failure to file a timely response. Adrian then filed motions to dismiss the petition and to set aside the entry of default, which the trial court denied.

¶3 After a default hearing, at which Adrian was not allowed to participate, the trial court entered a default decree. It subsequently denied Adrian's motion to set aside the decree. *See* Ariz. R. Fam. Law P. 85. Adrian appealed, and this court concluded he should have been allowed to participate in the default hearing, vacated portions of the decree, and remanded for further default proceedings pursuant to Rule 44(B)(2), Ariz. R. Fam. Law P. *In re Marriage of Heredia*, No. 2 CA-CV 2013-0070, ¶¶ 26-29 (Ariz. App. Dec. 5, 2013) (mem. decision).

¶4 On remand, Adrian served discovery requests, moved to continue the default hearing scheduled for May 2014, and sought temporary orders pursuant to Rule 47, Ariz. R. Fam. Law P. Damarys moved to strike Adrian's filings, arguing he was not

entitled to file anything because he was still in default. Adrian argued new temporary orders were permissible because this court had vacated the portions of the default decree regarding child support, legal decision-making authority, and parenting time, and because his right to participate in the "de novo default trial/hearing" entitled him to serve discovery requests.

¶5 The trial court denied Damarys's motion to strike Adrian's discovery requests, and ordered her to "respond to child support and spousal maintenance issues." The court also reinstated the temporary orders issued before the default decree. The court proceeded to conduct a default hearing spanning two days in August and October 2014, and subsequently issued an amended decree awarding Adrian $5,791 in attorney fees pursuant to A.R.S. §§ 25-324(A) and 12-349(A)(3). It also entered a separate judgment making Damarys's counsel responsible for twenty-five percent of the award. Damarys appeals from the award of attorney fees.

Jurisdiction

¶6 "This court may not address an issue or provide relief if it lacks jurisdiction to do so and we have an independent duty to ensure that we have jurisdiction before addressing the merits of any claim raised on appeal." *State v. Bejarano*, 219 Ariz. 518, ¶ 2, 200 P.3d 1015, 1016 (App. 2008). Notably, the exercise of our jurisdiction requires the timely filing of a notice of appeal. *Korens v. Ariz. Dep't of Econ. Sec.*, 129 Ariz. 426, 427, 631 P.2d 581, 582 (App. 1981). Adrian argues we lack jurisdiction because Damarys did not appeal the final judgment entered on January 6, 2016. We disagree that jurisdiction is absent in this instance.

¶7 The trial court's under-advisement ruling following the 2014 default hearing included a decision to award Adrian attorney fees expended on remand. The court subsequently entered an amended decree containing the $5,791 fee award and its rulings on the remaining issues in the case. The court also entered a separate judgment, one minute *before* the amended decree, only discussing the $5,791 fee award. The judgment made Damarys's attorney

responsible for twenty-five percent of the $5,791, a provision not contained in the under-advisement ruling or amended decree.

¶8 The separate judgment did not contain "an express determination that there is no just reason for delay and . . . an express direction for the entry of judgment" as required to issue "final judgment as to . . . fewer than all of the claims or parties." Ariz. R. Fam. Law P. 78(B). Nevertheless, the judgment was rendered final by the court's subsequent entry of the amended decree disposing of all other issues before the court.[1] *See id.* (decision on individual claims without Rule 78(B) language "subject to revision at any time" until judgment addressing remaining claims and parties); *Hill v. City of Phoenix*, 193 Ariz. 570, ¶ 16, 975 P.2d 700, 704 (1999) (partial judgments "become final upon entry of . . . judgment which effectively terminates all issues remaining in the litigation").

¶9 Because the judgment and the decree concerned the same fee award, Damarys's timely appeal from the decree was sufficient to confer appellate jurisdiction over the judgment for attorney fees. *See Hill*, 193 Ariz. 570, ¶ 10, 975 P.2d at 702-03 (notice in substantial compliance with rules "should be construed as sufficient so long as the defect has neither misled nor prejudiced an opposing party"); *Hanen v. Willis*, 102 Ariz. 6, 10, 423 P.2d 95, 99 (1967) (timely notice of appeal not invalidated by reference to date of earlier version of judgment); *Desert Palm Surgical Grp., P.L.C. v. Petta*, 236 Ariz. 568, ¶¶ 17-19, 343 P.3d 438, 446-47 (App. 2015) (timely notice not invalidated for omitting reference to amended judgment on same claims).[2] Accordingly, we have jurisdiction pursuant to

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[1]The amended decree contained the following: "9. **FINAL APPEALABLE ORDER.** Pursuant to Rule 89, Arizona Rules of Family Law Procedure, this final judgment/decree is settled, approved and signed by the court and shall be entered by the clerk." Thus, although the amended decree concluded with language ordering the lodging of "a form of Amended Decree," we conclude it was a final, appealable order.

[2]The fact Damarys did not file a separate notice of appeal from the January 6, 2016 judgment does not affect appellate jurisdiction.

A.R.S. § 12-2101(A)(1) over the entirety of Damarys's appeal. *See also* A.R.S. § 12-2102(A).

Award of Attorney Fees

¶10 The trial court based its fee award on the conclusion that Damarys had "refus[ed] to facilitate meaningful parenting time . . . [and] expand[ed] the proceedings by refusing to accept service and in the filing of frivolous motions." The court awarded fees pursuant to two statutes: § 25-324, which allows a discretionary fee award in dissolution proceedings "after considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings" and § 12-349(A)(3), which requires the imposition of fees as a sanction when a party "[u]nreasonably expands or delays [a] proceeding."[3] We review a court's decision to award fees under § 25-324 for abuse of discretion. *Myrick v. Maloney*, 235 Ariz. 491, ¶ 6, 333 P.3d 818, 821 (App. 2014). In reviewing a decision to award fees pursuant to § 12-349, we uphold the court's factual findings unless clearly erroneous, but review the application of the statute de novo as a question of law. *Fisher ex rel. Fisher v. Nat'l Gen. Ins. Co.*, 192 Ariz. 366, ¶ 13, 965 P.2d 100, 104 (App. 1998). Damarys claims the trial court's award of attorney fees was improper under both statutes. She argues the court's finding concerning her "refusal to facilitate meaningful parenting time" was clearly erroneous and that the court abused its discretion by punishing her insistence on following its written orders.

On December 3, 2015, this court mistakenly suspended the appeal and revested jurisdiction in the superior court for the limited purpose of obtaining a judgment in compliance with Rule 54(c), Ariz. R. Civ. P. Rule 54(c) does not apply in matters governed by the Arizona Rules of Family Law Procedure. *See Brumett v. MGA Home Healthcare, L.L.C.*, 240 Ariz. 421, n.4, 380 P.3d 659, 665 n.4 (App. 2016). Accordingly, on August 22, 2016, we vacated our December 2015 order.

[3]Section 12-349(B) allows the court to impose fees "among the offending attorneys and parties, jointly or severally."

¶11 Damarys, however, mischaracterizes the ruling of the trial court, which specifically found she had "continuously refused to allow [Adrian] any reasonable expansion of parenting time or make up parenting time." This finding refers to a disagreement over Adrian's midweek parenting time. Damarys testified she had complained the midweek visits resulted in later bed times for A.H. and problems with behavior and school performance. Though Damarys claimed she "never asked him not to see [A.H.]," Adrian testified he had discontinued his midweek parenting time at Damarys's request and she then refused his requests for substitute parenting time. Damarys admitted she had refused multiple requests for alternative parenting time, but still claimed she had "worked with" Adrian to make up his lost time.

¶12 Thus, the record supports the finding Damarys was willing to disregard court orders when it came to discontinuing Adrian's midweek visits, but not to allow Adrian make-up time.[4] The trial court also doubted Damarys's credibility in regard to complaining about both the disruptiveness of midweek visits and the fact that Adrian stopped exercising them.[5] We treat the court's findings concerning contradictory evidence and witness credibility with deference. *Carrasco v. Carrasco*, 4 Ariz. App. 580, 582, 422 P.2d 411, 413 (1967). Moreover, in light of Damarys's failure to provide a complete copy of the transcript of the default hearing, we must presume the record supports the court's factual findings. *See Bliss v. Treece*, 134 Ariz. 516, 519, 658 P.2d 169, 172 (1983) (appellate court presumes missing portion of record supports trial court decision); *Gen. Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 191, 193, 836 P.2d 404,

[4] In the March 18, 2015 amended decree, the trial court concluded: "Mother has offered no meaningful reason for denial of extra or make up parenting time with Father."

[5] "The court has struggled a bit with Mother's credibility on various issues. For example, she complains that Father is not exercising his mid-week visits, but also complains that the mid-week visits are disruptive to her daughter's routine during the school week."

406 (App. 1992) (appellant has burden of proving trial court error to obtain relief).

¶13 We thus conclude it was not clearly erroneous for the trial court to find Damarys's "refusal to facilitate meaningful parenting time" amounted to an unreasonable position warranting an award of attorney fees pursuant to § 25-324(A). The court did not abuse its discretion by awarding fees under § 25-324(A). [6]

¶14 However, as noted, when reviewing a § 12-349 award, we uphold the court's factual findings unless clearly erroneous, but review the application of the statute de novo as a question of law. *Fisher*, 192 Ariz. 366, ¶ 13, 965 P.2d at 104.[7] And, here we conclude Damarys did not unreasonably expand or delay the proceedings so as to require an award under § 12-349(A)(3). The court's award was

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[6]We reject Damarys's argument that the trial court failed to properly consider the parties' financial resources as required by § 25-324(A). The plain language of § 25–324(A) makes clear the court has discretion to grant or deny fees after considering both statutory factors, including financial resources. But a fee award in favor of the party with greater financial resources is not precluded. *See Mangan v. Mangan*, 227 Ariz. 346, ¶¶ 26-28, 258 P.3d 164, 170-71 (App. 2011) (affirming award of fee to party with greater ability to pay); *Magee v. Magee*, 206 Ariz. 589, ¶ 18, 81 P.3d 1048, 1052 (App. 2004) ("[A]n applicant's inability to pay . . . is not a prerequisite to consideration for an award under A.R.S. § 25-324.").

[7]Our dissenting colleague refers to the trial court's decision under § 12-349 as being discretionary. *See infra* ¶¶ 23-24. Our cases indicate otherwise. *See, e.g., Phx. Newspapers, Inc. v. Dep't of Corr., State of Ariz.*, 188 Ariz. 237, 243, 934 P.2d 801, 807 (App. 1997) (contrasting "discretionary award of attorney's fees" with "mandatory" award under § 12-349, noting latter is reviewed for sufficiency of evidence of "frivolous claim or defense"). As with the determination of whether a claim is "groundless," the question of whether a particular action expands or delays the proceedings requires "application of the . . . statute" based on an objective legal standard, and thus is reviewed de novo. *See id.* at 244, 934 P.2d at 808.

based on the conclusion Damarys "unnecessarily expand[ed] the proceedings by refusing to accept service and in the filing of frivolous motions." The court further concluded Damarys had "refused to save costs on service by accepting service of process" and her "motion to strike and vacate [the] temporary orders hearing was frivolous in light of the Court of Appeals ruling and mandate vacating all orders concerning legal decision making, parenting time and support."

¶15 An award under § 12-349 is a sanction imposed to deter "frivolous" litigation. *See Phx. Newspapers, Inc. v. Dep't of Corr., State of Ariz.*, 188 Ariz. 237, 244, 934 P.2d 801, 808 (App. 1997) (statute enacted "to reduce frivolous litigation by increasing the threat of fee sanctions"). The issuance of such a sanction requires conduct more serious than the assertion of unsuccessful claims or legal arguments. *See Donlann v. Macgurn*, 203 Ariz. 380, ¶ 36, 55 P.3d 74, 80-81 (App. 2002) (declining to conclude unsuccessful "repetitive motions" had "*unreasonably* delayed the proceedings"); *Reed v. Mitchell & Timbanard, P.C.*, 183 Ariz. 313, 320, 903 P.2d 621, 628 (App. 1995) (fee request properly denied when party made "good faith, valid argument" concerning "'debatable issue'"); *Lynch v. Lynch*, 164 Ariz. 127, 132-33, 791 P.2d 653, 658-59 (App. 1990) ("We must be careful in administering § 12-349 and similar statutes not to discourage the assertion of fairly debatable positions.").

¶16 We conclude Damarys's argument that Adrian was not entitled to seek discovery or make other affirmative requests while he was in default did not cross the line between an argument that lacks merit and one that is frivolous. *Hoffman v. Greenberg*, 159 Ariz. 377, 380, 767 P.2d 725, 728 (App. 1988). It is clear the trial court agreed in part with the motion to strike, because it effectively denied Adrian's request for a temporary orders hearing, and did not order Damarys to respond to his discovery requests regarding matters that had already been determined. Further, the motion to strike was supported by rational argument based on citation to relevant legal authority. *See Rogone v. Correia*, 236 Ariz. 43, ¶ 22, 335 P.3d 1122, 1129 (App. 2014) (claim frivolous when unsupported by argument based on law and evidence); *see also Tarr v. Superior Court*, 142 Ariz. 349, 351, 690 P.2d 68, 70 (1984) (defaulted party loses all rights to

litigate merits); *Long-Cleveland-Hayhurst & Co., Managing Gen. Agents v. Peterson*, 91 Ariz. 47, 48, 369 P.2d 666, 667 (1962) (defaulted party may not participate except to seek relief from default). Further, although Damarys was incorrect about the extent of Adrian's right to participate under Rule 44(B)(2), Ariz. R. Fam. Law P., in light of the court's need to determine the "appropriate relief to be awarded," her misplaced reliance on this argument in moving to strike Adrian's motions and refusing to accept service did not rise to the level of conduct warranting sanctions under § 12-349.

¶17 The dissent criticizes Damarys's use of a motion to strike to contest Adrian's ability to file documents while he was still in default. *See infra* ¶¶ 26-27. A motion to strike is a proper means to challenge the "propriety," as opposed to the merits, of a filing. *See Colboch v. Aviation Credit Corp.*, 64 Ariz. 88, 92, 166 P.2d 584, 587 (1946). The authority relied on by the dissent is distinguishable; it disapproves of motions to strike in situations where other responses are clearly better suited, such as to attack the merits of an opponent's filing, challenge the admission of evidence, or contest a court ruling.[8]

¶18 With respect to her refusal to accept service, Damarys correctly pointed out that Adrian could have served her by mail without employing a process server because she had already appeared in the action. Ariz. R. Fam. Law P. 43(C)(2)(c). We are aware of no duty to correct or otherwise accommodate an opponent's failure to understand procedural rules. *See* Ariz. R. Sup. Ct. 42, ER 3.4 (duties to opposing party and counsel). The refusal to accept service therefore cannot be said to have expanded

[8]*See Sitton v. Deutsche Bank Nat'l Tr. Co.*, 233 Ariz. 215, n.5, 311 P.3d 237, 242 n.5 (App. 2013) (admissibility of evidence); *Engel v. Landman*, 221 Ariz. 504, n.2, 212 P.3d 842, 847 n.2 (App. 2009) (motion to strike court ruling); *In re Estate of Shumway*, 197 Ariz. 57, ¶¶ 5-6, 3 P.3d 977, 980-81 (App. 1999) (contesting a will based on alleged unauthorized practice of law), *vacated in part on other grounds*, 198 Ariz. 323, ¶ 23, 9 P.3d 1062, 1069 (2000); *Birth Hope Adoption Agency, Inc. v. Doe*, 190 Ariz. 285, 287, 947 P.2d 859, 861 (App. 1997) (response to summary judgment motion).

the proceedings unreasonably so as to require sanctions pursuant to § 12-349.

¶19 Moreover, neither Damarys's motion to strike nor her refusal to accept service caused any actual delay in the resolution of the case. At the June 2014 hearing, the trial court efficiently resolved both parties' motions by reinstating the prior parenting time orders without conducting a temporary orders hearing, and ordering Damarys to respond only to discovery requests relevant to unresolved issues. In contrast, Adrian's last-minute motion to continue delayed the commencement of the default hearing on remand by approximately eleven weeks. The court therefore erred by finding Damarys "expand[ed] the proceedings by refusing to accept service and in the filing of frivolous motions."

Attorney Fees on Appeal

¶20 In our discretion, we deny both parties' requests for an award of attorney fees on appeal pursuant to Rule 21(a), Ariz. R. Civ. App. P., and § 25-324. And, because Damarys's arguments on appeal were not frivolous under the standards discussed above, we deny Adrian's request for fees on appeal pursuant to § 12-349.

Disposition

¶21 For the foregoing reasons, we affirm the trial court's award of attorney fees pursuant to § 25-324 and reverse the award of sanctions based on § 12-349(A)(3).

H O W A R D, Presiding Judge, concurring in part and dissenting in part:

¶22 I concur in the portion of the majority decision resolving the question concerning our jurisdiction and affirming the award of attorney fees pursuant to § 25-324. But, I must respectfully dissent from the portion vacating the award of fees pursuant to § 12-349. Given the broad discretion the trial court has to determine this sanction and the deference we must show to its findings, the record sufficiently supports the court's conclusion that Damarys and

her attorney unreasonably expanded or delayed the proceedings, thus justifying sanctions under § 12-349(A)(3).

¶23 Section 12-349(A)(3) mandates sanctions against a party or an attorney when either one "unreasonably expands or delays the proceeding." Whether a party or attorney acts reasonably or unreasonably under § 12-349(A) "varies with the circumstances," and the determination therefore "falls within the exercise of the trial court's sound discretion." *See Harris v. Reserve Life Ins. Co.*, 158 Ariz. 380, 384, 762 P.2d 1334, 1338 (App. 1988); *see also Phx. Newspapers, Inc.*, 188 Ariz. at 243, 934 P.2d at 807; *Hamm v. Y & M Enters., Inc.*, 157 Ariz. 336, 338-39, 757 P.2d 612, 614-15 (App. 1988) (trial court's determination party unreasonably expanded or delayed proceedings inherently discretionary decision based on court's position). A court abuses its discretion only if "no reasonable basis exists in the record from which [it] could award attorney's fees." *Harris*, 158 Ariz. at 384, 762 P.2d at 1338. On review, "the question is whether sufficient evidence exists to support [the court's] finding." *Phx. Newspapers, Inc.*, 188 Ariz. at 243, 934 P.2d at 807. Furthermore, we view "the evidence in the light most favorable to upholding the court's ruling" and will affirm unless its factual findings are "clearly erroneous." *Clark v. Anjackco Inc.*, 235 Ariz. 452, ¶ 14, 333 P.3d 779, 783 (App. 2014); *see also City of Casa Grande v. Ariz. Water Co.*, 199 Ariz. 547, ¶ 27, 20 P.3d 590, 598 (App. 2001).

¶24 The trial court is granted this discretion because it has "a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers and witnesses, and . . . can better assess the impact of what occurs before [it]." *Harris*, 158 Ariz. at 383, 762 P.2d at 1337, *quoting State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983). Accordingly, in reviewing a discretionary decision, "we will not substitute our judgment for that of the trial court." *Daystar Investments, L.L.C. v. Maricopa Cty. Treasurer*, 207 Ariz. 569, ¶ 13, 88 P.3d 1181, 1184 (App. 2004). "Even if we would have acted differently under the same circumstances, we nevertheless will affirm the trial court's decision if it did not 'exceed [] the bounds of reason by performing the challenged act.'" *Englert v. Carondelet Health Network*, 199 Ariz. 21, ¶ 14, 13 P.3d 763, 769 (App. 2000), *quoting Toy v. Katz*, 192 Ariz. 73, 83, 961 P.2d 1021,

1031 (App. 1997) (alteration in *Englert*); *see also Quigley v. Tucson City Court*, 132 Ariz. 35, 37, 643 P.2d 738, 740 (App. 1982) ("A difference in judicial opinion is not synonymous with 'abuse of discretion.'").

¶25 In the first appeal, this court concluded Adrian should have been allowed to participate in the default dissolution hearing and vacated the child custody, child support, and spousal maintenance provisions of the decree. We ordered the trial court to re-conduct the default hearing on those issues and allow Adrian to participate. Adrian subsequently sought temporary orders as to custody and support, filed discovery requests, and requested a continuance of the default hearing.

¶26 Damarys moved to strike Adrian's request for discovery and the continuance, arguing that he was not entitled to them as a matter of law. That argument, however, was better suited to a response and objection, rather than a motion to strike. *See Birth Hope Adoption Agency, Inc. v. Doe*, 190 Ariz. 285, 287, 947 P.2d 859, 861 (App. 1997); *see also In re Estate of Shumway*, 197 Ariz. 57, ¶ 6, 3 P.3d 977, 981 (App. 1999), *vacated in part on other grounds*, 198 Ariz. 323, ¶ 23, 9 P.3d 1062, 1069 (2000). Moreover, the rules provide only for motions to strike "pleading[s]" and Adrian's requests were not pleadings. Ariz. R. Fam. Law P. 24, 32(E). To the extent such a motion is allowable in response to Adrian's requests, Damarys did not identify "any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter" as required by Rule 32(E) governing motions to strike. *See also* Ariz. R. Civ. P. 12(f) (same standard governing motions to strike in civil practice).

¶27 Additionally, although we had vacated the custody and support orders, Damarys moved to strike Adrian's request for temporary orders rather than respond. She again failed to identify any appropriate grounds under Rule 32(E) which would justify striking that request. The trial court properly re-instituted the former custody orders as temporary orders and Damarys's motion to strike was unfounded and served only to expand the litigation. Inappropriate motions to strike expand the number of pleadings filed, waste the time and resources of the court and parties thus frustrating the goal of the efficient resolution of cases, and poison the tone of the litigation. *See Sitton v. Deutsche Bank Nat'l Trust Co.*,

233 Ariz. 215, n.5, 311 P.3d 237, 242 n.5 (App. 2013) ("Absent extraordinary circumstances or those expressly contemplated in Rule 12(f), [Ariz. R. Civ. P.,] motions to strike usually waste the time of the court and the resources of the parties."); *see also Engel v. Landman*, 221 Ariz. 504, n.2, 212 P.3d 842, 847 n.2 (App. 2009) (inappropriate motions to strike have "the consequence of impeding the efficient resolution of cases and increasing the cost of litigation" and generally disfavored because "'often sought by the movant simply as a dilatory tactic'"), *quoting Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 347 (4th Cir. 2001). The trial court acted well within its broad discretion in finding Damarys's motion to strike under these circumstances unreasonably expanded the proceedings.

¶28 Furthermore, twenty days before the hearing on temporary orders, Adrian's attorneys asked Damarys's attorneys to sign and return an acceptance of service form in order to avoid the costs of personal service. Damarys's attorneys refused, forcing Adrian to effect formal, personal service. Despite purposefully delaying acceptance of service, Damarys then argued that the personal service was ineffective because it occurred less than ten days before the hearing. Ariz. R. Fam. Law P. 47(E). The trial court was not unreasonable in finding this unnecessarily and unreasonably expanded the proceedings.

¶29 The trial court was in the best position to observe the parties and attorneys and assess whether Damarys's actions unreasonably expanded or delayed the proceedings. *See Harris*, 158 Ariz. at 384, 762 P.2d at 1338. It insured the sanction was proportional to the misconduct by only granting a portion of the total fees against the attorney. § 12-349(B). The record sufficiently supports the court's decision to impose sanctions pursuant to § 12-349(A)(3) upon both Damarys personally and her attorney, and this court should not second guess that decision. *See Harris*, 158 Ariz. at 384, 762 P.2d at 1338.

¶30 The majority contends that I have reached my conclusion based on an incorrect standard of review. *Supra* n.7. But under either standard of review, the result should be the same. A trial court's determination as to reasonableness is a factual finding to which we will defer unless clearly erroneous. *See Harris*, 158 Ariz. at

384, 762 P.2d at 1338 (reasonableness determinations within trial court's discretion); *see also Phx. Newspapers, Inc.*, 188 Ariz. at 244, 934 P.2d at 808 (trial court's factual findings reviewed for clear error); *Hamm*, 157 Ariz. at 338, 757 P.2d at 614 (when request for fees made under § 12-349(A)(3), "the trial judge reviews the course of the proceedings and the conduct of the parties from the commencement of the action to decide whether the proceedings have been unreasonably expanded or delayed"); *cf. Associated Aviation Underwriters v. Wood*, 209 Ariz. 137, ¶ 107, 98 P.3d 572, 606 (App. 2004) (in context of reviewing settlement agreements, determination of reasonableness is factual finding reviewed for clear error). A finding of fact is not clearly erroneous if it is supported by substantial evidence, allowing a reasonable person to reach the trial court's same result. *Castro v. Ballesteros-Suarez,* 222 Ariz. 48, ¶ 11, 213 P.3d 197, 200-01 (App. 2009). In determining whether substantial evidence supports the trial court's decision, this court "will not reweigh the evidence or substitute our evaluation of the facts." *Id.*

¶31 Here, Damarys and her attorney filed unnecessary and groundless motions to strike and refused to accept service and then complained about the timeliness of service. Because, under a deferential rather than de novo standard of review, the record contains substantial evidence to support the trial court's factual finding that Damarys and her attorney unreasonably expanded or delayed the proceedings, the court, as a matter of law, correctly applied § 12-349(A)(3). *See Phx. Newspapers, Inc.*, 188 Ariz. at 245, 934 P.2d at 809 (court misapplied § 12-349(A)(1) because it found insufficient evidence to support finding of intent to harass and its factual finding that claim was groundless not supported by applicable law).