

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MICHELLE DOREEN RICART, *Plaintiff/Appellee*,

v.

JOSEPH M. SAKALA, *Defendant/Appellant*.
No. 1 CA-CV 22-0115

FILED 10-20-2022
AMENDED PER ORDER FILED 10-31-2022

Appeal from the Superior Court in Maricopa County
No. CV2021-054048
The Honorable Mary Collins Cronin, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Jaburg & Wilk PC, Phoenix
By Kathi M. Sandweiss
Counsel for Plaintiff/Appellee

Law Office of Shannon Peters, Phoenix
By Shannon L. Peters
Counsel for Defendant/Appellant

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the court, in which Presiding Judge David D. Weinzweig and Judge D. Steven Williams joined.

H O W E, Judge:

¶1 Joseph Sakala appeals from the trial court’s ruling upholding an injunction against harassment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court’s order. *Clark v. Kreamer*, 243 Ariz. 272, 275 ¶ 10 (App. 2017). Michelle Ricart petitioned for an injunction against Sakala. The petition alleged three separate incidents between Ricart and Sakala within the last year since the petition was filed. In the first incident, Sakala knocked on Ricart’s neighbor’s door and asked the neighbor if he had cameras because one of his “Open House” signs was stolen. Sakala pointed at Ricart’s house and told the neighbor that he believed that the Ricarts stole the sign because he had problems with them in the past.

¶3 The second incident occurred at Ricart’s son’s school. Ricart arrived at the school and parked her car, waiting to pick up her son. She did not realize that Sakala was parked in the parking spot in front of her. As her son walked toward her car, she took photos of him. As she took the photos, Sakala got out of his car and turned towards Ricart’s car. Sakala started yelling with his hands in the air, saying that Ricart was taking a photo of his car. Ricart and her son were intimidated and got in their car and locked the doors. From inside the car, Ricart yelled that she did not know it was his car and was taking photos of her son. Sakala continued to yell at Ricart. Ricart drove away, and so did Sakala. Sakala then drove close to Ricart to slow her down.

¶4 In the third incident, Ricart’s husband’s arrest record and booking photos were anonymously mailed to Ricart’s son’s school. The trial court issued the injunction. Sakala requested a hearing on the injunction.

¶5 During the hearing, both parties were present; Ricart had counsel, but Sakala appeared on his own behalf. Ricart, her son, and Sakala testified at the hearing. The court admitted two photos taken during the

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school incident as evidence. One of the photos showed a young boy, presumably Ricart's son. The other photo did not show Ricart's son, only Sakala's car. The trial court found that Sakala had committed acts of harassment or may commit acts of harassment in the future. Therefore, it continued the injunction against Sakala. Sakala timely appealed.

DISCUSSION

¶6 Sakala argues that the trial court abused its discretion in (1) finding that the incident at Ricart's son's school constituted harassment without considering whether his behavior served a legitimate purpose, and (2) upholding the injunction against harassment based on only one instance of harassment. He also argues that the trial court violated his due process rights by denying him the opportunity to cross-examine Ricart's witness. We will affirm an order granting an injunction against harassment absent "a clear abuse of discretion." *LaFaro v. Cahill*, 203 Ariz. 482, 485 ¶ 10 (App. 2002).

¶7 Sakala, as the appellant, must "ensure that the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised." *Blair v. Burgener*, 226 Ariz. 213, 217 ¶ 9 (App. 2010) (internal citations omitted). Though Sakala attached a transcript of the hearing to his opening brief, the transcript "was not designated as part of the record." *Baker v. Baker*, 183 Ariz. 70, 72 (App. 1995). We, therefore, cannot consider it. Without this transcript, we presume the evidence and arguments presented at the hearing support the trial court's findings and order. *Blair*, 226 Ariz. 213, 217 ¶ 9. Given that presumption, we assume the trial court considered whether Sakala's behavior served a legitimate purpose, and it reached the conclusion that Sakala's behavior did not serve a legitimate purpose. Similarly, because Ricart's petition for the injunction alleged more than two incidents, we also assume that the trial court found at least two of the incidents to constitute harassment and upheld the injunction based on at least two such instances. Thus, because Sakala failed to meet his burden on appeal, we cannot say that the trial court abused its discretion.

¶8 Lastly, we review de novo Sakala's claim that his due process rights were violated. *Savord v. Morton*, 235 Ariz. 256, 260 ¶ 16 (App. 2014). We will reverse a court's order based on due process errors only if a party is prejudiced. *Volk v. Brame*, 235 Ariz. 462, 470 ¶ 26 (App. 2014). The record does not show that Sakala raised this argument at the trial court; instead, he raises it for the first time on appeal. As such, he has waived it. *See BMO Harris Bank N.A. v. Espiau*, 251 Ariz. 588, 594 ¶ 25 (App. 2021) (explaining

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that an argument is generally waived on appeal if the argument was not raised at trial).

CONCLUSION

¶9 For the reasons stated, we affirm.



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