DIVISION ONE
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RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

AAA FULL TRANSPORTATION SYSTEM dba AAA CAB SERVICES, INC., an Arizona corporation,	)	1 CA-CV 10-0646
	)	DEPARTMENT A
Appellees,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
v.	)	Rule 28, Arizona Rules of
	)	Civil Appellate Procedure)
JOHN W. HOLLIS and JUDITH L. HOLLIS,	)	
Appellants.	)	

Appeal from the Superior Court in Maricopa County

Cause No. CV2006-011153

The Honorable Douglas L. Rayes, Judge

AFFIRMED

John W. Hollis — West Sacramento, CA
And
Judith L. Hollis
Appellants *in Propria Persona*

The Elardo Law Firm, P.C. — Phoenix
By John A. Elardo
And Venessa J. Bragg
Attorneys for Appellees

T H O M P S O N, **Judge**

¶1 John and Judith Hollis appeal the trial court's denial of their motion for new trial and motion for judgment as a matter of law. For the following reasons, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

¶2 AAA Full Transportation System dba AAA Cab Services, Inc. (AAA) operates an extensive taxicab service in Arizona. In 2002, AAA purchased a fleet insurance policy which designated American Transportation Insurance Corporation (ATIC) as the insurer. The insurance policy reflected that ATIC was assuming 100% of the risk for AAA's fleet insurance coverage after a $100,000 self-insured retention (SIR). One year later, AAA renewed the policy. AAA paid significant advance and monthly premiums, intended to be used for fleet insurance with ATIC.

¶3 In 2003, AAA notified L & W Claims Management (L & W), the entity AAA believed to be the claims administrator, that a double-fatality motor vehicle accident had occurred and that the resulting claim ("Way claim") would likely exceed the $100,000 SIR. Several months later, AAA sent L & W a summons and complaint arising out of the Way claim. AAA then received a demand for the $100,000 SIR, signed by John Hollis, from a company called Tri-Continental Exchange Limited (TCE), which stated that if AAA did not "remit the amount of the SIR requested within fourteen (14) days" the application of insurance would be terminated with respect to any subsequent or pending claim.

¶4 An attorney for AAA, Lane, contacted John Hollis, as he purported to be the attorney for AAA and the insurers, to clarify why the SIR was requested to be paid to TCE instead of ATIC. John replied in a letter dated March 9, 2004, in which he advised that an "internal administrative error" resulted in "mistakenly designating [ATIC] as the carrier" and that the "correct insurer" was actually United Guarantee Reassurance Limited (United). John stated that AAA should remit the $100,000 SIR to TCE or L & W no later than March 11, 2004 in order to fully tender the defense of the Way claim to the insurance company. John further advised that an attorney, Simmons, had been retained to defend the claim, should AAA wish to have "the Company" undertake defense of the matter.

¶5 As requested, AAA remitted a $100,000 check to L & W. AAA's risk manager, Minietto, personally delivered the check to Judith Hollis, John's wife, at the L & W office. Judith stated that although L & W's owner, Stephen Weber, was out of the office, she could nevertheless accept the check and stamp Weber's signature on a document acknowledging receipt of AAA's check. Judith produced the acknowledgment and endorsed the back of the check "for deposit only to the account of Tri-Continental Exchange Limited, Acct. No. [], American Transport Ins. Corp." Judith signed the back of the check, printed her name below her signature, and wrote "Asst. Secretary."[1]

[1] AAA did not discover that the $100,000 check was endorsed and signed by Judith Hollis until it received a copy of the check on July 31, 2006.

¶6 AAA cancelled its insurance policy with ATIC effective April 1, 2004, although it continued to correspond with L & W agents and employees, including John and Judith Hollis, throughout most of 2004. In October 2004, Simmons requested payment of his legal fees incurred in defending the claim against AAA. John sent Simmons a letter informing him that TCE's assets had been seized by the United States. Simmons terminated his representation of AAA due to non-payment of his legal fees, although AAA later paid Simmons for fees he incurred.

¶7 Lane sent correspondence to L & W on January 20, 2005, regarding the $100,000 SIR check. Lane stated that he was aware of TCE's insolvency and made demand for immediate return of the $100,000. John replied in a letter stating that the St. Vincent and Grenadines government "raided [TCE's] offices, seized all its records, and shut down the company."

¶8 In July 2006, AAA filed a complaint against John and Judith Hollis, inter alia, alleging fraud, misrepresentation, professional negligence, conspiracy, breach of contract/fiduciary duties, constructive fraud, bad faith, and Racketeer Influenced and Corrupt Organizations Act (RICO) violations. AAA's damages theory at trial was that the Hollises and co-defendants, through fraud and misrepresentations, sold AAA worthless "invalid" insurance policies, and as a result, AAA was deprived of coverage and did not receive the benefit of the policies. Additionally, AAA alleged that although it paid the $100,000 SIR to L & W Claims for the Way

claim, defendants did not defend AAA against that claim. Furthermore, following the filing of the Way case, AAA presented two other claims for defense and unsuccessfully attempted to invoke its insurance coverage. AAA alleged it suffered significant monetary damages because it defended itself as an uninsured entity in all three claims that exceeded the $100,000 SIR under the policy periods.

¶9 At trial, John testified on his own behalf.[2] He testified that TCE and ATIC were not licensed or authorized to do business in Arizona. TCE was incorporated in 1996 in St. Vincent, the Grenadines. Robert Brown and Stephen Weber[3] were listed as directors of TCE. ATIC was incorporated in American Samoa in February 2002. Its Articles of Incorporation listed Keith Morcroft, Robert Osmundsen, and Steve Speir on the Board of Directors. Morcroft testified that although each of them owned 33% of the shares in ATIC, no one paid anything for the shares.

¶10 John was questioned about a series of wire transfers in 2002 through 2004 from various sources to his trust account. Most of the sources in question were accounts controlled or owned by Robert Brown, such as "Robert Brown dba Tri-Continental Exchange" (Brown dba TCE account), "Hook Enterprises," "Vine Craft Services," "Crest Lake Properties," "Alternative Market Exchange," and

[2] John also represented a co-defendant, Joseph Patterson, at trial. The jury found in favor of Patterson on all counts.

[3] At the time of trial, Weber had passed away.

"American Continental." The amount of the wire transfers ranged from $10,000 to at least $602,000. Additionally, John's trust account statements showed periodic transfers from the trust account to John's personal checking account. In 2003, at least $350,000 was debited from the trust account to the Brown dba TCE account. Also in 2003, approximately $2.3 million was transferred to John's trust account from Brown's account at the Royal Bank of Canada. Within weeks of that transaction, John wired $1.8 million to Hook Enterprises. John generally testified that the transfers were authorized by his "client," referring to Brown, ATIC, or some other individual or entity. Substantial wire transfers were also periodically sent to L & W. John testified that Brown authorized the disbursements to L & W.

¶11 Numerous checks written from the trust account, which were endorsed by Judith and issued to John, were admitted in evidence. John testified the checks were issued for his legal fees; however, no legal bills or documents were offerred at trial to support his testimony. John stated that he would not have produced the legal bills in the course of litigation because of the attorney-client privilege. Judith was also receiving checks from TCE for her work at L & W, and receiving monthly checks from John's trust account.

¶12 Judith testified that she was not an employee of L & W. She testified that her bookkeeping work was contract labor, but that no contract existed between her and L & W. She also testified

that she was paid by ATIC for contract labor, by verbal agreement with Morcroft and the ATIC board of directors. Judith stated that she wrote checks to herself, TCE, and John at Morcroft's direction. She specifically stated that Morcroft "approved everything that was going on." After Morcroft was replaced on ATIC's board of directors, Judith testified that L & W checks were written at the direction of Wilson, Keyvan, or Osmundsen.[4] Finally, Judith testified that when L & W shut down, the L & W files were placed in her garage, but that she did not personally move them there.

¶13 Morcroft testified that John Hollis and Robert Brown asked him to be a director of ATIC, along with Osmundsen and Spier. Morcroft testified that they never had board meetings and that John and Judith were actually directing TCE and ATIC. He testified that although he thought ATIC should be separate from TCE, John and Judith decided that ATIC would be run by staff in St. Vincent, the Grenadines, i.e., TCE staff. He further testified that he never hired L & W as its claims administrator, and that he never had a checkbook for the ATIC account. He "always assumed that [ATIC checks] were always written only by Judith."

¶14 Morcroft also testified that several documents bearing his signature were forgeries. Specifically, he testified that his signature was forged, used without authorization, or "electronically lifted" on the AAA policy dated July 27, 2004 and a

[4] Patterson, who worked for L & W, testified that he requested checks from Judith, not Weber, L & W's alleged owner. In fact, he "didn't know if he ever saw a check written from Steve Weber."

letter dated July 15, 2003 and stock certificate for Combined Services Limited[5] as part of an application for an international insurance license application submitted to St. Vincent and the Grenadines. When Judith was questioned about the use of Morcroft's signature stamp, she responded that she used it "once, and perhaps twice, with his permission." John admitted to Morcroft in a letter dated May 7, 2004 that Morcroft's "signature stamp was used once and only once" on a letter to the American Samoa insurance commissioner accompanying ATIC's annual statement of insurance.

¶15 Minietto testified that he believed that Judith was the claims manager at L & W. He stated, "it seemed like all my correspondence [addressed] to other people Judy was answering, so I kind of started talking to Judy and forwarding things towards Judy, because that seemed to be where I was getting my responses from." He testified that he was never informed that Judith was running ATIC or L & W.

¶16 Osmundsen, who evidence showed was a director of ATIC with Morcroft, testified that he did not give Judith directions to write checks on ATIC's behalf, nor did he tell Judith to write herself a check. He testified that he did not believe he was running ATIC, does not know who owns ATIC or who the shareholders

[5] John described Combined Services Limited (CSL) as an "off-shore insurance company." The CSL stock certificate submitted to St. Vincent stated that Morcroft owns 100,000 shares. Morcroft testified he never paid $100,000 for CSL, nor does he own any interest in CSL. Morcroft believed that John was trying to "plant [him] in Combined Services for purposes of the regulators" in St. Vincent because CSL and TCE were "having trouble with licensing."

are, and stated he has never been a signatory on a bank account for ATIC. In fact, he testified that he did not know where ATIC was banking.

¶17 Wilson, who was the director of ATIC at the time of trial (and had been since late 2004), testified that after Morcroft was dismissed from the ATIC Board of Directors, John contacted him to ask if Wilson wanted to replace Morcroft on the ATIC's Board. Wilson testified he did not contribute capital to the company, did not purchase stock, and does not know who owns ATIC stock. Wilson testified that he reported to John and Judith regarding his activities at ATIC.

¶18 The jury found Judith liable for negligent misrepresentation, fraud (misrepresentation and nondisclosure), and conspiracy. John was found liable for professional negligence, violation of the Arizona RICO statutes,[6] and conspiracy. The jury also found that the Hollises acted in concert. Although the jury originally assessed punitive damages in the amount of $10 million as to John and $10 million as to Judith, the trial court reduced both awards to $1.5 million.[7] The Hollises filed a motion for new

[6] Because the trial court determined that no right to a jury trial exists on the RICO claim, it considered the jury's verdict on this claim as advisory. The trial court found in favor of AAA on the RICO claim against John Hollis.

[7] The jury also awarded compensatory damages in the amount of $1.3 million; however, the Hollises do not appeal the amount of that award.

trial and a motion for judgment as a matter of law. The trial court denied both motions.

¶19 The Hollises filed a timely appeal. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) § 12-2101(A)(1) (2003).

II. DISCUSSION

¶20 The Hollises raise numerous issues on appeal, which we consider in turn.

A. References to Attorney-Client Privilege

¶21 The Hollises argue that the trial court abused its discretion in denying their motion for new trial based on alleged improper references to the attorney-client privilege made by AAA. Specifically, the Hollises complain that in closing argument, AAA made the following statements:

> - "And why is that? Because you saw a great deal of the defense. It's hide. Hide behind what? Attorney/client privilege."
>
> - "We've talked to Mr. Hollis. You now know what we know with respect to his involvement in this fraud. Okay? He's trying to hide behind attorney/client privilege. He's objecting to documents. He's trying to prevent you from getting the truth. He tried to do that with us too."
>
> - "That's the only way you can keep the documents from the public because he gets to hide them, attorney/client privilege. And he's deep in it."
>
> - "Don't give any other documents to the Plaintiffs. They'll hide behind Hollis' attorney/client privilege."

¶22 The Hollises' motion for new trial argued the jury verdicts were the result of passion or prejudice stemming from the references to the attorney/client privilege. The trial court found that "the verdicts were not the result of passion or prejudice with the exception of the punitive damage award against the Hollises." In denying the Hollises' motion for new trial, the trial court stated as follows:

> Plaintiff's closing argument at least suggested, if not outright stated, that [the Hollises] were using the attorney-client privilege as a means to hide evidence. That argument was improper. However, there was no objection. Although it is a close call, the Court does not find that counsel's improper argument warrants a new trial.

¶23 The Hollises failed to object to AAA's closing argument. [8] "A party who withholds timely objection and fails to request that the trial court admonish the jury to disregard the improper comments of an opponent does not preserve the objection as a ground for appeal 'unless . . . the misconduct was of so serious a nature that no admonition or instructions by the court could undo the damage.'" *Liberatore v. Thompson*, 157 Ariz. 612, 619, 760 P.2d 612, 619 (App. 1988)(citing *Schmerfeld v. Hendry*, 74 Ariz. 159, 161, 245 P.2d 420, 421 (1952)(quotation omitted)). The Hollises argue that AAA's misconduct was so egregious that no objection and

[8] We reviewed other portions of the record in which the Hollises objected when AAA inquired into privileged communications. The trial court properly sustained the Hollises' objections in each instance.

no jury admonishment could possibly repair the damage. We disagree. The Hollises waived this issue on appeal by failing to object to AAA's argument. Accordingly, we decline to address this issue.

B. Alleged Violation of Order in Limine

¶24 The Hollises contend that AAA violated an order in limine pertaining to evidence of criminal investigations against Brown. AAA argues that it did not violate the order. We review the trial court's ruling on a party's alleged violation of court orders for an abuse of discretion. *Cervantes v. Riglaarsdam*, 190 Ariz. 396, 398, 949 P.2d 56, 58 (App. 1997).

¶25 Although the trial court granted the Hollises' motion in limine to preclude the criminal investigation, it did leave the issue open for AAA to show relevance at trial. John testified that in mid-September 2004, Brown completed a wire authorization and faxed it to one of Brown's entities, American Continental (in Bermuda), so that roughly $602,000 could be wired into John's trust account. AAA's counsel asked the trial court if he could approach, and the parties had a bench conference. Thereafter, AAA asked John if he knew that Brown was arrested and in custody on September 3, 2004, which John confirmed. The court then provided the jury with a limiting instruction, that "whatever happened to Brown is not any evidence of anything or any wrongdoing by any of the defendants in this case." Questioning resumed without another reference to Brown's arrest or custody.

¶26 The other instance of AAA's inquiry into criminal investigations occurred in a similar fashion. The court ordered an afternoon recess following John's testimony about his representation of Brown and Brown's various companies. When the trial resumed, AAA asked John, "[G]overnment authorities seized your trust account on September 17, 2004 for $1.2 million, correct?" John replied in the affirmative. AAA then asked, "And government authorities then seized $225,958.84 out of your personal checking account on October 1st, 2004; is that correct?" John again responded affirmatively. No objection was made, and shortly thereafter, the trial court instructed the jury as follows:

> The fact that money is seized from an account is not evidence of criminal activity, and you're not to draw any conclusions that it was. Further, the fact that the money, any money or seizure does not prove where the money came from, so you're not to draw any conclusions about where the money came from either.

¶27 We agree with AAA that based upon this record, no violation of the order in limine occurred. The trial court did not abuse its discretion in permitting AAA to establish the relevance of specific questions and in giving a limiting instruction thereafter.

C. Insufficient Evidence

¶28 The Hollises filed a motion for new trial based upon insufficiency of the evidence, which the trial court denied. The trial court also denied their motion for judgment as a matter of

law. On appeal, the Hollises again contend the evidence was insufficient to support the jury's verdicts. They also claim that the judgment, as modified with the findings of fact on AAA's RICO claim, is unsupported by the evidence. They argue that John cannot be held liable for unlawful conduct of third persons under the RICO statute and that there is no evidence his actions (or inaction) caused damage to AAA.

¶29 We review for abuse of discretion the trial court's denial of the motion for new trial on the grounds that the verdict is against the weight of the evidence. *Styles v. Ceranski*, 185 Ariz. 448, 450, 916 P.2d 1164 (App. 1996). We review de novo a court's ruling on a motion for judgment as a matter of law. *Shoen v. Shoen*, 191 Ariz. 64, 65, 952 P.2d 302, 303 (App. 1997). At the same time, we view the evidence and all reasonable inferences drawn from the evidence in the light most favorable to affirming the verdicts. *Hutcherson v. City of Phoenix,* 192 Ariz. 51, 53, ¶ 13, 961 P.2d 449, 451 (1998)("[I]f any substantial evidence exists permitting reasonable persons to reach such a result, we will affirm the judgment.").

¶30 The jury found that the Hollises committed conspiracy. Conspiracy may be implied by the tortious conduct itself; the conspiratorial agreement need not be express. Restatement (Second) of Torts § 876, cmt. a (1979); *see also Dawson v. Withycombe*, 216 Ariz. 84, 103, ¶ 53, 163 P.3d 1034, 1054 (App. 2007). "A conspiracy may be established by circumstantial evidence through

the nature of the acts, the relationship of the parties, the interests of the conspirators, or other circumstances." *Dawson*, 216 Ariz. at ¶ 53, 163 P.3d at 1054.

¶31 As to Judith, we conclude that the evidence was sufficient to support the jury's findings. John's own testimony confirmed that Judith had an "arrangement" with TCE, was doing "the books" at L & W, and was keeping ATIC's books. An email was produced from Judith to Morcroft in which she was questioning Morcroft's expense account and denying certain expenses, which suggests Judith exercised control over ATIC funds. In another email from Brown to John and Judith, Brown discussed whether it was proper for Morcroft to continue to receive payments personally. Judith's testimony often conflicted not only with other witnesses' testimonies, but with her own deposition transcript.

¶32 As to the evidence supporting the findings against John, Morcroft testified that John and Judith were, in fact, directing TCE and ATIC. Osmundsen testified he did not believe he was running ATIC, does not know who owns ATIC or who the shareholders are, and has never been a signatory on a bank account for ATIC. Similarly, Wilson testified he did not contribute capital to the company, did not purchase stock, and does not know who owns ATIC stock. Wilson further testified that he reports to John and Judith regarding his activities at ATIC. Morcroft testified that many of the documents submitted by John to foreign authorities or other parties were forgeries bearing his signature.

¶33 AAA's vice president testified that he had no knowledge that John and Judith were actually running ATIC and had set up the company. He testified that if he had known, he would not have purchased the insurance.

¶34 Finally, we find no merit in the Hollises' argument that the findings of fact on the RICO claim are unsupported by the evidence. The trial court made particularized findings in accordance with A.R.S. § 13-2314.04(L) (2011). John was found to have engaged in a pattern of unlawful activity by money laundering and participating in a criminal syndicate or fraudulent scheme or artifice. The trial court's judgment contained specific findings describing the pattern of unlawful activity, listed in detail the numerous wire transfers, and sufficiently particularized the monetary and general damages suffered by AAA as a result of John's illegal activities. We hold sufficient evidence supported the jury's verdicts against the Hollises.[9]

D. Statute of Limitations Re: Negligent Misrepresentation

¶35 The Hollises contend that AAA's claim for negligent misrepresentation against Judith was time-barred under A.R.S. § 12-

[9] The Hollises argue in their Reply Brief that by signing the Direct Policy Endorsement (which advises AAA that the insurance company is unregulated), AAA "insiste[d] on obtaining, through its own agent, insurance coverage from an unauthorized, non-admitted carrier." The Hollises seem to argue that this document is evidence that their representations and non-disclosures would not have altered AAA's decision to purchase insurance from ATIC. Although AAA may have agreed to forfeit some regulatory protection, we reject the Hollises' argument that such a waiver operates as an agreement to be defrauded.

542 (2011). Specifically, they argue that the two-year limitations period began to run on March 30, 2004, the date AAA cancelled all insurance it had purchased from ATIC. AAA filed its complaint on July 26, 2006.

¶36 Appellants raised the statute of limitations as an affirmative defense and argued this issue below in a motion to dismiss AAA's complaint. AAA filed a response, arguing at length that the claim was not time-barred because it did not discover the nature and extent of the insurance fraud until early 2006. Furthermore, AAA argued that the statute of limitations would be tolled due to appellants' continued material misrepresentations, concealment of the truth, and efforts to elude investigation by AAA. The trial court conducted an oral argument and denied the Hollises motion to dismiss, reasoning that "[t]he limitations defense raises potential questions of fact not susceptible of resolution on a motion to dismiss."

¶37 At the close of trial, the jury received an instruction on the two-year statute of limitations for negligent misrepresentation. Specifically, the jury was instructed, in part, as follows:

> To establish this defense, [the Hollises] must prove that before July 26, 2004, [AAA} knew, or in the exercise of reasonable diligence should have known, that it had suffered injury as the result of the misrepresentations by [the Hollises] that [AAA} now claims to have been negligent.

¶38 The trial court correctly deferred this issue to the jury, and the jury determined that AAA's claim was not time-barred, as it found Judith liable for negligent misrepresentation. *See Walk v. Ring*, 202 Ariz. 310, 316, ¶ 23, 44 P.3d 990, 996 (2002) ("determinations of the time when discovery occurs and a cause of action accrues 'are usually and necessarily questions of fact for the jury'" (quoting *Doe v. Roe,* 191 Ariz. 313, 323, ¶ 32, 95 P.2d 951, 961 (1998))). Accordingly, we will not disturb the jury's factual finding.

E. Punitive Damages

¶39 On appeal, the Hollises claim that the punitive damages award, "even as reduced by the court, was so shockingly excessive that it could only have been designed to financially destroy [them]." The Hollises argue that the award, in fact, has destroyed them because they were "forced" into bankruptcy.

¶40 The purpose of punitive damages is to "express society's disapproval of outrageous conduct and to deter such conduct by the defendant and others in the future." *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 497, 733 P.2d 1073, 1080 (1987). We recognize, as the Hollises point out, that "[o]ne category of relevant evidence" in calculating punitive damages is the defendant's financial position. *Id*. However, another category subject to consideration is "the nature of the defendant's conduct," including the duration of misconduct, the degree of defendant's awareness of the harm, and

any concealment of it. *Id.* Finally, the "profitability of the defendant's conduct" is a third relevant consideration. *Id.*

¶41 The punitive damages awards against John and Judith, as reduced by the trial court, were not outrageous or excessive in light of the Hollises' conduct. The weight of the evidence presented at trial did not substantiate or provide any reasonable explanation for the numerous and substantial wire transfers of funds from various sources to John and Judith Hollis. We conclude the punitive damage awards were appropriate as reduced by the trial court.

F. Award of Attorneys' Fees and Costs

¶42 Finally, John contends that the award of attorneys' fees and costs in favor of AAA violates A.R.S. §13-2314.04(M)(2011), which provides as follows:

> Notwithstanding subsection A of this section, a court shall not award costs, including attorney fees, if the award would be unjust because of special circumstances, including the relevant disparate economic position of the parties or the disproportionate amount of the costs, including attorney fees, to the nature of the damage or other relief obtained.

¶43 Subsection A of the statute awards a successful plaintiff "treble damages and the costs of the suit, including reasonable attorney's fees." A.R.S. §13-2314.04(A). In general, we review a trial court's award of attorneys' fees and costs for an abuse of discretion. *See State v. Shipman*, 208 Ariz. 474, 475, ¶ 3, 94 P.3d 1169, 1170 (App. 2004)(reviewing award of attorneys' fees under

Rule 11, Arizona Rules of Civil Procedure); *E. Vanguard Forex, Ltd. v. Ariz. Corp. Comm'n*, 206 Ariz. 399, 415, ¶ 54, 79 P.3d 86, 102 (App. 2003)(reviewing award of fees under A.R.S. § 12-348, which mandates an award of attorneys' fees and other expenses to a non-governmental party that prevails on the merits); *In re Marriage of Berger*, 140 Ariz. 156, 167, 680 P.2d 1217, 1228 (App. 1983)(analyzing attorneys' fee award in the context of a marital dissolution proceeding); *In re Estate of Estes*, 134 Ariz. 70, 80 654 P.2d 4, 14 (App. 1982)(reviewing a court's decision whether to award a fiduciary's fees).

¶44 The trial court awarded AAA its costs in the amount of $14,886.54 and found defendants Osmundsen and John Hollis "liable for attorneys fees of $23,481.50 on the RICO claims." John claims that he is not wealthy and that there is an "indisputable and extremely disparate wealth" between him and AAA. These do not constitute "special circumstances" under A.R.S. § 13-2314.04(M), particularly considering the nature of the financial damage to AAA. AAA was successful in its RICO claim against John. We hold the trial court did not abuse its discretion in awarding AAA, as a successful plaintiff, its reasonable attorneys' fees and costs pursuant to A.R.S. § 13-2314.04(A).

III. CONCLUSION

¶45 For the foregoing reasons, we affirm the trial court's denial of the Hollises' motion for judgment as a matter of law and motion for new trial.

/s/
_____
JON W. THOMPSON, Judge

CONCURRING:

/s/
_____
DIANE M. JOHNSEN, Presiding Judge

/s/
_____
MARGARET H. DOWNIE, Judge