

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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JAMES M. HOBERT,  
*Plaintiff/Appellee,*

*v.*

LAURA M. RODRIGUEZ,  
*Defendant/Appellant.*

No. 2 CA-CV 2017-0028  
Filed November 9, 2017

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).*

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Appeal from the Superior Court in Pima County  
No. C20165523  
The Honorable Cynthia T. Kuhn, Judge

**AFFIRMED**

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Laura M. Rodriguez, Tucson  
*In Propria Persona*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

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ESPINOSA, Judge:

¶1 Laura Rodriguez appeals from the trial court's order issuing an injunction against harassment restricting her from having contact with James Hobert and from going to his church. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 We relate the facts in some detail, and in a light favoring the trial court's rulings. *Mahar v. Acuna*, 230 Ariz. 530, ¶ 2, 287 P.3d 824, 826 (App. 2012). In December 2016, Hobert filed a petition for an injunction against harassment by Rodriguez. Hobert identified his relationship to Rodriguez as "clergy-parishioner" and attached a written narrative detailing his contacts with her. Hobert's account indicated Rodriguez started attending his church sometime in the spring of 2016 and soon thereafter "began showing up at [his] office to talk with [him]." On one occasion, Hobert ended the meeting because it was late and he needed to leave. This upset Rodriguez, so he scheduled "a regular [one-hour] meeting with her."

¶3 Hobert thereafter told Rodriguez on more than one occasion that he "felt uncomfortable" about meeting with her, and he encouraged her to "look for a woman spiritual guide." When he learned that Rodriguez may have "had an obsession with [another priest and] was perhaps harassing him," Hobert made a "deal" with her that he would meet with her for an hour each week if "she would leave [the other priest] alone." Rodriguez raised the topic of the church's teachings on sexuality both for priests and laypersons "several times," and Hobert "saw her question[s] as being provocative, but not as propositioning [him], but rather as the mischievous school girl making the authority figure turn red in embarrassment in front of a class."

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¶4 In mid-September 2016, Rodriguez had an “outburst” during a weekly Sunday night Bible study and “got in a shouting match with some of the other participants.” Hobert asked her to leave and then agreed with the other Bible study members “to ask her not to return.” Rodriguez, however, waited for Hobert outside and spoke with him at length. When she made a comment expressing a sexual interest in Hobert, he felt “shaken” and told her “a romance between [them wa]s impossible.”

¶5 The following day, Hobert contacted the diocese about ending his one-on-one meetings with Rodriguez by having “a final meeting with [her], with another person present, where [they] would formally end the arrangement.” Hobert scheduled a meeting with Rodriguez the next week, not telling her a nun would also be present and it would be their last meeting because he was concerned she would cancel the meeting otherwise. Hobert’s “goal in the meeting was to end the spiritual direction relationship, to end any future confessor/penitent celebration of the sacrament of reconciliation together, and to preclude . . . any lengthy private conversations after, e.g., masses or other parish meetings.”

¶6 At the meeting, Rodriguez sought to continue her weekly meetings with Hobert, offering to “always meet . . . with someone else present, even . . . two others present” for another six months. Hobert repeatedly questioned why she needed to talk only with him, and not another spiritual director, such as one of the sisters at the Benedictine Monastery. Rodriguez said it was “because she felt she had built a base with [him]” and “stubbornly resisted” Hobert’s attempts to tell her their meetings needed to end. Following that meeting, Rodriguez spoke with several people at the diocese and on at least two occasions “loitered at [Hobert’s] workplace and aggressively sought [his] attention.” Hobert and the diocese agreed Rodriguez “was dangerous to [him]” and “a restraining order may be needed to keep her from harassing [him and the other priest].”

¶7 The trial court granted Hobert’s ex parte request for an injunction against harassment, which was served on Rodriguez. The injunction directed her not to have any contact with him and not to “go to or near” his church. Soon thereafter, Rodriguez requested a hearing, attaching a letter detailing her version of the events precipitating the injunction. Rodriguez stated that she had not been harassing the other priest Hobert mentioned but rather it was he who directed her to speak with Hobert in the first place. Furthermore, according to Rodriguez, Hobert

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made subtle expressions of romantic interest in her and asked about her “use of the Muslim veil.” Finally, Rodriguez claimed she only ran into Hobert following the Bible study incident and “could have claimed sexual harassment” based on his statements during their conversation, “driv[ing] the false accusation against [her].” She also argued “Hobert’s claim of harassment [wa]s a testimony under duress” from his superiors, the injunction infringed her First Amendment religious freedom because it forbade her from going to Hobert’s church, and the “false harassment claims” had been made “in order to conce[a]l a discriminatory hate crime against [a] Muslim-looking American[.]”

¶8 The trial court granted Rodriguez’s hearing request and took testimony from both parties. Following Hobert’s testimony, the court found “there ha[d] been a series of acts, over a period of time, directed at [Hobert] that would cause a reasonable person to be seriously alarmed, annoyed or harassed” and “[Rodriguez’s] conduct, in fact, seriously alarm[ed], annoy[ed] or harass[e]d [Hobert], and serve[d] no legitimate purpose.” The court then heard from Rodriguez and “considered the applicable statutory law and the scope of [Hobert]’s request,” and found it to be “consistent and appropriate” and Hobert to have “met his burden of proof.” Additionally, the court found Rodriguez’s testimony “credible” but not sufficient to “change the Court’s conclusion that over time, the relationship between the parties ha[d] exhibited specific alarming and/or harassing conduct toward [Hobert].” The court issued a modified injunction nearly identical to the original one but “clarif[ied] that in the event [Hobert] [wa]s no longer associated with [the church], [Rodriguez could] participate in services [there].” Rodriguez appealed;<sup>1</sup> we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(5)(b).

**Injunction Against Harassment**

¶9 Section 12-1809(A)-(C), A.R.S., provides that an injunction against harassment may be obtained by filing a petition with the superior court identifying the plaintiff and defendant and containing “[a] specific statement showing events and dates of the acts constituting the alleged harassment.” The statute allows the court to issue an injunction

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<sup>1</sup>Hobert did not file an answering brief in this appeal. In our discretion, however, we do not treat his failure to respond as a confession of error. See *McDowell Mountain Ranch Cmty. Ass’n v. Simons*, 216 Ariz. 266, ¶ 13, 165 P.3d 667, 670 (App. 2007).

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“[r]estrain[ing] the defendant from contacting the plaintiff . . . and from coming near the residence, place of employment or school of the plaintiff or other specifically designated locations.” § 12-1809(F)(2). Furthermore, the statute defines “harassment” as “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.” § 12-1809(S).

¶10 Rodriguez does not appear to challenge the trial court’s determination that her actions toward Hobert fell within the statutory definition of harassment. Rather, she argues the injunction fails the “3-part test for determining if an action of the government violates the First Amendment’s separation of Church and State” as set forth in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). Specifically, she asserts, “When a priest falls in love with a woman and his ministers and superiors persecute her, ostracize her, slander, humiliate, bully and ridicule her, and lay all blame on her, the State should only step in to definitively end all sexually discriminatory abuse” and “the Supreme Court [should] rule that the Catholic Church may not refuse sacraments to attractive spinsters at a parish (even if it is their own private property) because that’s the same kind of witch-hunting that’s been happening for hundreds of years.” She also claims “[t]his government action advances an exaggerated version of traditional Catholicism: emotional celibacy” and results in “excessive entanglement between government and religion” because Hobert “cannot testify about his own thoughts and ideas to the Court without expecting negative repercussions from his superiors.”

¶11 Rodriguez is correct that *Lemon v. Kurtzman* identifies three factors for determining whether a state action violates the Establishment Clause: “First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster ‘an excessive government entanglement with religion.’” 403 U.S. at 612-13 (internal citations omitted). Contrary to her argument, however, the injunction passes the *Lemon* test. First, it serves the secular purpose of protecting Hobert, an individual, against harassment. Second, it neither advances nor inhibits religion but rather protects that individual, who happens to be a priest, from harassment on the same terms as any other person seeking an injunction. Finally, the injunction does not threaten excessive entanglement with religion because, again, it protects a person, not a religious institution. The

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injunction's inclusion of Hobert's church does not change our conclusion, and the trial court additionally made clear that Rodriguez could return to the church if Hobert's affiliation there ended.

¶12 Moreover, to analyze the injunction along the lines Rodriguez suggests is beyond our purview. It is not our place to second-guess the trial court's determination that Hobert was, "in fact, seriously alarm[ed], annoy[ed] or harass[e]d" merely because Rodriguez claims he was actually "in love with" her and his testimony was based on fear of "negative repercussions from his superiors." See *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 36, 977 P.2d 807, 814 (App. 1998) ("We do not reweigh the evidence or determine the credibility of witnesses."). Nor will we comment upon religious policies such as the celibacy of priests or the qualifications for receiving sacraments. Cf. *Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 341 (1987) ("[R]eligious organizations have an interest in autonomy in ordering their internal affairs, so that they may be free to[] 'select their own leaders, define their own doctrines, resolve their own disputes, and run their own institutions.'") (Brennan, J., concurring), quoting Douglas Laycock, *Towards a General Theory of the Religion Clauses: The Case of Church Labor Relations and the Right to Church Autonomy*, 81 Colum. L. Rev. 1373, 1389 (1981). Finally, to the extent Rodriguez alleges Hobert's or the church's "sexually discriminatory abuse," she has identified no authority suggesting a discrimination claim is a cognizable defense against the issuance of an injunction, nor are we aware of any.

¶13 Rodriguez additionally argues the trial court's comments and actions during the hearing demonstrated the court did not read all of the letter she had attached to her request for hearing, was biased toward Hobert, and improperly limited her cross-examination of him. Because Rodriguez did not make the transcript part of the record on appeal, however, we are unable to address these arguments. See Ariz. R. Civ. App. P. 11(b); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995) ("A party is responsible for making certain the record on appeal contains all transcripts or other documents necessary for us to consider the issues raised on appeal. When a party fails to include necessary items, we assume they would support the court's findings and conclusions.") (internal citation omitted).

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**Disposition**

¶14 For the foregoing reasons, the trial court's grant of the injunction against harassment is affirmed.