

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

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ERNESTO SANCHEZ,  
*Plaintiff/Appellee,*

*v.*

VICTOR MANUEL ARREOLA,  
*Defendant/Appellant.*

No. 2 CA-CV 2019-0139  
Filed February 6, 2020

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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NOT FOR PUBLICATION  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. C20192365  
The Honorable Deborah Pratte, Judge Pro Tempore

**VACATED AND REMANDED**

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COUNSEL

Dumond & Doran PLLC, Phoenix  
By Christopher M. Doran  
*Counsel for Defendant/Appellant*

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**MEMORANDUM DECISION**

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

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ECKERSTROM, Judge:

¶1 Victor Arreola appeals the trial court's order affirming an injunction against harassment in favor of Ernesto Sanchez. For the following reasons, we vacate that order and remand for an additional hearing.

**Background**

¶2 In May 2019, Sanchez obtained an ex parte harassment injunction against Arreola on the ground that Arreola, a bail bondsman, had repeatedly threatened him with physical violence. Arreola requested a hearing, which the trial court promptly scheduled for June 2019, consolidating the case with a separate matter regarding an ex parte injunction that Sanchez's father had obtained against Arreola.

¶3 At a first one-hour hearing, the only witness who testified was Sanchez's father. Plaintiffs' shared counsel used thirty minutes, while Arreola's counsel used twenty minutes. At the conclusion of that hearing, the trial court determined that more time was required to "conclude these matters" (i.e., the two injunctions against Arreola) and scheduled a second one-hour hearing, at which each party was to be "allotted ½ of the available time."

¶4 At the beginning of the second hearing, the trial court warned the parties that the hearing would need to stop at a predetermined time and asked them to "keep that in mind." The court further clarified that plaintiffs' counsel would be allotted fifteen minutes and Arreola's counsel "20 to 25 minutes." Sanchez testified first. While he was cross-examined, Sanchez's counsel continually interrupted and delayed Arreola's counsel to ask questions about the exhibits, including asking questions directly of Arreola's counsel. Arreola repeatedly requested that those interruptions not be counted against his time. Arreola took the stand next, but before he was able to complete his testimony, the court advised, "[W]e are out of time." Arreola asked for five additional minutes because of "the whole fiasco with the logistics" and related interruptions from plaintiffs' counsel, but the court denied that request, moving on to allow plaintiffs' counsel "about one minute of cross-examination."

¶5 The trial court dismissed the injunction that had been issued in favor of Sanchez's father but affirmed the injunction in favor of Sanchez such that it "stay[ed] in full force and effect." Arreola then stated for the record his position that he had not been given "adequate time to present

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[his] case,” requesting “a continuance before the Court issues a ruling or to stay the ruling so that it can be continued.” He further explained: “Our testimony has been limited the entire time especially with the logistical hurdles we had to go through with opposing counsel being permitted to approach the witness stand during my [cross-]examination.” The court denied this request.

¶6 This appeal followed. Arreola contends his “due process rights were violated” because he “was not given time to present sufficient evidence for a substantive hearing.” We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(5)(b).

**Discussion**

¶7 The record before us supports Arreola’s claim that opposing counsel squandered Arreola’s limited time to present his case, not with proper objections, but because she was unprepared despite having been provided with Arreola’s documents in advance of the hearing. The trial court even conceded that the many interruptions from plaintiffs’ counsel had detracted from Arreola’s limited time. As a result, Arreola was not able to offer the testimony of any additional witnesses he had planned to present,<sup>1</sup> and the record also supports his claim that his own testimony was prejudicially incomplete. These are not minor issues; they go to the core of whether both sides had a fair opportunity to present their case. *See Comeau v. Ariz. State Bd. of Dental Exam’rs*, 196 Ariz. 102, ¶ 20 (App. 1999) (“Procedural due process means that a party had the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” (quoting *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976))).

¶8 We acknowledge that a trial court must be given broad discretion to manage its docket and that we may not substitute our judgment regarding the court’s day-to-day management of cases. *See Findlay v. Lewis*, 172 Ariz. 343, 346 (1992). But, “[p]rocedural due process . . . requires the court to afford litigants adequate time to present their evidence.” *Volk v. Brame*, 235 Ariz. 462, ¶ 19 (App. 2014). Here, Arreola plausibly argues that the court’s rigid management of its docket unreasonably prevented him from presenting his case in a “meaningful manner.” And, we note that the court retained the option of continuing the

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<sup>1</sup>The record reflects that at least one additional witness was present at the beginning of the hearing and waiting to be called. Arreola argues that he planned to present one other witness as well.

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case for one additional hearing. *Id.* ¶ 21 (“If, during the progress of a scheduled hearing, it becomes apparent that the court lacks sufficient time to receive adequate testimony, then the court must . . . continue the hearing to permit it to perform its essential tasks.”).

¶9 Sanchez has not filed an answering brief to respond to Arreola’s arguments. “When an appellant raises a debatable issue in a civil case, we may, in our discretion, treat the failure to file an answering brief as a confession of error.” *Tucson Estates Prop. Owners Ass’n v. Jenkins*, 247 Ariz. 475, ¶ 6 (App. 2019). Because Arreola has presented a non-trivial argument, which finds support in the record, that the trial court abused her discretion, we accept Sanchez’s concession of reversible error. *See Wood v. Abril*, 244 Ariz. 436, ¶ 6 (App. 2018) (“We review a trial court’s grant of an injunction against harassment for an abuse of discretion.”).

**Disposition**

¶10 We vacate the order affirming the injunction and remand for a hearing that satisfies the requirements of due process.