

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2012-000303-001 DT

08/17/2012

COMMISSIONER MYRA HARRIS

CLERK OF THE COURT  
K. Waldner  
Deputy

MIRIAM GARCIA

ADAM E LANG

v.

JAIME SHURTS (001)

JAMES L SULLIVAN

WILLIAM A KOZUB  
DESERT RIDGE JUSTICE COURT  
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

**Lower Court Case No. CC2012006991 and LC2011236553.**

Defendant-Appellant Jaime Shurts (Defendant) appeals the Desert Ridge Justice Court's determination sustaining an Injunction Against Harassment brought by Plaintiff-Appellee Miriam Garcia. Defendant Shurts contends the trial court erred. This is one of three related injunction against harassment cases between the parties. In a separate case, Plaintiff appeals the trial court's decision reducing her attorneys' fees from her requested amount of \$73, 538.50 to \$2,500.00. Because the three cases involve the same parties and the same incidents these three cases have been consolidated for purposes of determining this appeal.<sup>1</sup>

For the reasons stated below, the court affirms in part and reverses in part the trial court's judgment.

I. FACTUAL BACKGROUND.

On December 5, 2011, Defendant-Appellant Jaime Shurts<sup>2</sup> obtained an IAH against Plaintiff-Appellee Miriam Garcia.<sup>3</sup> This IAH precluded Ms. Garcia from having contact with Ms. Shurts and included in the order the following language:

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<sup>1</sup> Because the matters are interrelated and because the exhibits used in the three cases are the same, this court will—unless already described—identify the documents by date and description as opposed to Exhibit number. This Court recognizes the trial court files are replete with multiple copies of the same documents. In analyzing these documents, this Court will refer to documents that relate to the named parties and—except where indicated—will ignore OOPs and IAHs that relate to parties other than Ms. Shurts and Ms. Garcia. The one exception will be to reference the OOP in the family court matter between Mr. and Mrs. Shurts to the extent it references the Bajada home. This Court finds that any other use of an OOP or IAH ordered for third parties is not relevant to these proceedings as these matters are limited to the IAHs ordered or denied to Ms. Garcia and Ms. Shurts.

<sup>2</sup> This is a consolidated appeal from three different cases, all involving the same parties. For ease in following the opinion, the parties will be identified by name rather than as Plaintiff and Defendant.

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Defendant shall have no contact with Plaintiff except through attorneys, legal process, court hearings and as follows: Phone, Email/Fax/Text Messaging, Mail/Writing. Other: Do not approach me, contact me, follow me, stalk me, look at my facebook, [sic] tell others about my marriage or my legal pending relations with my husband. Do not harass me by continueing [sic] telling others that Ron and I are divorcing as we are not as per Rons [sic] request of minimum of two years to try and work things out.

Included in this order was an order stopping Ms. Garcia from going to Ms. Shurts' listed residence of 11025 Bajada Drive, Scottsdale, Arizona, 85262 as well as two workplaces: (1) Russ Lyon Sotheby in Scottsdale and the Pine Canyon club in Flagstaff. Judge Clancy Jayne of Desert Ridge Justice Court signed this IAH. This IAH was based on Defendant Shurts' Petition wherein she alleged she had asked Plaintiff Garcia to stop contacting Ms. Shurts' husband. Ms. Shurts alleged she was trying to reconcile with her husband and requested that Ms. Garcia refrain from telling others that Ms. Shurts was getting divorced. Ms. Shurts (1) claimed Ms. Garcia's actions caused her "mental and emotional distress" and (2) alleged Ms. Garcia's "gossip and slander have hurt my business capacity, relationships, and further caused me great emotional distress."

Ms. Garcia was served with this IAH on January 6, 2012. Ms. Garcia requested a hearing on the IAH on January 8, 2012, two days after being served. The same day that Ms. Garcia was served with the IAH, counsel for Ms. Shurts sent a letter<sup>4</sup> to Ms. Garcia's employer (1) informing Ms. Garcia's employer—FOX News—Ms. Shurts received an IAH against Ms. Garcia; (2) enclosing copies of the Petition and the Order for the IAH; (3) informing FOX News that counsel was investigating if Ms. Garcia had committed a crime—a violation of A.R.S. § 13-1408; (4) suggesting FOX News was complicit in aiding Ms. Garcia to avoid service; and (5) indicating counsel's intent to seek "the assistance of other local media outlets to get this matter resolved."

On January 11, 2012, at 1:37 p.m., Ms. Garcia's counsel e-mailed Keith Lee about the e-mail Keith Lee allegedly sent to FOX news. This e-mail informed Mr. Lee he had "facts seriously wrong" and that he was being used to carry out someone else's "personal vendetta." Counsel asked Mr. Lee to immediately contact him.<sup>5</sup>

On January 11, 2012, Lizbeth Licon at foxtv.com forwarded to Ms. Garcia a copy of a notice/e-mail<sup>6</sup> received from "Keith Lee."<sup>7</sup> Mr. Lee's e-mail had the subject heading: FW: Picket signs will be at FOX NEWS 3-6 pm [sic] tomorrow. The message said:

In dispute of Miriam Garcia having an affair with local businessman picketers [sic] will walk the street in the moral disgrace of Mia Garcia.

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<sup>3</sup> Injunction Against Harassment in CC2011-236553.

<sup>4</sup> Exhibit F re Letter from Berens, Kozub, Klobberdanz & Blonstein, PLC. to KSAZ FOX 1o dated January 6, 2012.

<sup>5</sup> E-mail from David Rauch to leekeith35 dated January 11, 2012.

<sup>6</sup> Defendant's Exhibit G.

<sup>7</sup> Ms. Garcia and her counsel assume Keith Lee is an agent for Ms. Shurts. See Miriam Garcia's Hearing Brief in CC2011-236553 and CC2012-0069100 (Consolidated Hearing) dated January 25, 2012, at p. 7, ll. 19-20.

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The following day, marchers appeared bearing placards with the following message:

SHAME ON FOX NEWS  
MIA GARCIA ADULTEROUS  
PLEASE DO NOT SUPPORT FOX NEWS<sup>8</sup>

On July 12, 2012, Ms. Garcia filed a Petition for an Injunction Against Harassment, claiming a “barrage” of attacks over a six-month period. Ms. Garcia claimed Ms. Shurts orchestrated a picket line in front of her place of employment and hired protesters to carry placards and bumper stickers accusing her of an adulterous relationship. Ms. Garcia further alleged Ms. Shurts told Ms. Garcia’s colleagues at FOX News that Ms. Garcia was (1) having an affair and (2) Ms. Shurts was planning to sue Ms. Garcia and it would be a “big story.” Judge Clancy Jayne—Desert Ridge Justice Court—signed Ms. Garcia’s IAH on January 12, 2012.

The trial court held hearings on January 12, 2012, and January 26, 2012, on matters relating to Ms. Garcia’s IAH. In addition, there was a hearing on the related case, Shurts v. Garcia, CC2011–236553 on January 17, 2012.

At the January 12, initial hearing for Ms. Garcia’s IAH, her counsel—Adam Lang—addressed the court and asserted Ms. Shurts obtained an IAH and was using it to bludgeon Ms. Garcia.<sup>9</sup> Counsel proceeded to talk about events that occurred on January 11, 2012, and said he showed up at FOX News and there were protestors who had been hired on “craigslist” [sic] who had about 100 leaflets and three banners.<sup>10</sup> The trial court granted the requested IAH order<sup>11</sup> and named FOX News and the exercise facility as protected locations on the order.<sup>12</sup> The trial court added it was shocked<sup>13</sup> and said:

Somebody is obviously abusing the purpose and the intent of why these orders are given.<sup>14</sup>

The trial court informed Ms. Garcia’s counsel that her IAH would need to be served before the court could hold a hearing on it.<sup>15</sup>

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<sup>8</sup> Defendant’s Exhibit M.

<sup>9</sup> Transcript of Proceedings, Injunction Against Harassment Hearing of January 12, 2012, at 3:34 P.M.—transcribed by AV Tranz—at p. 4, ll. 22–25; p. 5, ll. 1–4.

<sup>10</sup> *Id.* at p. 5, ll. 10–18.

<sup>11</sup> *Id.* at p. 7, ll. 3–4 and ll. 11–12.

<sup>12</sup> *Id.* at p. 7, ll. 15–16 and ll. 21–23.

<sup>13</sup> *Id.* at p. 8, l. 10.

<sup>14</sup> *Id.* at p. 8, ll. 16–17.

<sup>15</sup> *Id.* at p. 9, ll. 4–6.

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Ms. Shurts was served with Ms. Garcia's IAH in the courtroom at the January 17, 2012, hearing.<sup>16</sup> On January 19, 2012, Ms. Shurts filed a Request for Hearing on the Garcia IAH alleging (1) there was no basis for an IAH as Ms. Garcia admitted she never met Ms. Shurts and (2) Ms. Garcia's IAH violated Ms. Shurts' free speech rights.

On January 26, 2012, the trial court held a combined hearing on the two IAHs.<sup>17</sup> Shortly after the hearing commenced, counsel for Ms. Shurts—Jim Sullivan and William Kozub—made an appearance on the record and moved to dismiss Ms. Shurts' IAH.<sup>18</sup> Ms. Garcia's counsel did not oppose the request to dismiss the Shurts' IAH.<sup>19</sup> Ms. Garcia's counsel added (1) there was no basis for Ms. Shurts' IAH; (2) Ms. Shurts' IAH was obtained through a fraud on the court; and (3) Ms. Garcia would be seeking attorneys' fees.<sup>20</sup> Ms. Garcia's counsel explained the fraud on the court was including as a protected address on the Shurts IAH the home where Ms. Garcia spent a great amount of time and from which she had been barred from for a three week period.<sup>21</sup> This home—the Bajada home—was not Ms. Shurts' home and Ms. Shurts was herself banned from entering the Bajada home. Ms. Garcia's counsel added they believed “fees and possibly sanctions” were appropriate.<sup>22</sup> The trial court ordered that (1) attorneys' fees be determined at a separate hearing<sup>23</sup> and (2) the Shurts IAH was quashed.<sup>24</sup>

Ms. Garcia then testified about her own IAH. She testified she never met Ms. Shurts,<sup>25</sup> had not gone to Ms. Shurts' workplace;<sup>26</sup> and had not directed any activity toward Ms. Shurts.<sup>27</sup> Ms. Garcia stated her boss told her about a letter written by Ms. Shurts' counsel which accompanied a copy of the Shurts IAH and it made her feel embarrassed and scared.<sup>28</sup> Ms. Garcia eventually saw a copy of the letter written to FOX News.<sup>29</sup>

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<sup>16</sup> January 17, 2012 Order signed by Judge Clancy Jayne and stating: “As counsel for Defendant Jaime Shurts received a copy of the Injunction Against Harassment signed January 12, 2012, It [sic] is deemed that Service of the Injunction was accomplished by the Clerk in the Courtroom at the time of the Hearing held 01-17-12 at 1:10 p.m. [sic].

<sup>17</sup> Transcript of Proceedings, Injunction Against Harassment Hearing of January 26, 2012 at 10:04 a.m.—transcribed by AV Tranz.

<sup>18</sup> *Id.* at p. 8, ll. 3-15.

<sup>19</sup> *Id.* at p. 9, ll. 22-23.

<sup>20</sup> *Id.* at p. 10, ll. 1-7.

<sup>21</sup> *Id.* at p. 10, ll. 9-15.

<sup>22</sup> *Id.* at p. 10, ll. 23-25.

<sup>23</sup> *Id.* at p. 11, ll. 1-2.

<sup>24</sup> *Id.* at p. 11, ll. 1-13.

<sup>25</sup> *Id.* at p. 13, ll. 15-16.

<sup>26</sup> *Id.* at p. 13, ll. 17-18.

<sup>27</sup> *Id.* at p. 13, ll. 21-23.

<sup>28</sup> *Id.* at p. 15, ll. 3-25; p. 16; p. 17, ll. 1-3.

<sup>29</sup> FOX News employs Ms. Garcia. Transcript for January 26, 2012, hearing, *id.*, at p.13, ll. 11-12. . Counsel for Ms. Shurts objected to this document as hearsay.

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Ms. Garcia said she was served the same day this letter was received by FOX News.<sup>30</sup> After she was served, she felt “scared, afraid, confused” because she was the object of an IAH from a person she never met.<sup>31</sup> Ms. Garcia testified she was also informed by her assignment editor that the assignment editor received an e-mail—to Lizbeth—saying there was going to be a protest outside of the news station.<sup>32</sup> Ms. Garcia confirmed she believed Ms. Shurts “was behind” the e-mail and the protest<sup>33</sup> and said she was terrified.<sup>34</sup> She called her attorney.<sup>35</sup> Despite Shurts’ counsel’s objections about hearsay, Ms. Garcia testified her attorney—“Adam”—told her the protestors said (1) they were hired “off a Craigslist ad”; (2) met someone in a parking lot who paid them; and (3) that person gave them bumper stickers and banners to be there.”<sup>36</sup> Ms. Garcia added she felt afraid and terrible after she saw the banner.<sup>37</sup>

That evening, Ms. Garcia was contacted by Officer Steve Mortose.<sup>38</sup> Ms. Garcia testified that the police officer told her about an incident at the Highlands Church where a woman asked the officer the name of the reporter who was there. Ms. Garcia’s testimony was:

He said he was at Highlands Church and a woman had come up to him and asked who is that reporter standing over there [sic]. And he said that’s Britt Moreno and she said that’s not Miriam Garcia because she shouldn’t be here. She’s having an affair with my husband.<sup>39</sup>

Ms. Garcia also reported that Britt Moreno said Ms. Shurts told her (Britt Moreno) that (1) Ms. Garcia was having an affair with Ms. Shurts’ husband; (2) Ms. Shurts was planning to sue Ms. Garcia “tomorrow”; and (3) it would be a “big story.”<sup>40</sup> Ms. Garcia said these calls made her feel helpless.<sup>41</sup> She obtained her IAH the day following the protest.<sup>42</sup>

On cross-examination, counsel for Ms. Shurts asked Ms. Garcia if she was having an affair with Ron Shurts.<sup>43</sup> The parties and court discussed if this question was objectionable, with Garcia’s counsel instructing her to assert her Fifth Amendment privileges and Shurts’ counsel

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<sup>30</sup> Transcript for January 26, 2012, hearing, *id.*, at p. 24, ll. 10–11.

<sup>31</sup> *Id.* at p. 25, ll. 10–15.

<sup>32</sup> *Id.* at p. 28, ll. 21–24; p. 29, ll. 1–21. This testimony refers to the e-mail from Keith Lee. Counsel for Ms. Shurts objected to its admission as hearsay.

<sup>33</sup> *Id.* at p. 33, ll. 10–25; p. 34, ll. 1–17.

<sup>34</sup> *Id.* at p. 34, ll. 18–22; p. 35, ll. 22–25.

<sup>35</sup> *Id.* at p. 36, ll. 1–4. Shurts’ counsel asserted Ms. Garcia was waiving her attorney-client privilege. See Transcript for January 26, 2012, hearing, *id.*, at p. 37, ll. 19–25; p. 38, ll. 1–4.

<sup>36</sup> *Id.* at p. 39, ll. 16–19.

<sup>37</sup> *Id.* at p. 41, ll. 20–23.

<sup>38</sup> *Id.* at p. 45, ll. 15–19.

<sup>39</sup> *Id.* at p. 45, ll. 21–25.

<sup>40</sup> *Id.* at p. 46, ll. 14–19.

<sup>41</sup> *Id.* at p. 46, ll. 21–25.

<sup>42</sup> *Id.* at p. 42, ll. 1–2.

<sup>43</sup> *Id.* at p. 50, ll. 9–10.

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arguing the door had been opened about the relationship.<sup>44</sup> The trial court finally determined it did not need the answer to the question.<sup>45</sup> Ms. Garcia admitted she (1) did not witness the protest in front of FOX News; (2) did not see the bumper stickers while she was at FOX News; and (3) did not see the banner while she was there.<sup>46</sup> She agreed she was not present at the protest and said that as far as she knew, Ms. Shurts was not present either.<sup>47</sup> She also said she was not present at Highlands Church when Ms. Shurts was there.<sup>48</sup> In discussing the Highlands Church incident, Ms. Garcia conceded it was possible Ms. Shurts was at the church because she was a member of the church community.<sup>49</sup>

Ms. Garcia also said she had no information about Mr. Kozub seeking assistance from local media outlets in order to serve her.<sup>50</sup> Ms. Garcia then said she was afraid Ms. Shurts was going to hire someone to kill her.<sup>51</sup> Ms. Garcia added she did not believe that Ms. Shurts' actions were those of a "normal person" and said she understood Ms. Shurts had some mental health issues and was on medication.<sup>52</sup> Ms. Garcia admitted she received the information about Ms. Shurts' medication from Ron Shurts, who also told her Ms. Shurts was crazy.<sup>53</sup>

During closing argument, (1) the attorneys for Ms. Garcia; (2) the attorneys for Ms. Shurts; and (3) the trial court discussed the import of *A.J. La Faro v. Cahill*, 203 Ariz. 482, 86 P.2d 56 (Ct. App. 2002). Ms. Garcia's counsel summarized the acts of harassments as: (1) the letter to her employer from Ms. Shurts' counsel saying that Ms. Garcia violated a criminal statute; (2) Ms. Shurts getting an IAH that used Ron Shurts' (Bajada) address as Ms. Shurts' address despite Ms. Shurts having received an OOP that forbade her from going to that residence; (3) the e-mail from Keith Lee that was faxed from Ms. Shurts' fax machine; (4) the picketers; and (5) the Highlands Church incident; They asserted the harassment stopped after Ms. Garcia obtained her IAH.<sup>54</sup>

The trial court determined (1) the *LaFaro* case applied to political speech; but (2) the speech in this case was personal.<sup>55</sup> The trial court then upheld Ms. Garcia's IAH,<sup>56</sup> saying that the conduct was "worse than harassing. It's vicious."<sup>57</sup>

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<sup>44</sup> *Id.* at p. 50, ll. 11–25; pp 51–53; p. 54, ll. 1–20.

<sup>45</sup> *Id.* at p. 54, ll. 21–23.

<sup>46</sup> *Id.* at p. 56, ll. 12–18.

<sup>47</sup> *Id.* at p. 56, ll. 19–24.

<sup>48</sup> *Id.* at p. 59, ll. 3–5.

<sup>49</sup> *Id.* at p. 60, ll. 11–14.

<sup>50</sup> *Id.* at p. 62, ll. 10–18.

<sup>51</sup> *Id.* at p. 63, ll. 13–15.

<sup>52</sup> *Id.* at p. 64, ll. 1–9.

<sup>53</sup> *Id.* at p. 64, ll. 10–24.

<sup>54</sup> *Id.* at p. 74, ll. 7–24; pp. 74–75; p. 77, ll. 1–5.

<sup>55</sup> *Id.* at p. 77, ll. 7–10.

<sup>56</sup> *Id.* at p. 77, ll. 21–22. Hearing Order in CC2012006991 re Injunction Against Harassment dated January 26, 2012.

<sup>57</sup> Transcript for January 26, 2012, hearing, *id.*, at p.77, ll. 17–18.

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Ms. Garcia requested attorney fees in this action. The trial court granted this request but significantly reduced the fees from the \$73,538.50 which Ms. Garcia sought. The trial court granted Ms. Garcia attorneys' fees of \$2,500.00.

Plaintiff filed a timely appeal. Defendant responded to Plaintiff's claims in the underlying IAH action (LC2012-000337-001 DT) and filed a responsive brief to Ms. Garcia's attorney's fee claim (LC2012-000303-001 DT) as part of LC2012-000373-001 DT. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUES:

A. *Did The Trial Court Err In Upholding the Garcia IAH And Finding A Series Of Acts Of Harassment.*

Injunctions Against Harassment are reviewed for a "clear abuse of discretion" *La Faro v. Cahill, id.*, 203 Ariz. at 485 ¶10, 86 P.2d at 59 ¶ 10 (Ct. App. 2002). Because appellate courts use an abuse of discretion standard, the appellate courts will view the facts in the light most favorable to upholding the trial court's decision. Here, the trial court upheld Ms. Garcia's IAH after conducting a hearing at which both parties had the opportunity to present evidence. Because this court must view the facts in the light most favorable to upholding the trial court's determination, this Court only needs to find two acts of harassing conduct to determine the trial court did not err in its ruling.

**Abuse of Discretion**

Injunctions Against Harassment are determined based on the conduct of the parties. These are fact based controversies and, as such, are left to the sound discretion of the trial court. In addressing discretionary conduct, the Arizona Supreme Court stated:

Something is discretionary because it is based on an assessment of conflicting procedural, factual or equitable considerations which vary from case to case and which can be better determined or resolved by the trial judge, who has a more immediate grasp of all the facts of the case, an opportunity to see the parties, lawyers, and witnesses, and who can better assess the impact of what occurs before him. Where a decision is made on that basis, it is truly discretionary and we will not substitute our judgment for that of the trial judge; we will not second-guess. Where, however, the facts or inferences from them are not in dispute and where there are few or no conflicting procedural, factual or equitable considerations, the resolution of the question is one of law or logic. Then it is our final responsibility to determine law and policy and it becomes our duty to "look over the shoulder" of the trial judge and, if appropriate, substitute our judgment for his or hers.

*State v. Chapple*, 135 Ariz. 281, 297 n. 18, 660 P.2d 1208, 1224 n.18 (1983) (citation omitted). An appellate court does not normally sit as a second chance to retry conflicting factual assertions and does not reweigh the evidence to determine if it would reach the same conclusion as the

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original trier-of-fact. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Here, the trial court was required to determine if Ms. Garcia established that Ms. Shurts was responsible for two or more acts of harassment. Because this issue requires an “assessment of conflicting procedural, factual, or equitable considerations which vary from case to case” rather than a “question . . . of “law or logic”<sup>58</sup> it is not appropriate for this Court to substitute its judgment for that of the trial court. This Court will not look over the shoulder of the trial court when the dispute involves conflicting factual considerations. The trial court chose to believe Ms. Garcia’s version of the harassing conduct and discount the arguments presented by Shurts’ counsel to the effect that if Ms. Shurts did not personally engage in the harassment, then harassment did not occur. This Court notes Shurts’ counsel’s argument disregards the opportunity and ability for a person to harass another by hiring, convincing or inveigling third parties to do the deed on behalf of the harasser. Nothing in the law presented by Shurts or her counsel demonstrated that harassment must be personally done.

**Acts of Harassment**

Injunctions Against Harassment are governed by the requirements of A.R.S. 12–1809 and the Arizona Rules of Protective Order Proceeding (ARPOP). They are civil actions requiring—at a minimum—two separate acts of harassment. ARPOP, Rule 6(E)(1); A.R.S. 12–1809(C). ARPOP Rule 1(B)(2)(b) defines an Injunction Against Harassment as:

An Injunction Against Harassment is governed by A.R.S. § 12–1809 and may be granted to prevent a person from committing acts of harassment against another. There is no relationship requirement.

In this case, the trial court determined Ms. Shurts was responsible for two or more such acts. This Court notes the purpose of the statutory scheme and of the ARPOP is to reduce the potential for conflict between parties. Therefore, issuing courts focus on responsibility for harassing conduct as well as whether the conduct would be considered harassing. Here, the trial court found Ms. Shurts engaged in harassing conduct. The facts—as presented to the trial court—show Ms. Shurts sought court protection against Ms. Garcia when Ms. Shurts obtained an IAH against Ms. Garcia that contained incorrect statements. In this Petition, Ms. Shurts alleged she “asked,” “told,” and “explained” things to Ms. Garcia. Since it was uncontroverted that she never had personal contact with Ms. Garcia, these statements were patently false. Nonetheless, Ms. Shurts tried to use the trial court and the IAH process as swords in her battle with Ms. Garcia. Not content with merely asserting inaccurate allegations, Ms. Shurts requested—in her Petition—that Ms. Garcia be precluded from going to the home of Mr. Shurts (Bajada home) which Ms. Shurts listed as her own residence. The trial court determined Ms. Shurts herself was forbidden to go to that residence as a result of an Order of Protection Mr. Shurts obtained against Ms. Shurts earlier in the year.<sup>59</sup> Although Ms. Shurts’ counsel objected to the introduction of the OOP against Ms. Shurts, this Court—and the trial court—can take judicial notice of court orders *State v.*

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<sup>58</sup> *State v. Chapple, id.*

<sup>59</sup> See Order of Protection in FN 2011–002075.

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*Valenzuela*, 109 Ariz. 109, 110, 506 Ariz. 240, 241 (1973). This Court takes judicial notice of the Order of Protection for the purpose of demonstrating Ms. Shurts knew or should have known she had no access to the Bajada home. This Court finds the trial court did not err in concluding Ms. Shurts made untruthful statements to the trial court when obtaining her IAH against Ms. Garcia.

Ms. Garcia argued that—despite her requests for Ms. Shurts to lift the IAH—Ms. Shurts did not do so until January 26, 2012. Consequently, for twenty days after she was served with the Shurts IAH, Ms. Garcia was prevented from going to the Bajada home. The trial court could view each of these days as a separate occurrence or act of harassment. Using legal means to prevent a person from legitimately going to a place where the person wishes to be, without justification, can be viewed as a harassing act under the definition of A.R.S. § 12-1809(R).

[H]arassment means 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.

A reasonable person would be seriously annoyed if—without a legitimate reason—the person was prevented from going to a home where the person was accustomed to going. Ms. Garcia expressed that she found her inability to go to the Bajada home to be annoying and harassing.

An Injunction Against Harassment may be entered if the court finds either (1) evidence of harassment by the defendant within the year preceding the request for the injunction or (2) good cause exists to believe that great or irreparable harm would result if the injunction is not granted. A.R.S. 12-1809(E). In this case, the trial court could find both criteria were met. Not only had Ms. Garcia been forbidden to go to the Bajada home as a direct result of the Shurts IAH, Ms. Garcia also had good cause to believe she would suffer “great or irreparable harm.”

Ms. Garcia testified that during the week before she received her IAH, she discovered she was the target of a campaign calculated to discredit her and cast aspersions on her character. She discussed several incidents: (1) Ms. Garcia’s employer received a letter about her personal conduct that included a copy of the Shurts IAH; (2) a protest march was organized outside of the place where Ms. Garcia worked; (3) Ms. Shurts approached Ms. Garcia’s colleague and made disparaging comments. These three incidents provided the trial court with reasons to determine Ms. Garcia had good cause to believe she would suffer great or irreparable harm to her reputation should Ms. Shurts be allowed to continue these actions. Ms. Shurts is responsible for the conduct of her attorneys in contacting Ms. Garcia’s employer and forwarding copies of the Shurts IAH to her employer. In addition, the trial court determined Ms. Shurts was complicit in sending the Keith Lee e-mail, after observing that the attachment to the e-mail contained a faxed copy of the Shurts IAH with “Jaime” written on the top of the fax line.<sup>60</sup> Ms. Garcia testified Ms. Shurts directly approached Ms. Garcia’s co-workers and accused Ms. Garcia of a

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<sup>60</sup> Transcript for January 26, 2012, hearing, *id.*, at p. 58, ll. 13–14.  
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misdemeanor—adultery. The letter, protest march, and accusations of adultery were all calculated to expose her to public opprobrium and to interfere with her ability to earn a living. The protest march banners included specific reference to Ms. Garcia’s employer: i.e. “Shame on FOX News” and “Please Do Not Support FOX News.” These are elements of great and/or irreparable harm. Even if this Court was to accept the implied assertion that these activities were performed by third parties and/or directed to third parties, the clear import is that Ms. Shurts was involved with the activities. Indeed, even if Ms. Shurts had no direct involvement in these two actions, these activities would give Ms. Garcia cause to believe she might suffer “great and irreparable harm” at Ms. Shurts’ hand. The trial court undeniably determined Ms. Shurts was connected with these activities and commented about the fax notation bearing the heading “Jaime” that accompanied the copy of the Shurts IAH sent by Keith Lee.

This Court notes (1) IAH Orders are given to the parties involved; (2) the trial court determined Ms. Shurts supplied the IAH Order that was used in a calculated attempt to discredit Ms. Garcia; and (3) any allegation of a misdemeanor was dependent on Ms. Shurts’ conduct. A.R.S. § 13–1408(B) states there can be no prosecution for adultery except upon the complaint of the husband or wife. Although Ms. Shurts’ counsel wrote to FOX News—on January 6, 2012,—alleging Ms. Shurts was investigating the possibility of bringing an adultery charge, Ms. Shurts had agreed to waive this possibility almost 6 months earlier as evidenced by a letter written by her counsel—dated July 12, 2011—in her dissolution action.

I am also in receipt of your letter dated July 7, 2011, with regard to the prospective waiver of any of the provisions in the infidelity paragraph (14.2 of the Premarital Agreement and paragraph 4(p) of the Amendment.) Jaime agrees.

This letter indicated Ms. Shurts knew of the possibility of adultery charges should either party enter a physical relationship with a third person during the pendency of the dissolution and agreed to waive any fidelity requirement. Therefore, Ms. Shurts waived whatever rights she had based on infidelity claims. A.R.S. § 13–1408 does not allow for the punishment of only one party. The statute provides that when an adulterous act is committed between parties only one of whom is married, both are to be punished. Because Ms. Shurts waived her rights under the infidelity paragraph (agreement), she tacitly agreed she would not pursue any adultery prosecution. Because she could not institute an adultery prosecution against Ms. Garcia<sup>61</sup> without implicating Mr. Shurts, she was foreclosed from instituting any adultery prosecution. Therefore she knew or should have known (1) the statement in her counsel’s letter to Fox News was inaccurate and (2) suggesting the possibility of criminal conduct and/or adultery charges to Ms. Garcia’s employer was calculated to harass or annoy Ms. Garcia or cause her great or irreparable harm.

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<sup>61</sup> Letter of January 6, 2012, from Berens, Kozub, Kloberdanz & Blonstein, PLC to KSAZ FOX 10 stating: If such a crime under A.R.S. § 13–1408 has occurred, Ms. Shurts intends to immediately file a Complaint with the appropriate parties. The letter is included as part of Exhibit F to Appellee’s Answering Memorandum in LC 2012–000337–001 DT.

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A.R.S. §12–1809 allows courts to enjoin harassment because “a person should not have to endure repeated frightening, dangerous or otherwise alarming and intrusive personal conduct that serves no legitimate purpose.” *LaFaro v. Cahill, id.*, 203 Ariz. at 486, ¶ 15, 56 P.3d at 60 ¶ 15. Indeed, the Court of Appeals construed the statute’s purpose as follows:

The legislature likely intended A.R.S. § 12–1809 to provide a civil (*i.e.*, non-criminal) method to help protect citizens from stalkers or perpetrators of domestic violence. But the protection of citizens from harassment—a legitimate and laudable goal—is not incompatible with the protection and exercise of free speech, especially with a common sense interpretation of the statute.

*LaFaro v. Cahill, id.*, 203 Ariz. at 488, ¶ 22, 56 P.3d at 62 ¶ 22.

Ms. Shurts contested the use of the (1) Highlands Church incident and (2) the protest at the news station as acts of harassment, and, instead, characterizes these events as exercises of free speech which were not “directed at”<sup>62</sup> Ms. Garcia. The essence of this claim is that there can be no IAH if the communication was not directly between Ms. Shurts and Ms. Garcia. The parties established (1) they did not know one another and (2) had no direct contact. This, Ms. Shurts argued, was enough to remove her from the legally allowed group that could be subject to an IAH requested by Ms. Garcia. Simply stated, Ms. Shurts’ position is that there must be direct contact between the defendant and the victim for an IAH to be sustained. This is inaccurate and—despite Ms. Shurts’ allegations—not supported by *LaFaro v. Cahill, id.* In *LaFaro v. Cahill, id.*, the Court of Appeals found the trial court abused its discretion in granting an IAH based on a communication to a third party that was overheard by the victim. In so finding, however, the Court of Appeals took pains to state the finding was based on the specific facts of *LaFaro, id.*, and added it did not suggest “that a third-party conversation could never constitute ‘directed at’ harassment pursuant to A.R.S. § 12–1809.” *LaFaro v. Cahill, id.*, 203 Ariz. at 486 n.3 ¶ 13, 56 P.3d at 60, n.3 ¶ 13.

As has been seen, even if Ms. Shurts’ position were to be sustained, Ms. Garcia still demonstrated at least two acts of direct harassment. Therefore the trial court did not err in sustaining Ms. Garcia’s IAH.

*B. Did The Trial Court Err In Admitting The E-Mail From Keith Lee.*

Ms. Shurts alleged the trial court erred by admitting the Keith Lee e-mail into evidence, claiming the e-mail was impermissible hearsay. Additionally, Ms. Shurts claimed the e-mail exemplified hearsay upon hearsay because the e-mail was directed to Channel 3. This Court first notes that the e-mail was not offered as proof of the matter asserted. Instead, Ms. Garcia’s attorneys offered the e-mail so Ms. Garcia could testify about her reactions to learning about the e-mail. In addition, the trial court noted that at the top of the copy of the Shurts IAH included with the e-mail—trial court’s Exhibit G—is the name “Jaime.” This copy has a January 10 date with a 1:54 P.M. time listed. The use of the name “Jaime” at the top of this IAH copy was

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<sup>62</sup> Defendant’s/Appellant’s Opening Memorandum in LC2012–000337–001 DT at p. 7, l. 5.

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telling—if not dispositive—for the trial court in deciding to admit the exhibit. Because the rules of evidence in protective order proceedings are relaxed, the trial court had the discretion to decide if the probative value of the evidence was outweighed by any danger or unfair prejudice. Rule 5, Rules of Protective Order Procedure provides:

A. Admissible Evidence.

1. All relevant evidence is admissible, except the court may exclude evidence if:
  - a. the probative value is outweighed by the danger of unfair prejudice;
  - b. the evidence results in confusion of the issues;
  - c. admitting the evidence may result in undue delay;
  - d. a needless presentation of cumulative evidence would result, or
  - e. the evidence lacks reliability.

The comment to this rule indicates the rule is intended to give the court broad discretion in determining whether proffered evidence is to be admissible. The trial court did not abuse its discretion in deciding to admit this evidence. Furthermore, even if the trial court had abused its discretion, the ultimate decision would not have been affected as this Court finds there were sufficient indicia of other acts of harassment to sustain Ms. Garcia's IAH.

*C. Did The Trial Court Err In Determining The Holding Of LaFaro v. Cahill, 203 Ariz. 482, 56 P.3d 56 (Ct. App. 2002) Only Protects Political Speech And Not Speech In General.*

Shurts' counsel's third attack is on the trial court's analysis of *A.J. La Faro v. Cahill, id.* In *LaFaro, id.*, the Arizona Court of Appeals began its opinion by stating it chose to exercise its discretion "because the use of an injunction to restrict political speech is an issue of great public importance that is capable of evading review." *LaFaro v. Cahill, id.*, 203 Ariz. at 485, ¶ 9, 86 P.2d at 59, ¶ 9. The Court of Appeals' phrasing of the issue immediately lends itself to the idea that the Court is addressing political as opposed to private speech. Indeed, the Court of Appeals concluded *LaFaro, id.*, 203 Ariz. at 487, ¶ 16, 56 P.3d at 61, ¶ 16, stood for political speech.

We conclude that § 12-1809 cannot be used to restrict protected political speech.

In deciding *LaFaro, id.*, the Arizona Court of Appeals determined LaFaro's IAH was overly broad because it restricted Cahill from speaking to LaFaro regarding any topic including a political matter in a public place. The Court of Appeals concluded:

Our construction of A.R.S. § 12-1809 is intended to prevent future improper application of this statute to protected political speech.

*LaFaro, id.*, 203 Ariz. at 488-89, ¶ 23, 56 P.3d at 62-63, ¶ 23. The language of the opinion supports the trial court's construction. Therefore the trial court did not err in determining *LaFaro v. Cahill, id.*, is limited to political speech.

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*D. Did The Trial Court Err By Reducing Attorneys' Fees From \$73,538.50 To \$2,500.00.*

Ms. Garcia prevailed on her request to maintain her IAH. She did not prevail on her attempt to quash Ms. Shurts' IAH as Ms. Shurts voluntarily dismissed that IAH. While Ms. Garcia maintains these are separate actions, it is apparent the trial court determined these actions were intermingled and the research and writing needed to defend the Garcia IAH was also the research and writing needed to attack the Shurts IAH. As it turned out, there was no need to attack the Shurts IAH as Ms. Shurts dismissed that action. Ms. Garcia now contends she was "punished" by the trial court's actions in failing to award her the amount of her requested fees.<sup>63</sup>

This Court has thoroughly reviewed the court file, the transcripts of the two hearings, the legal memoranda and motions, and the exhibits in the underlying cases. While this Court believes the trial court erred in lowering the requested fees by approximately 96%,<sup>64</sup> this Court does not believe the entire requested fee is warranted. Although counsel for Ms. Garcia, presented pages of exhibits to support their claim, many of these exhibits are duplicative. The total number of hours spent on this case appears to be excessive.

The first contended issue is the standard of review. Ms. Garcia's counsel urge this Court to find the trial court abused its discretion in lowering Ms. Garcia's requested attorneys' fees. Counsel for Ms. Shurts maintained the appropriate standard for review is *de novo*. In support of its contention, Ms. Shurts' counsel cited *Hormel v. Maricopa County*, 224 Ariz. 454, 461, ¶ 27, 232 P.2d 768, 775, ¶ 27 (Ct. App. 2010). In *Hormel, id.*, the court said:

In general, we review for an abuse of discretion the court's denial of attorneys' fees. However, our standard of review for the tax court's decision to deny a motion for sanctions and fees under A.R.S. § 12-249 is *de novo*.

[Citation omitted.] *Id.* The Court of Appeals then referred to *Casa Grande v. Ariz. Water Co.*, 199 Ariz. 547, 555, ¶ 27, 30 P.3d 590, 598 (Ct. App. 2001) which held the application of A.R.S. § 12-349 is a question of law that is reviewed *de novo*. See also *Phoenix Newspapers, Inc. Dept. of Corrections, State of Ariz.*, 188 Ariz. 237, 244, 934 P.2d 801, 808 (Ct. App. 1997). Counsel for Ms. Shurts, however, misstated the trial court's decision when it stated "no award was made in favor of Garcia"<sup>65</sup> as the trial court awarded Ms. Garcia \$2,500.00. Here—based on the foregoing—this Court finds the award of attorneys' fees award is subject to *de novo* review.

Injunctions Against Harassment—like orders of protection—are relatively routine proceedings. Forms are available at justice court and an individual can seek a protective order with relative ease. The process is geared to make obtaining a protective order simple enough that numerous protective orders are issued to pro se litigants on a daily basis. Indeed, ARPOP

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<sup>63</sup> Appellant's Opening Memorandum in LC2012-000303-001 DT at p. 1, ll. 22.

<sup>64</sup> Desert Ridge Justice Court Ruling on Motion dated February 14, 2012, denying Miriam Garcia's Application for Attorneys' Fees of \$73,538.30 and awarding her fees and costs in the amount of \$2,500.00.

<sup>65</sup> Appellee's Answering Memorandum, LC 2012-000373-001 DT, at p. 6, l. 2.

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Rule 10(A) mandates that parties use only the protective order forms adopted by the Arizona Supreme Court and Rule 10(B) requires courts to provide these forms without charge. Additionally, there is only one possible response to a protective order—to request a hearing on the order. ARPOP Rule 8 describes the procedures for a contested hearing and the form needed to request a hearing is mandated by rule. Trial courts—and this Court—review attorneys’ fee applications with these factors in mind.

This Court notes counsel for Ms. Garcia expended time and effort in acquiring other protective orders issued on behalf of third parties. This time was wasted as protective orders issued to third parties are not relevant in determining if a specific person has engaged in harassing conduct to another. It was not the function of the Desert Ridge Justice Court to consider protective orders issued by Coconino County or Phoenix Municipal Court as a basis for (1) issuing or failing to issue a protective order to Ms. Garcia or (2) sustaining or dismissing a protective order against Ms. Garcia. The trial court rightly should have discounted this evidence and Ms. Garcia and her attorneys should not be compensated for the time or effort they expended in obtaining these orders or submitting them to the trial court. As stated, courts are constrained to use only the protective order forms adopted by the Arizona Supreme Court. Therefore, time expended in preparing an order for a protective order hearing is wasted. Similarly, the Desert Ridge Justice Court should not have considered any claimed violations of Mr. Shurts’ Order of Protection or any police reports about any claimed violation of Mr. Shurts’ Order of Protection. The dispute for which Ms. Garcia is entitled to attorneys’ fees is the dispute she had with Ms. Shurts. It would be inappropriate for the trial court to consider other disputes involving claims by third parties when (1) those parties were not present; (2) Ms. Garcia’s counsel did not represent those third parties; and (3) Ms. Shurts is not being called on to defend her actions against third parties as part of the present case. Therefore, to the extent the Desert Ridge Justice Court disallowed claims for any of those expenses the trial court did not err.

Ms. Garcia is, however, correct in asserting she is entitled to attorneys’ fees for fees incurred for the contested hearing about her own IAH and for reasonable fees expended in preparing to defend against Ms. Shurts’ IAH. Even though Ms. Shurts withdrew her IAH at the last minute, Ms. Garcia had—at that point—incurred expenses stemming from the Shurts IAH. A.R.S. § 12–349(A) provides for reasonable attorney’ fees for bringing an action without substantial justification. The Shurts IAH lacked substantial justification as it was based on inaccurate assertions. Indeed, Shurts’ counsel implicitly agreed there was no justification for a protective order when they argued in their Answering Memorandum in LC2012–000373–001 DT that “Shurts sought an injunction to stop Garcia from committing adultery with Shurts’ husband”<sup>66</sup> and “the claim was not brought solely or primarily for harassment but rather to stop Garcia from sleeping with Shurts’ husband.”<sup>67</sup> Protective orders exist to protect petitioners from acts of harassment; not to stop potential IAH defendants from committing misdemeanors or causing

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<sup>66</sup> *Id.* at p. 2, ll. 7–8 and 21–24; p. 6, ll. 11–12.

<sup>67</sup> *Id.* at p. 9, ll. 2–3.

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“mental and emotional distress”<sup>68</sup> because a third party has a romantic or sexual relationship with the potential IAH defendant. Similarly, Ms. Shurts’ counsel’s claim that “[t]he Shurts injunction was not harassing because it sought to enjoin criminal conduct that was affecting Shurts directly”<sup>69</sup> is inapposite where—as here—Ms. Shurts had agreed in a separate proceeding to forego any requirement of fidelity with Mr. Shurts. Moreover, the Shurts IAH contained material misrepresentations in (1) its allegations and (2) its requested areas to be protected. Ms. Shurts knew or should have known she did not ask or explain anything to Ms. Garcia because the parties never had face to face contact. Ms. Shurts also knew or should have known it was inappropriate to list her husband’s Bajada home as her address to be protected when she was constrained from going to that home by the Order of Protection her husband obtained months earlier.

A.R.S. § 12–1809(N) also allows for reasonable attorneys’ fees. As is common with attorney fee disputes, however, there is great leeway in determining what is and is not reasonable in a particular case. Reasonable does not mean whatever the traffic will bear; nor does it mean whatever the attorney contracts to charge. Thus, although Ms. Garcia’s counsel asserted “Mia should also be entitled to all of her fees from Jaime”<sup>70</sup> this is not the correct standard. Ms. Garcia is entitled to reasonable fees, not all fees. It remains for the court to determine which charges are reasonable. In making this determination, this Court notes that while counsel have written motions and briefs, the underlying language of these documents—perhaps of necessity—is the same. Therefore, the Court will review the time charged for each document in light of the new information included in the document and not just adopt the listed charges as this would result in duplicative billing.

Similarly, the Court is not required to blindly adopt Ms. Garcia’s counsel’s assertions that defense counsel’s actions in not informing them about Ms. Shurts’ inability to be present at the January 17, 2012, hearing “borders on the unconscionable and was simply another abuse of the system and a tactic to harm Mia.” Polemic aside, Ms. Garcia’s counsel have not shown any evidence that defense counsel intended to abuse the system or that defense counsel were even aware that Ms. Shurts injured herself on the night of January 16, 2012. This Court—and the trial court—need more than speculation about defense counsel’s reasoning. Ms. Garcia’s counsel asserted:

“And while these Instructions do not state that Jaime cannot travel, why didn’t Jaime’s counsel immediately inform counsel for Mia of the purported issue? The answer couldn’t be any clearer: to harm and harass Mia. [sic]”<sup>71</sup>

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<sup>68</sup> *Id.* at p. 6, l. 19.

<sup>69</sup> *Id.* at p. 7, ll. 8–9

<sup>70</sup> Appellant’s Opening Memorandum LC2012–000303–001 DT at p. 5, n. 4, ll. 24–28.

<sup>71</sup> *Id.* at p. 8, ll. 11–14.

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Ms. Garcia's counsel provided no factual basis for their conclusion. Absent proof of this assertion, the trial court was not required to include—as part of its calculations and analysis of the attorneys' fees—sums for time spent in making the assertion.

Ms. Garcia's counsel asserted Ms. Garcia incurred \$14,072.50 in legal fees on January 25, 2012, alone.<sup>72</sup> This fee appears excessive—particularly because Ms. Garcia was the only person to testify at the January 26, 2012 hearing. This was not a full bore trial. It was a hearing where the plaintiff needed to prove her case by a preponderance of the evidence—ARPOP, Rule 8 (F)—and where all relevant evidence is admissible—ARPOP, Rule 5 (A). Disclosure rules do not apply—ARPOP, Rule 5(B). Ms. Garcia's counsel asserted in her original Application For Attorneys' Fees<sup>73</sup> the number of hours expended were reasonable and would have been “undertaken by a reasonable and prudent lawyer to advance or protect his client's interest in the pursuit of the case.” This Court disagrees and finds the number of hours to be excessive. Ms. Garcia's counsel billed for over 38 hours of attorney time within a 24-hour period. While Ms. Garcia may determine she needed or wanted a team of lawyers at her side, her desire in this regard does not equate to a reasonable desire. Her three lawyers also billed for numerous conferences and strategizing sessions. This Court has no doubt these attorneys are skilled. Nonetheless, this Court finds it unreasonable to bill Ms. Shurts for Ms. Garcia's three attorneys to work approximately 12 hours per day—as they did on January 25, 2011,—for an IAH hearing.

This does not mean that the trial court did not err by reducing the fees by approximately 96%. In this case, the trial court sua sponte eviscerated the claimed attorneys' fees. By so doing, the trial court erred, as its determination amounted to a denial of justice. *Charles L. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 350, 141 P.3d 824, 830 (Ct. App. 2006). Ms. Garcia's attorneys charged her for their representation. Their representation reasonably included a review of the documents, e-mails and telephone calls, and preparation and appearances at court. Ms. Garcia requested she be compensated for these expenses and the trial court agreed—although it refused to make the order at the January 26, 2012, hearing. This Court finds Ms. Garcia is entitled to reasonable attorney fees.

The next issue is whether Ms. Garcia is entitled to a hearing on the attorney fees issue or if this Court should determine the correct amount of attorneys' fees. Counsel for Ms. Shurts asserted Ms. Garcia's counsel failed to request a hearing on the attorneys' fee issue and therefore waived their right to have the hearing. Ms. Shurts' counsel also asserted that once the Court made a ruling on fees, Ms. Garcia failed to preserve the hearing issue for appeal.<sup>74</sup> Ms. Shurts' counsel failed to properly support this issue and this Court finds Ms. Garcia's counsel preserved the issue on appeal by filing an appellate memorandum.

Ms. Shurts' counsel also (1) maintained Ms. Garcia is not entitled to an explanation of the court's decision or findings of fact and conclusions of law and (2) stressed Ms. Garcia failed to

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<sup>72</sup> *Id.* at p. 9, ll. 22–23.

<sup>73</sup> Miriam Garcia's Application For Attorneys' Fees at p. 15, ll. 11–15.

<sup>74</sup> Appellee's Answering Memorandum at p. 4, ll. 14–16.

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preserve this as an appellate issue. In support of this allegation, Ms. Shurts' counsel proffered *Trantor v. Fredrikson*, 179 Ariz. 299, 878 P.2d 657 (1994) as support. In *Trantor, id.*, 179 Ariz. at 299, 878 P.2d at 657, the Arizona Supreme Court held the failure of a party to object to the absence of specific findings of fact and conclusions of law—in addressing attorneys' fees under A.R.S. § 12–349—barred the party from raising the issue on appeal. The Supreme Court first held A.R.S. 12–349 did not specifically require findings of fact and conclusions of law, but continued and ruled that A.R.S. § 12–350 required the court to set forth the specific reasons for an award. *Id.* The Arizona Supreme Court held:

Because a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects before error may be raised on appeal, absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal.

[Citations omitted.] *Id.* The Arizona Supreme Court then continued and held:

If the court has failed to make findings and a party wants them, all one has to do is to make that issue known in the trial court. The trial court will either make findings or it will not. If it does, the party gets what it wants. If it fails to do so, the issue is preserved for review. But by failing to act at all, a litigant is not in the position to complain about how helpful findings would have been on appeal.

*Trantor, id.*, 179 Ariz. at 301, 878 P.2d at 659. Because counsel for Ms. Garcia (1) did not request a hearing and (2) did not request that the trial court reconsider its attorney fees award, this Court finds this attorneys' fees in this matter do not require findings of fact and conclusions of law. However, this does not mean the attorneys' fees are not subject to review. They are. Instead of reviewing the awarded amount for an abuse of discretion, the attorneys' fees are—as previously stated—subject to *de novo* review.

This Court finds the trial court erred in awarding attorneys' fees of \$2,500.00. This Court has reviewed the time charges as well as the work product the time charges relate to on a line-by-line basis. This Court notes counsel for Ms. Garcia requested compensation for over 46 hours of attorney time that relates to preparing and submitting their application for attorneys' fees—an amount this Court believes to be excessive in both time and money. This Court has also reviewed the numerous strategizing sessions counsel claimed and found these sessions to be excessive in light of the evidence presented and the charges made relative to the two IAHs. After a detailed review of these charges, this Court determines Ms. Garcia is entitled to an attorneys' fee award of \$15,079.50. In so doing, this Court determined the Shurts IAH was improperly obtained and contained misstatements of material fact, warranting the imposition of attorneys' fees as authorized by A.R.S. § 12–349. This Court finds the Shurts IAH was without substantial justification, was groundless, and was not made in good faith. This Court further finds the Shurts IAH constituted harassment as it forbade Ms. Garcia from going to a residence where she was legally allowed to go and where Ms. Shurts had no viable interest. *Cypress on Sunland Homeowners Ass'n v. Orlandini*, 227 Ariz. 288, 301 ¶ 49, 257 P.3d 1168, 1181 ¶ 49 (Ct. App.

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2011). In contrast, this Court determines the Garcia IAH was justified and attorneys' fees were appropriate as authorized by A.R.S. 12-1809 (N).

III. CONCLUSION.

Based on the foregoing, this Court concludes the Desert Ridge Justice Court did not err in sustaining Ms. Garcia's IAH. Because this Court finds there were more than two instances of direct harassment stemming from (1) the 20 days when Ms. Shurts' IAH was in effect and (2) Ms. Shurts' attorney communications with Ms. Garcia's employer, this Court has no need to address the remaining allegations about hearsay evidence and the protest in front of FOX News. This Court further finds (1) the trial court erred in sua sponte reducing Ms. Garcia's claimed attorneys' fees by more than 96% and (2) attorneys' fees of \$15,079.50 are appropriate. In making this determination, this Court has reviewed each charge listed in the "Detailed Description of Attorneys' Fees and Paraprofessionals' Fees (Through February 8, 2012)" and considered the time spent by the various attorneys and the paraprofessional. This Court acknowledges Ms. Garcia's attorneys' fee request has been reduced to approximately 20.5% of the requested amount. Reductions in attorney fees of more than 80% have been upheld. In *ABC Supply, Inc. v. Edwards*, 191 Ariz. 48, 52, 952 P.2d 286, 290 (Ct. App. 1996), the Court of Appeals allowed an almost ninety per cent (90 %) reduction in the awarded amount.

Because neither party prevailed fully on its appeal and because most of the issues in the consolidated appeals were briefed in prior documents, each party shall bear its own costs for the appeal.

**IT IS THEREFORE ORDERED** affirming in part and reversing in part the judgment of the Desert Ridge Justice Court.

**IT IS FURTHER ORDERED** remanding this matter to the Desert Ridge Justice Court for all further appropriate proceedings.

**IT IS FURTHER ORDERED** signing this minute entry as a formal Order of the Court.

/s/ Myra Harris

THE HON. MYRA HARRIS  
Judicial Officer of the Superior Court

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