

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. CATHERINE M WOODS

CASE NO. C20172169

DATE: July 14, 2017

TODD GREENE
Appellant

VS.

JENNIFER TERPSTRA
Appellee

RULING

IN CHAMBERS RE: LOWER COURT APPEAL FROM TUCSON CITY COURT

In this appeal from the Tucson City Court (“the trial court”), this Court is asked to determine whether the trial court committed reversible error by denying him a hearing pursuant to A.R.S. § 12-1809(H) on the ground of mootness, and then striking his timely Notice of Appeal on the ground of mootness. For reasons stated below, following this Court’s careful review and consideration of the record, this Court concludes that the trial court did err by depriving Appellant a hearing pursuant to A.R.S. § 12-1809(H) and by striking his Notice of Appeal. The case shall be remanded to the trial court for further proceedings.

RELEVANT FACTS AND PROCEDURAL BACKGROUND

On December 30, 2015, the trial court heard Appellee Jennifer Terpstra (“Terpstra”) on her *ex parte* Petition for Injunction Against Harassment against Appellant, Todd Greene (“Greene”). The trial court granted Terpstra’s Petition. On January 5, 2016, Greene received service of the Injunction. On November 30, 2016, Greene filed a timely written request for hearing, for purposes of challenging the Injunction and seeking to have it quashed for lack of proof. By written notice to the parties dated November 30, 2016, the trial court set the matter for hearing on December 21, 2016. On December 21, 2016, Greene appeared in person for the hearing. Terpstra failed to appear for the hearing. However, counsel appeared on her behalf and requested a continuance. Over Greene’s objection, and being fully aware that the Injunction was to expire on January 5, 2017, the trial court granted Terpstra’s oral request to continue the hearing. In the presence of Greene and Terpstra’s counsel, the trial court set the continued hearing for January 4, 2017.

On December 30, 2016, Greene filed a Motion to Dismiss the Injunction. On January 4, 2017, using an

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entirely incorrect case caption and failing to provide service upon Greene, counsel for Terpstra filed a Motion to Continue the January 4, 2017 hearing on the grounds that he “is out of state and cannot be present for the hearing,” and also because he wanted time to respond to Greene’s Motion to Dismiss. Greene appeared for the January 4, 2017 hearing. Terpstra and her counsel failed to appear. Again, acutely aware that the Injunction was to expire on January 5, 2017, and over Greene’s objection, the trial court continued the hearing to January 25, 2017. Subsequently, the trial court *sua sponte* deemed Greene’s request for hearing to be moot on the grounds that the Injunction expired. The trial court vacated the January 25, 2017 hearing.

Greene filed a timely Notice of Appeal, again asserting his right to a hearing pursuant to § 12-1809(H). The trial court issued an Order striking the Notice of Appeal, concluding that the expiration of the Injunction rendered an appeal moot. Greene filed a timely Notice of Appeal, seeking review of that Order.

FACTUAL FINDINGS AND CONCLUSIONS OF LAW

On appeal, the reviewing court is required to review the facts in the light most favorable to sustaining the trial court’s judgment. *See Galbraith v. Coury Bros. Ranches, Inc.*, 9 Ariz. App. 137, 138, 449 P.2d 974, 975 (1969). An appellate court shall not substitute its discretion for that of the trial court if there is a reasonable basis in the record for sustaining that ruling. *State v. Barger*, 167 Ariz. 563, 566, 810 P.2d 191, 194 (App. 1991). Motions to continue are addressed to the sound discretion of the trial court and its decision will not be reversed absent a clear abuse of discretion. *Matter of Appeal in Yavapai County Juvenile Action No. J-9365*, 157 Ariz. 497, 499, 759 P.2d 643, 645 (App. 1988). A trial court abuses its discretion when it commits an error of law in the process of reaching a discretionary decision. *Mahar v. Acuna*, 230 Ariz. 530, ¶ 14, 287 P.3d 824, 828 (2012). *See also Grant v. Arizona Pub. Serv. Co.*, 133 Ariz. 434, 455-56, 652 P.2d 507, 528-29 (1982). An abuse of discretion occurs when “the reasons given by the court for its actions are clearly untenable, legally incorrect, or amount to a denial of justice.” *State v. Gomez*, 211 Ariz. 111, ¶ 12, 118 P.3d 626, 629 (App. 2005). An appellate court’s review is limited to the record before the trial court. *See GM Dev. Corp. v. Cmty. Am. Mortgage Corp.*, 165 Ariz. 1, 4, 795 P.2d 827, 830 (App. 1990).

On the record before this Court, it appears that the Injunction expired on January 5, 2017 and Terpstra has not sought to renew it. However, there remains a legitimate legal basis to consider Greene’s appeal. As recognized in *Cardoso v. Soldo*, 230 Ariz. 614, 277 P.3d 811 (App. 2012), appellate courts in Arizona in the exercise of discretion for various reasons have considered appeals that have become moot. For instance, as summarized in *Cardoso*, where the appeal presents an issue of great public importance, or one capable of repetition but evading review, our courts have refused to dismiss the appeals as moot. In addition, recognizing

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a “collateral consequences exception” to mootness, the Court in *Cardoso* refused to dismiss the appeal of an expired order of protection. *Id.* at ¶ 14, 277 P.3d at 816. (“Because expired orders of protection carry with them significant collateral legal and reputational consequences, we hold they are not moot for purposes of appellate review.”)

In this case, similar to the effects of orders of protection as outlined in *Cardoso*, this Court finds that the Injunction at issue may carry with it collateral legal and reputational consequences for Greene. Greene’s interest in having the opportunity to quash the stigma and reputational harm associated with the Injunction justifies consideration of his appeal. In addition, consideration of this appeal is warranted in order to avoid repetition of the same procedural shortcomings in the trial court in future cases. Given the trial court’s procedural handling of Greene’s hearing request, including the continuances granted, the failure to hold a hearing before the expiration of the Injunction, treating his case as closed once the Injunction expired, and dismissing his Notice of Appeal, this Court concludes that the trial court’s errors are capable of repetition but evading review.

Section 12-1809(H), A.R.S., mandates that if timely requested by the defendant, the court shall hold a hearing on the Injunction, and that the hearing should be held on an expedited basis when possible. In pertinent part, the statute provides:

At any time during the period during which the injunction is in effect, the defendant is *entitled* to one hearing on written request. . . . A hearing that is requested by a defendant shall be held *within ten days* from the date requested unless the court finds compelling reasons to continue the hearing. The hearing shall be held *at the earliest possible time*. . . . After the hearing, the court may modify, quash, or continue the injunction. (*Emphasis added*).

Here, Greene timely requested a hearing pursuant to § 12-1809(H). He had an absolute statutory right to receive his hearing before the Injunction expired, for the opportunity to challenge and/or refute Terpstra’s evidence that served as the basis for the Injunction. For reasons unknown to this Court, the trial court did not hold the hearing within ten days of Greene’s request or otherwise exhibit an effort to handle the matter on an expedited basis. On December 21, 2016, at the prescribed date and time, Greene sought to receive his hearing and he opposed any continuance. For reasons unknown to this Court, but not directly at issue in this appeal, the trial court deemed it appropriate to grant Terpstra’s oral request for a continuance and it reset the matter for January 4, 2015. Terpstra, through counsel, had actual notice and knowledge of the new hearing date and time.

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On January 4, 2017, Terpstra and her counsel failed or refused to appear for the hearing. Again, Greene sought to receive his hearing that day, before the Injunction expired, and he opposed any continuance. The trial court's January 4, 2017 decision to grant another continuance and its subsequent refusal to hold a hearing pursuant to §12-1809(H) deprived Greene of a substantial right and was contrary to law, and amounted to an abuse of discretion. In addition, the trial court's *sua sponte* dismissal of Greene's timely Notice of Appeal was contrary to law, and amounted to an abuse of discretion. Treating the expired Injunction as moot "ignores the gravity of [the] orders for the individuals involved, and is, therefore, inconsistent with ... collateral consequences jurisprudence." *Cardoso*, 230 Ariz. at ¶ 13, 277 P.3d at 816 (internal citation and quotations omitted).

Accordingly,

IT IS ORDERED reversing the trial court's determination that Greene's request for a hearing pursuant to § 12-1809(H) was moot, and reversing the trial court's determination that his Notice of Appeal was moot.

IT IS FURTHER ORDERED remanding the matter to the trial court for further proceedings consistent with this ruling. The Court anticipates that the trial court will set this matter for a hearing on the Injunction, as contemplated by § 12-1809(H) at the earliest possible time and resolve any pending Motions.


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- cc: Hon. Antonio F Riojas
- Hon. Wendy A Million
- Christopher L. Scileppi, Esq.
- Todd Greene
- Case Management Services - Civil
- Clerk of Court - Appeals Unit
- Clerk of Court - Exhibits (Remand Desk)
- Clerk of Court - Under Advisement Clerk
- Tucson City Court - Appeals (Case/Docket# HR15110662)

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