April 2018
STATE BAR OF ARIZONA, FAMILY LAW SECTION, EXECUTIVE COUNCIL
CASE LAW UPDATE

This update contains summaries of 2 reported Arizona opinions decided in April 2018.

Arizona Supreme Court and Court of Appeals (Divisions 1 and 2) Opinions and Memoranda Decisions may be accessed at: http://apps.supremecourt.az.gov/aacc/default.htm

This update has been prepared by the Case Law Update sub-committee of the State Bar of Arizona Family Law Section, Executive Council, Timea R. Hanratty (Chair).

REPORTED OPINIONS

Wood v. Abril, 2 CA-CV 2017-0182-FC (4/20/2018).
Injunction Against Harassment. Vacated injunction against harassment.

Issues: 1) Is a trial court's order refusing to dissolve an injunction appealable notwithstanding a lack of language pursuant to Rule 54(c) that the judgment was final and no matters remained pending?
2) Did sufficient evidence support a finding of harassment?

Facts: Appellant Abril is girlfriend of Appellee Wood's ex-husband. Wood obtained an injunction against harassment against Abril, which was granted. Abril requested a hearing and the injunction was affirmed at hearing. Abril then appealed, arguing the court's finding of harassment was not supported by sufficient evidence because at most, there was only one incident of harassment.

Analysis re: Jurisdiction: The trial court's order affirming the injunction after hearing did not contain the requisite language regarding finality (Rule 54(c), ARCP). When an injunction against harassment is not sought in conjunction with a pending family court case, the ARCP apply to the extent they are not inconsistent with the Rules of Protective Order Procedure. Because *Brumett v. MGA Home Healthcare, LLC*, held that an order granting, dissolving, or refusing to dissolve an injunction pursuant to A.R.S. § 12-2101(A)(5)(b) was not a final judgment, and such an order is expressly appealable under that statute, Rule 54(c) does not apply so the case is appealable.

Analysis re: Injunction: The definition of harassment requires at least two incidents. A.R.S. § 12-1809(S). In this case, Wood's petition alleged two incidents. However, the first of those two incidents was a verbal altercation wherein Abril didn't say anything and instead it was just Wood's ex-husband. As such, this incident could not count towards the "series of acts" in the definition of harassment and could not support a finding that Abril harassed Wood on that occasion. Because a single incident is insufficient to support a finding of harassment, the Court of Appeals vacated the injunction.

Gonzalez et al. v. Nguyen et al., CV-17-0117-PR (4/12/2018).

Procedure; Default Judgment; Meritorious Defense. Vacated Court of Appeals' opinion and affirmed trial court's default judgment.

Quoc Nguyen was driving his employer's van and rear-ended Pablo Gonzalez's truck. Gonzalez filed a negligence action against Nguyen and his employer, which they did not answer. Gonzalez applied for entry of default, and after a hearing, the court entered a default judgment. The defendants then filed a Rule 60(c) motion to vacate the award, and the employer's insurer moved to intervene. The court denied the motion to intervene but granted the motion to vacate the default judgment. The precise issue on appeal was whether a Rule 60(c) motion needs a meritorious defense supporting the motion, and whether it requires evidence extraneous to the existing record. The Arizona Supreme Court held that a meritorious defense is necessary for a Rule 60(c) motion to set aside, and evidence thereof could appear in the record; outside evidence is not necessary.