

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 12/11/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

DIANE CARDELL, )  
 ) 1 CA-CV 12-0153  
 )  
 ) DEPARTMENT E  
Plaintiff/Appellee, )  
 )  
 ) **MEMORANDUM DECISION**  
v. ) (Not for Publication -  
 ) Rule 111, Rules of the  
CHRISTINE NELSON, ) Arizona Supreme Court)  
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 )  
Defendant/Appellant. )  
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 )  
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 )  
 )

Appeal from the Superior Court of Yavapai County

Cause No. V1300DO201280008

The Honorable Patricia Amavisca Trebesch

**AFFIRMED**

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Diane Cardell, *In Propria Persona*

Chino Valley

Christine Nelson, *In Propria Persona*

Cottonwood

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**T H O M P S O N, Judge**

¶1 Christine Nelson (Nelson) appeals from the order of protection entered against her as to Diane Cardell (Cardell) and

Cardell's minor daughter, J.C.K. For the reasons that follow, we affirm.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶2 Cardell filed a petition for an order of protection (the petition) against Nelson on January 9, 2012, pursuant to Arizona Revised Statutes § 13-3602 (2010) on behalf of herself and her child J.C.K. According to Cardell, at the time of the petition, Nelson was dating or engaged to Cardell's ex-husband who is J.C.K.'s father. Cardell's petition alleged Nelson was driving J.C.K. without a driver's license as a result of her three D.U.I. convictions. Under the Defendant/Plaintiff Relationship section of the petition, Cardell checked the boxes that read "child in common" and "other" and handwrote in "she is my ex husband's fiancé." The petition requested that Nelson stay away from Cardell's home and work and J.C.K.'s school.

¶3 The court issued an order of protection which barred Nelson from having contact with Cardell and J.C.K. and from driving J.C.K. For the Defendant/Plaintiff Relationship section of the order, the court entered "married now or in the past." Nelson was given notice of the order on January 11, 2012, and she requested a hearing. After that hearing, the court sustained the order. Nelson timely appealed. We have jurisdiction pursuant to Rule 9 of the Arizona Rules of Protective Order Procedure.

## DISCUSSION

¶4 Nelson argues that the order of protection is invalid because the parties to the order are both female and do not have a qualifying statutory relationship. Specifically, Nelson states she and Cardell do not have a child in common nor have they ever been married to each other. Cardell asserts that because Nelson was acting as a step-parent, residing with J.C.K. and driving J.C.K. during her father's parenting time, the order of protection is valid.<sup>1</sup> We agree.

¶5 The purpose of an order of protection is to restrain a person from committing an act of domestic violence. A.R.S. § 13-3602(A). For an order of protection to be valid, the plaintiff and defendant must be in one of the six relationships enumerated by A.R.S. § 13-3601(A)(2010).<sup>2</sup> See A.R.S. § 13-3602(C)(4). If the victim is a minor child, the parent shall

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<sup>1</sup> Neither Nelson nor Cardell complied with the Arizona Rules of Civil Appellate Procedure (ARCAP) Rule 13(a)(6), which requires the parties' briefs to include citation to legal authority.

<sup>2</sup> Those relationships are: 1. One of marriage or former marriage or of persons residing or having resided in the same household; 2. The victim and the defendant have a child in common; 3. The victim or the defendant is pregnant by the other party; 4. The victim is related to the defendant or the defendant's spouse by blood or law, such as by marriage; 5. The victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant, and 6. The relationship between the victim and the defendant is currently or was previously a romantic or sexual relationship.

file for an order of protection. A.R.S. § 13-3602(A). An order of protection is valid for one year after defendant is served.<sup>3</sup> A.R.S. § 13-3602(K) (2010).

¶6 We review the grant of an order of protection for an abuse of discretion.<sup>4</sup> *Cardoso v. Soldo*, \_\_\_ Ariz. \_\_\_, \_\_\_, ¶ 16, 277 P.3d 811, 816 (App. 2012); *cf. LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 10, 56 P.3d 56, 59 (App. 2002). While we note that the court erroneously marked the form indicating the parties had been married, as a general principle we may affirm the superior court's ruling if "it is correct for any reason apparent in the record." *See Forszt v. Rodriguez*, 212 Ariz. 263, 265, ¶ 9, 130 P.3d 538, 540 (App. 2006). Section 13-3601(A)(5) provides that an order of protection may be entered where "[t]he victim is a child who resides or has resided in the same household as the defendant and is related by blood to a former spouse of the defendant or to a person who resides or who has resided in the same household as the defendant." Cardell's answering brief states that Nelson was living with and engaged to J.C.K.'s father at the time of the petition. Accordingly, assuming, as

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<sup>3</sup> The order of protection will naturally expire, therefore, on January 24, 2013.

<sup>4</sup> Because Nelson has not provided us with a transcript of either hearing, we must presume the record supports the court's findings. Ariz. R. Civ. Proc. 11(b)(1); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (1995).

we must, that evidence was presented at the hearings and accepted by the superior court, the minor child J.C.K. and Nelson were in a qualified relationship for an order of protection under A.R.S. § 13-3602(A)(5). Furthermore, we presume that the superior court found evidence that Nelson posed a danger to J.C.K. because Nelson was driving her without a driver's license. See *Baker*, 183 Ariz. at 73, 900 P.2d at 767.

¶6 Based upon the foregoing, we find no abuse of discretion by the superior court. We affirm the order of protection.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

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DIANE M. JOHNSEN, Acting Presiding Judge

/s/

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JOHN C. GEMMILL, Judge