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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

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

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YESENIA LORONA, *Plaintiff/Appellee*,

*v.*

MARIA GUADALUPE MORA, *Defendant/Appellant*.

No. 1 CA-CV 16-0138  
FILED 1-10-2017

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Appeal from the Superior Court in Yuma County  
No. S1400DO201501609  
The Honorable Stephen J. Rouff, Judge *Pro Tempore*

**AFFIRMED IN PART; VACATED IN PART**

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COUNSEL

Meerchaum & Orduno, Yuma  
By Candice Orduno-Crouse  
*Counsel for Defendant/Appellant*

**MEMORANDUM DECISION**

Judge Maurice Portley<sup>1</sup> delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Lawrence F. Winthrop joined.

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**P O R T L E Y**, Judge:

¶1 Maria Guadalupe Mora (“Grandmother”), appeals the trial court’s order continuing an order of protection in favor of Yesenia Lorona (“Mother”), and her two minor children. For the following reasons, we affirm the decision continuing the order as it applies to the children, but vacate the order also protecting Mother.

**FACTS AND PROCEDURAL HISTORY<sup>2</sup>**

¶2 Grandmother is the mother of Luis Mora (“Father”) and the paternal grandmother of G.M. and A.M. After Mother and Father separated and started divorce proceedings, Grandmother provided childcare and transportation for the minor children as she helped Father with his scheduled parenting time.

¶3 Mother filed a petition for a protective order in November 2015, alleging that after G.M. (“Child”) reported that Grandmother had slapped her in the face some two months earlier, Child was afraid of Grandmother, and refused to leave with her. The trial court granted the ex parte order, which prevented Grandmother from contacting Mother and the two minor children, including picking up, dropping off, or babysitting the minor children.

¶4 After Grandmother was served with the order, she requested a hearing. During the hour-long hearing in January 2016, the court heard from Mother, maternal aunt, Grandmother, and Father, and admitted

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<sup>1</sup> The Honorable Maurice Portley, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

<sup>2</sup> “We view the facts in the light most favorable to upholding the trial court’s ruling.” *Mahar v. Acuna*, 230 Ariz. 530, 532, ¶2, 287 P.3d 824, 826 (App. 2012).

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exhibits, including an audio recording of Child accusing Grandmother of slapping her, and video recordings of Child's refusal to leave Mother's vehicle. The court, however, refused to admit Grandmother's video recordings of other ordinary encounters with the children, but allowed Grandmother and Father to summarize those recordings and took judicial notice of their contents. The court then continued the order of protection.

¶5 Grandmother filed a timely appeal, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-2101(A)(1), -2101(A)(5)(b)<sup>3</sup> and Arizona Rules of Protective Order Procedure ("Rule") 42(b)(2).

### DISCUSSION

¶6 Grandmother argues that the trial court (1) violated her due process rights to a fair hearing by allowing Mother to present evidence outside the scope of the petition and by imposing unfair time constraints on the hearing; (2) erred by taking judicial notice of the content of approximately 80 video recordings of exchanges occurring without incident offered into evidence by Grandmother; and (3) abused its discretion by admitting incomplete audio evidence.<sup>4</sup>

¶7 We review the continuance of an order of protection for an abuse of discretion. *Cardoso v. Soldo*, 230 Ariz. 614, 619, ¶16, 277 P.3d 811, 816 (App. 2012). A court abuses its discretion when it makes an error of law in reaching a discretionary conclusion or when the record is devoid of competent evidence to support the decision. *Michaelson v. Garr*, 234 Ariz. 542, 544, ¶ 5, 323 P.3d 1193, 1195 (App. 2014). We review questions of law, including due process claims, de novo. *Id.*

¶8 To secure and continue a protective order, a person must prove, by a preponderance of the evidence, that "[t]he defendant has committed an act of domestic violence within the past year." A.R.S. § 13-

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<sup>3</sup> We cite to the current version of the applicable statute unless otherwise stated.

<sup>4</sup> Mother did not file an answering brief. Although we could treat her failure as a confession of error, in the exercise of our discretion we will address the substance of the appeal. *See Gonzales v. Gonzales*, 134 Ariz. 437, 437, 657 P.2d 425, 425 (App. 1982) ("Although we may regard [the] failure to respond as a confession of reversible error, we are not required to do so.").

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3602(E)(2); Ariz. R. Prot. Order P. 38(g). Domestic violence includes assault under A.R.S. § 13-1203, if the victim is a grandchild or the grandchild's parent. A.R.S. §§ 13-3601(A)(4).

**I. Due Process Claims**

¶9 Grandmother argues that the trial court violated her due process rights. Specifically, she contends that (1) Mother was permitted to cross-examine her on a matter outside the scope of the petition without sufficient notice, and (2) the court did not give her adequate time to present her case or allow her to present all of her exhibits.

¶10 The protections of due process, under both the Fourteen Amendment to the United States Constitution, and Article 2, Section 4 of the Arizona Constitution, apply to protective order proceedings. *See Savord v. Morton*, 235 Ariz. 256, 259-60, ¶16, 330 P.3d 1013, 1016-17 (App. 2014). Thus, Grandmother was entitled to notice reasonably calculated to apprise her of the action so that she could adequately prepare her opposition and receive a meaningful opportunity to be heard. *See Armstrong v. Manzo*, 380 U.S. 545, 550, 552 (1965); *Wallace v. Shields*, 175 Ariz. 166, 174, 854 P.2d 1152, 1160 (App. 1992); *see also* Ariz. R. Prot. Order. P. 38(e) (providing that at a contested order for protection hearing: "The judicial officer must ensure that both parties have an opportunity to be heard, to present evidence, and to call and examine and cross-examine witnesses.").

¶11 Although Grandmother contends her due process rights were violated, she did not raise either objection during the hearing or in a post-trial proceeding. Even though we generally do not address an issue not raised to the trial court, *Cardoso*, 230 Ariz. at 619, ¶ 18, 277 P.3d at 816 (citing *Englert v. Carondelet Health Network*, 199 Ariz. 21, 26, ¶ 13, 13 P.3d 763, 768 (App. 2000)), we note that the record does not support Grandmother's assertion that Mother's cross-examination went beyond the allegation in the petition that Grandmother slapped the Child. Additionally, Grandmother had a reasonable opportunity to defend herself against the allegations by cross-examining Mother, testifying, and presenting a witness on her behalf. Finally, although the court stopped the proceeding near the end of the business day after both sides presented evidence, there was no request to present any additional evidence. Given the record, the decision to end the hearing shortly after five o'clock did not constitute an imposition of a "rigid time limit," and did not violate Grandmother's due process rights.

¶12 Having reviewed the record, we find the order of protection, as a matter of law, inappropriately included Mother. Mother did not allege

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any direct act of domestic violence against her by Grandmother and did not pursue such an order. *See* A.R.S. § 13-3602(A). During the hearing, the court asked Mother three times why she should be included in the protective order, and Mother did not have a sufficient answer. In fact, Mother testified that “I just want my children to be protected. That’s the only thing I want.”

¶13 In continuing the order of protection, the court considered Mother’s accusations against Grandmother as something akin to “threatened custodial interference.” But Mother never made such an allegation in the petition, and never sought to amend the petition during the hearing. Nor did Mother articulate any custodial interference, especially given that Father wanted Grandmother to help him as he tried to fulfill his parenting time with the children. Grandmother, as a result, did not know that she had to defend herself about matters not properly raised nor sought by Mother, or would be raised *sua sponte* by the court, which deprived her of proper notice and a fair hearing. *See Savord*, 235 Ariz. at 259-60, ¶16, 330 P.3d at 1016-17. Consequently, the court erred by including Mother in the order of protection, and we vacate the portion of the ruling giving protective status to Mother.

## II. Grandmother’s Videos

¶14 Grandmother also alleges the court committed fundamental error by taking “judicial notice” of more than 80 recorded interactions between Mother and Grandmother. She claims the videos show Mother coaching Child into making the accusations against her. Grandmother, however, never presented the coaching allegation to the court; rather she only indicated that the videos show “mom tell[ing] [Child] not to come with grandma because grandma is mean.” The court responded “Okay. I’ll accept that, that that’s what the video shows.” Grandmother did not object to the court’s statement. In fact, when the court later determined that the videos were irrelevant to the issue of whether the alleged slap occurred, the court asked “Do you want to offer all these phones and recordings into evidence . . . or I will accept it’s true that there’s 80 video recordings on that device there that show that the child was exchanged without anyone . . . slapping her.” Father replied, “Okay, I’ll accept your word.” Because Grandmother did not object to the court presuming the videos did not support Mother’s claim of a slap, she has waived the issue and we will not address it. *Englert*, 199 Ariz. at 26-27, ¶13, 13 P.3d at 768-69.

### III. Incomplete Audio Evidence

¶15 Finally, Grandmother argues that the court abused its discretion by admitting incomplete audio evidence. However, a compact disc containing the entire audio file was admitted into evidence. We review a court's ruling on an evidentiary issue for a clear abuse of discretion and will not reverse unless unfair prejudice resulted or the court incorrectly applied the law. *Larsen v. Decker*, 196 Ariz. 239, 241, ¶6, 995 P.2d 281, 283 (App. 2000) (internal citations omitted).

¶16 Although only a portion of the audio record was played and translated from Spanish to English during the hearing, Grandmother did not explain why the remaining portion of the audio recording was "necessary to qualify, explain or place into context the portion already introduced." See *State v. Prasertphong*, 210 Ariz. 496, 499, ¶ 15, 114 P.3d 828, 831 (2005) (citations omitted). Moreover, her objection to the legality and authenticity of the audio recording was untimely, and any resulting error is waived. See *Maxwell v. Aetna Life Ins. Co.*, 143 Ariz. 205, 213-14, 693 P.2d 348, 356-57 (App. 1984) (by failing to assert a timely objection, party waived its right to assert any error therefrom). Consequently, the court's evidentiary ruling did not amount to an abuse of discretion.

### IV. Fees on Appeal

¶17 Grandmother requests attorney's fees and costs on appeal pursuant to Rule 39 and A.R.S. § 13-3602(P). After consideration of the briefing, and our resolution on appeal, we exercise our discretion and deny Grandmother's request for fees on appeal. We, however, grant her costs on appeal upon compliance with ARCAP 21.

### CONCLUSION

¶18 Based on the foregoing, we affirm the trial court's order continuing the order of protection of the two minor children, but vacate the inclusion of Mother on the continued order of protection.

