

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



DIVISION ONE
FILED: 03/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

CHARLES LLOYD MIERKEY,) 1 CA-CV 11-0349
)
Plaintiff/Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication
DEBRA ANN MIERKEY,) - Rule 28, Arizona
) Rules of Civil
Defendant/Appellant.) Appellate Procedure)
)

Appeal from the Superior Court in Mohave County

Cause No. S8015DO201100306

The Honorable Julie S. Roth, Judge

AFFIRMED

Charles Lloyd Mierkey Kingman
In Propria Persona

Debra Ann Mierkey Kingman
In Propria Persona

N O R R I S, Judge

¶1 Debra Ann Mierkey ("Debra") timely appeals the superior court's order continuing an order of protection it issued in favor of her then-husband Charles Lloyd Mierkey

("Charles").¹ Debra first argues this court should "Lift/Reverse" the order of protection because Charles obtained the order "based on false allegations" and the superior court did not allow her to present "testimony . . . to prove [the] allegations . . . were untrue." On the record before us, we see no basis for overturning the superior court's order.

¶12 As the appellant, Debra bears the burden of providing sufficient evidence for us to address these issues. ARCAP 11(b)(1) ("If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a certified transcript of all evidence relevant to such finding or conclusion."). Debra has not included in the record on appeal a transcript of the court's hearing on the order of protection, thus, we have no way to determine whether Charles obtained the order based on false allegations or whether the superior court prevented Debra from presenting evidence to show the allegations were false. *See State ex rel. Dep't of Econ.*

¹On May 17, 2011, Charles filed, and the superior court granted, a petition for an order of protection alleging, among other things, Debra had "assaulted" him at work, then called him repeatedly and returned to his place of business the next day, when he called police and she was "arrested for domestic violence." He also alleged she continued to harass him after the domestic violence incident. Two days later, at Debra's request, the court held a hearing on the order of protection. It found Charles "[met] the requirements for having an order of protection," and upheld the order.

Sec. v. Burton, 205 Ariz. 27, 30, ¶ 16, 66 P.3d 70, 73 (App. 2003) (appellant responsible for ensuring record on appeal contains all transcripts and documents necessary to address issues raised on appeal); *Retzke v. Larson*, 166 Ariz. 446, 449, 803 P.2d 439, 442 (App. 1990) (citations omitted) (in absence of a transcript, we assume missing portions of record "supported the [superior] court's finding"). Indeed, the minute entry of the hearing showed Debra was present, was sworn and testified, was permitted to introduce an exhibit, and was allowed to present closing arguments. Thus, the record we have does not reflect the superior court abused its discretion in continuing the order of protection. See *LaFaro v. Cahill*, 203 Ariz. 482, 485, ¶ 10, 56 P.3d 56, 59 (App. 2002) (citation omitted) (appellate court reviews superior court's injunction against harassment for "clear abuse of discretion").

¶13 Debra also argues the superior court, in continuing the order of protection, should not have relied on allegations she committed a domestic violence offense against Charles, because the State "dismissed" the "domestic violence" charges against her. We disagree. The record before us contains next to no information regarding the nature of what appear to be criminal charges filed against Debra by the State. The hearing minute entry reflects Debra introduced as an exhibit an order

entered by the Kingman Municipal Court that appears to have imposed a fine (partially suspended), required her to pay certain fees, prohibited her from having any "uninvited contact with Charles," and dismissed, pursuant to the State's agreement, two charges (assault, classified as a "domestic violence" offense, and the use of a telephone to terrify, intimidate, threaten, harass, annoy or offend) against her.

¶4 Again, because we have no transcript, the best we can glean from the record is that the municipal court imposed some type of "probation" based on Debra's commission of some criminal offense. Thus, although the State may well have agreed to dismiss the charges identified in the exhibit, this does not mean Charles failed to present the superior court with sufficient evidence warranting both entry and continuance of the order of protection.

