

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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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In re the Matter of:

TAMARA KURILOVA, *Plaintiff/Appellant*,

*v.*

MARTIN MICKA, *Defendant/Appellee*.

No. 1 CA-CV 15-0556 FC  
FILED 5-17-2016

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Appeal from the Superior Court in Maricopa County  
No. FC2015-071776  
The Honorable Jay L. Davis, Commissioner

**AFFIRMED**

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COUNSEL

Tamara Kurilova, Goodyear  
*Plaintiff/Appellant*

Law Office of Katherine Kraus PLLC, Peoria  
By Katherine Kraus  
*Counsel for Defendant/Appellee*

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**MEMORANDUM DECISION**

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Kenton D. Jones joined.

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**N O R R I S**, Judge:

¶1 The issue in this appeal is whether the superior court abused its discretion when it quashed an ex parte order of protection and found plaintiff/appellant Tamara Kurilova had failed to show by a preponderance of the evidence that defendant/appellee Martin Micka committed, or may in the future commit, an act of domestic violence. Based on the record before us, the superior court did not abuse its discretion in quashing the order of protection. Thus, we affirm its order. *See Cardoso v. Solo*, 230 Ariz. 614, 619, ¶ 16, 277 P.3d 811, 816 (App. 2012) (appellate court reviews superior court's order of protection ruling for abuse of discretion).

**FACTS AND PROCEDURAL BACKGROUND**

¶2 On June 12, 2015, Kurilova petitioned the superior court for an ex parte order of protection against Micka, her ex-husband. In her petition, she stated Micka was stalking her and she was "worr[ied] about [her] safety." She alleged she had obtained two prior orders of protection against Micka. In support of her June 2015 petition, she identified two incidents of stalking. First, she alleged that although she had never provided Micka with "any information" about her "job," he, nonetheless, went to her workplace on June 8, 2015, at 12:00 p.m. and asked her co-workers about her schedule. Kurilova was not at work when this occurred. Second, Kurilova alleged that on September 20, 2014, many of her neighbors had seen Micka wandering around outside her home "multiple times during [the] day and night."

¶3 The superior court granted the order of protection and ordered Micka not to go to Kurilova's residence or work. *See* Ariz. Rev. Stat. ("A.R.S.") § 13-3602(E) (Supp. 2015) (court shall issue protective order if there is reasonable cause to believe defendant may commit an act of domestic violence or has committed an act of domestic violence). Micka then requested a hearing, arguing Kurilova's allegations against him were "untrue." *See* A.R.S. § 13-3602(I) ("[A] party who is under an order of protection or who is restrained from contacting the other party is entitled

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to one hearing on written request.”). At the conclusion of the hearing, the superior court found Kurilova had failed to meet her burden of proof and quashed the order of protection. *See* Ariz. R. Protective Order P. 8(F) (“The plaintiff shall prove the case by a preponderance of the evidence, in order for a protective order to remain in effect . . .”).

**DISCUSSION**

¶4 In Arizona, domestic violence includes the crime of stalking. *See* A.R.S. § 13-3601(A) (Supp. 2015) (domestic violence includes an offense prescribed in A.R.S. § 13-2923). In turn, stalking includes a person “intentionally or knowingly” engaging in conduct that is directed towards another person that would cause “a reasonable person to fear for the person’s safety” or “would cause a reasonable person to fear death,” and that person in fact fears for his or her safety or death. A.R.S. § 13-2923 (Supp. 2015). The superior court found Kurilova had failed to show by a preponderance of the evidence that Micka had engaged in stalking, as defined by the statute.

¶5 Much of the evidence Kurilova presented regarding her June 8 stalking allegation was either inadmissible or disputed by Micka. For example, first, the superior court found two unnotarized letters from Kurilova’s co-workers, stating Micka had been at Kurilova’s workplace, were inadmissible because they were “hearsay documents with no indication of reliability.”<sup>1</sup> *See* Ariz. R. Protective Order P. 5(A)(1)(e) (court may exclude evidence that lacks reliability). Second, Kurilova did not present any witness who had directly observed Micka at her workplace. Rather, Kurilova’s witness testified she did not recall being at Kurilova’s workplace on June 8. The witness testified that her mother or Kurilova’s co-workers – the record is not clear – had seen Micka there.

¶6 Further, although the witness did testify that photos, which – from our reading of the transcript – may have been from a video allegedly showing Micka at Kurilova’s workplace on June 8, “looks like” Micka,<sup>2</sup>

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<sup>1</sup>The court also did not admit many of Kurilova’s documents because it determined they were outside of the scope of the proceedings.

<sup>2</sup>On appeal, Kurilova failed to include the video in the record on appeal. *See Myrick v. Maloney*, 235 Ariz. 491, 495, ¶ 11, 333 P.3d 818, 822 (App. 2014) (“An appellant [] has an obligation to provide transcripts and other documents necessary to consider the issues raised on appeal.”)

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Micka testified he was not at Kurilova's workplace and presented his work schedule and time card as evidence that on June 8, at 12:00 p.m., he was at work.

¶7 And finally, Kurilova did not produce any evidence in support of her claim that Micka was at her home on September 20. Based on the record properly before us, the superior court did not abuse its discretion in finding Kurilova "failed to establish by a preponderance of the evidence that [Micka] had committed or may in the future commit an act of domestic violence."

**CONCLUSION**

¶8 For the foregoing reasons, we affirm the order of the superior court quashing the order of protection. As the successful party on appeal, we award Micka his costs on appeal, contingent upon his compliance with Arizona Rule of Civil Appellate Procedure 21.



Ruth A. Willingham · Clerk of the Court  
FILED : ama

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(citation omitted). Kurilova also attached documents to her opening brief that included letters from her co-workers not admitted into evidence at the hearing and which are also not part of the record on appeal. *See* ARCAP 11(a)(1) (record consists of documents filed in the superior court before filing a notice of appeal).