

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KRISTI J. REEDER, *Petitioner/Appellee*,

v.

STEVEN A. DAHL, *Respondent/Appellant*.

No. 1 CA-CV 16-0343 FC
FILED 2-16-2017

Appeal from the Superior Court in Maricopa County
No. FC2016-003641
The Honorable Roger L. Hartsell, Judge *Pro Tempore*

AFFIRMED

COUNSEL

Steven A. Dahl, Phoenix
Defendant/Appellant

Kristi J. Reeder, Phoenix
Petitioner/Appellee

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Judge John C. Gemmill and Judge Patricia A. Orozco joined.¹

T H U M M A, Judge:

¶1 Steven Dahl appeals from the superior court's issuance, after an evidentiary hearing, of an order of protection against him and a Brady Notice. Because Dahl has shown no reversible error, the order is affirmed.

FACTS² AND PROCEDURAL HISTORY

¶2 Dahl and Kristi Reeder divorced in 2014 and share custody of their three children. In March 2016, Reeder filed a petition for an order of protection against Dahl, alleging he had made various offensive and threatening statements to her, was stalking her and that she was in fear for her safety. After the petition was granted ex parte, Dahl requested an evidentiary hearing, which was held a short time later. The hearing, where both parties were self-represented, lasted more than two hours and Dahl and Reeder were allowed one hour each to testify, submit exhibits and present witnesses.

¹ The Honorable John C. Gemmill and Honorable Patricia A. Orozco, Retired Judges of the Court of Appeals, Division One, have been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

² This court construes the record in a light most favorable to upholding the superior court's decision. *See Michaelson v. Garr*, 234 Ariz. 542, 544 ¶ 5 (App. 2014) (citing cases).

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¶3 Reeder testified that she was threatened by Dahl’s profane language and statements, including statements like “hurt’s coming.” Reeder also testified that Dahl constantly drove by her home and was stalking her. Dahl denied stalking Reeder and claimed, through cross-examination, that the reason he drove by her home was to “investigate” missing marital assets and to visit neighbors. Dahl admitted making the alleged statements but argued they were not made during the dates alleged and he did not consider them harassing or threatening.

¶4 After considering the evidence, and weighing and assessing credibility, the superior court affirmed the order of protection. As relevant here, that included an order prohibiting Dahl from “conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury” against Reeder. A Notice to Sheriff of Brady Indicator (Brady Notice) issued at the same time.

¶5 This court has jurisdiction over Dahl’s timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1) and -2101(A)(1) (2017),³ and Arizona Rules of Protective Order Procedure (ARPOP) 42(a)(2).

DISCUSSION

¶6 This court reviews an order of protection for an abuse of discretion, reviewing issues of law de novo. *Mahar v. Acuna*, 230 Ariz. 530, 534 ¶ 14 (App. 2012).

I. Dahl’s Constitutional Rights Were Not Violated.

A. The Order Of Protection Does Not Violate Dahl’s First Amendment Rights.

¶7 Dahl argues the superior court violated his First Amendment rights by issuing the order of protection “based solely on words” because none of his statements “could be considered threatening, fighting words, nor seriously alarming to the plaintiff whom has been a participant in many such discussions.” As noted above, however, Dahl admitted to making rude, offensive and profane statements. “Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution.” *State v. Brown*, 207 Ariz. 231, 234 ¶ 8 (App. 2004) (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 309-10 (1940)).

³ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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Moreover, the superior court made plain that the order of protection was issued based on Dahl's threatening statements *and* conduct. Accordingly, there is no factual basis for Dahl's argument. In addition, the order of protection does not restrict any constitutionally protected speech. For these reasons, Dahl has not shown that his First Amendment rights were violated.

B. The Brady Notice Does Not Violate Dahl's Second Amendment Rights.

¶8 Dahl argues the Brady Notice violates his Second Amendment rights by prohibiting him from possessing firearms. The Brady Notice, however, is a federal law requirement, 18 U.S.C. § 922(d)(8), the constitutionality of which has been upheld as being "substantially related to the important government interest of preventing domestic gun violence," *United States v. Chovan*, 735 F.3d 1127, 1141 (9th Cir. 2013). On this record, Dahl has not shown that his Second Amendment rights were violated.

C. The Superior Court Did Not Violate Dahl's Fourteenth Amendment Rights.

¶9 Dahl argues his Fourteenth Amendment rights were violated because the "judge incorrectly handled the admission of evidence and testimony" at the hearing. Dahl has a due process right to have "the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

¶10 Dahl first argues he should have received advance copies of the documents presented to the superior court. As applicable here, however, there is no pre-hearing disclosure requirement in protective order proceedings akin to what is required by the Arizona Rules of Civil Procedure. *See* ARPOP 37. Moreover, from the record, the superior court gave Dahl an opportunity to review the documents, to make any objections he had and the court excluded some of the evidence based on his objections. For other documents submitted, Dahl conceded he was "certain they came from [him]." Dahl has not shown the superior court violated his due process rights in addressing the documents offered at the hearing.

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¶11 Dahl next argues the superior court erred by excluding “[m]uch of [his] critical evidence relative to dispute the claims on the petition.” This evidence, however, largely consisted of a calendar of events Dahl prepared and phone records. The court explained that the calendar would not be admitted because Dahl could testify to his recollection of events. The court also explained that it would not admit “phone records from other people.” The superior court had the discretion to exclude evidence “if its probative value is outweighed by a danger of . . . wasting time.” ARPOP 36(a). Dahl has shown no abuse of that discretion here. Moreover, Dahl was still able to relay to the court what his evidence was meant to prove, Reeder conceded that it did and the court acknowledged his point.

¶12 Finally, Dahl argues “a series of police reports dated from Nov 2013-Mar 2016 were ignored.” The superior court explained that the reports were excluded because they were outside of the relevant timeframe. The court had the discretion to exclude evidence that was not relevant. *See* ARPOP 36(a). On this record, Dahl has shown no Fourteenth Amendment Violation.

II. Dahl Has Shown No Reversible Error In The Superior Court Affirming The Order Of Protection Or Issuing The Brady Notice.

A. The Superior Court Did Not Err In Affirming The Order Of Protection.

¶13 Citing A.R.S. § 13-2921(A), Dahl argues the order of protection was in error because it is only harassment “if the defendant knows he is harassing.” That statute, however, provides that “[a] person commits harassment if, with intent to harass or with knowledge that the person is harassing another person, the person” does certain enumerated things. A.R.S. § 13-2921(A). Although Dahl disagrees with the superior court’s determination, it “reviewed the demeanor of both parties” and apparently did not believe Dahl’s view of his actions was credible. This court “will defer to the [superior] court’s determination of witnesses’ credibility and the weight to give conflicting evidence.” *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347 ¶ 13 (App. 1998). Moreover, although Dahl lists numerous facts in his opening brief that he claims support his argument that the order of protection was in error, this court does not re-weigh the evidence considered by the superior court. *See Hurd v. Hurd*, 223 Ariz. 48, 52 ¶ 16 (App. 2009). Dahl has not shown that the superior court erred in affirming the order of protection.

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B. The Superior Court Did Not Commit Reversible Error In Issuing The Brady Notice.

¶14 Dahl claims the Brady Notice should not have been issued because Reeder was not asked about his use or access to firearms and the allegations do not meet the standard necessary to justify a Brady Notice. Dahl is correct that the applicable Arizona procedural rules direct that the superior court “must ask the plaintiff about the defendant’s use of or access to firearms to determine whether the defendant poses a credible threat to the physical safety of the plaintiff or other protected person.” ARPOP 23(i)(1). From the record on appeal, however, Dahl’s use of and access to firearms (and Reeder’s knowledge of that use and access) does not seem disputed. Indeed, Dahl’s reply brief on appeal concedes that Reeder “had lived with and shot [Dahl’s] firearms over our entire relationship.” On this record, Dahl has shown no reversible error under ARPOP resulting from the superior court’s failure to ask Reeder about such use or access.

¶15 The Brady Notice was issued under federal law, expressly stating “the protective order. . . appears to meet the criteria established in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. § 922).” This federal statute prohibits the subject of a protective order from possessing firearms if the protective order “was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate” and “by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.” 18 U.S.C. § 922(d)(8). Given this standard, the Brady Notice was automatically triggered because (1) Dahl attended and participated in the evidentiary hearing and (2) the protective order prohibits Dahl from “. . . conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury.” On this record, Dahl has shown no error under federal law in the superior court issuing the Brady Notice.

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C. Dahl Has Not Shown The Superior Court Was Improperly Biased.

¶16 Dahl asserts reversal is required because the superior court displayed “prejudice and bias” toward him. The “judge is presumed to be free of bias and prejudice.” *Cook v. Losnegard*, 228 Ariz. 202, 206 ¶ 22 (App. 2011). Although Dahl claims the superior court “made several comments towards [him] during the hearing that [he] felt showed prejudice against [him] and [his defense],” the record does not support an argument that the superior court was improperly biased against him. Nor has Dahl made any showing to rebut the presumption that the superior court was free of bias and prejudice.

CONCLUSION

¶17 The order of protection and Brady Notice are affirmed.



AMY M. WOOD • Clerk of the Court
FILED: AA