

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

In re the Matter of:

JACQUELINE FLORES, *Petitioner/Appellant*,

v.

LAURINDO R. JORDAN, JR., *Respondent/Appellee*.

No. 1 CA-CV 20-0694 FC
FILED 10-7-2021

Appeal from the Superior Court in Maricopa County
No. FC2020-071766
The Honorable J. Justin McGuire, Judge *Pro Tempore*

REVERSED AND REMANDED

COUNSEL

Jacqueline Flores
Petitioner/Appellant

Ryan, Rapp, Underwood & Pacheo PLC, Phoenix
By Brian S. Kelley
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge David D. Weinzwieg and Judge Paul J. McMurdie joined.

S W A N N, Judge:

¶1 Jacqueline Flores appeals the superior court’s order quashing an ex parte order of protection she obtained against Laurindo R. Jordan, Jr., her former husband with whom she shares a child. We reverse and remand for further proceedings because the superior court did not apply the correct legal standard and did not afford Flores an opportunity to prove her case.

FACTS AND PROCEDURAL HISTORY

¶2 On October 7, 2020, Flores petitioned the superior court for an ex parte order of protection against Jordan. Flores alleged that Jordan had a “history of domestic violence” against her “through abusive language, overt and/or covert intimidation and manipulative and abusive interactions.” She averred that despite her explicit instructions to Jordan that he was not to come to her house, he had arrived at her home several days earlier and texted her that he was outside, causing her to call the police department for help. Flores alleged that Jordan had mental health problems, always carried weapons, and had “been abusive and coercive” toward her such that she could not “be around him without feeling stressed and on high alert because of his past behavior.” She claimed to have received “reports” that Jordan had driven by her house throughout 2019, which led her to believe that he was spying, stalking, or attempting to intimidate or control her. She also alleged that Jordan engaged in verbal and emotional abuse during parenting time exchanges in 2011 and 2014.

¶3 The superior court granted the order of protection and ordered Jordan not to contact Flores or go to her residence, workplace, or their child’s school. Jordan thereafter requested a hearing, asserting that Flores had lied in her petition and “there has never been a history of domestic violence, abuse, stalking or anything of that sort.”

¶4 At the hearing, the superior court asked Flores whether her testimony would be consistent with her petition if she were to testify. Flores answered in the affirmative. The court then stated that it could only affirm

FLORES v. JORDAN
Decision of the Court

the order of protection if Flores proved by a preponderance of the evidence that Jordan had committed a crime of domestic violence within the past year, and it could not consider anything not in the petition. It then ruled that because Flores's petition did not allege that Jordan had committed a crime of domestic violence within the past year, there was no possibility that Flores could present any such evidence. The court therefore quashed and dismissed the order of protection. Flores appeals.

DISCUSSION

¶5 Flores contends that she was denied due process of law because the superior court did not permit her to present evidence at the hearing.¹ We review a ruling on an order of protection for abuse of discretion. *Cardoso v. Soldo*, 230 Ariz. 614, 619, ¶ 16 (App. 2012). The court abuses its discretion when it makes an error of law in reaching a discretionary conclusion. *Savord v. Morton*, 235 Ariz. 256, 259, ¶ 10 (App. 2014). We review due process claims de novo. *Id.* at 260, ¶ 16.

I. THE SUPERIOR COURT DID NOT APPLY THE CORRECT LEGAL STANDARD.

¶6 At the hearing on the order of protection, the superior court stated that it could “only affirm the order of protection if there is proof, by a preponderance of the evidence, that [Jordan] committed a crime of domestic violence within the past year.” That was an incorrect statement of law.

¶7 Arizona law requires a court to issue an order of protection if it determines that there is reasonable cause to believe the defendant (1) “may commit an act of domestic violence” or (2) “has committed an act of domestic violence within the past year or within a longer period of time if the court finds that good cause exists to consider a longer period.” A.R.S. § 13-3602(E). If the defendant requests a hearing after an order of protection is issued and served, *see* A.R.S. § 13-3602(L), the burden changes, and the order will only remain in effect if the plaintiff “prove[s] the case by a preponderance of the evidence” at the hearing. Ariz. R. Protective Order P. 38(f)(3).

¹ Flores also contends that the court erred by denying her motion to continue the hearing. Because the record does not contain any such motion, we do not consider that issue. *See* ARCAP 11(c)(1)(B) (appellant must include in the record transcripts of all proceedings relevant to challenged rulings).

FLORES v. JORDAN
Decision of the Court

¶8 Accordingly, Flores had the burden at the hearing to show, by a preponderance of the evidence, *either* that Jordan had committed an act of domestic violence within the preceding year (or within a longer period, at the court’s discretion) *or* that Jordan *might* commit domestic violence. That is not the standard that the superior court applied.² We therefore reverse and remand.

II. THE SUPERIOR COURT DID NOT FOLLOW THE CORRECT HEARING PROCEDURE AND DEPRIVED FLORES OF DUE PROCESS.

¶9 In addition, we reverse and remand because the superior court did not follow the correct procedure for an order of protection hearing, resulting in a denial of due process.

¶10 The Rules of Protective Order Procedure require that the court allow the parties to “have an opportunity to be heard, to present evidence, and to call and examine and cross-examine witnesses.” Ariz. R. Protective Order P. 38(f)(1). Here, the superior court refused to allow Flores to present any testimony or other evidence at the hearing because her petition contained “no allegation of a crime of domestic violence being committed by [Jordan] against [Flores] in the past year” and it could not “consider anything outside of the petition.” As we have already explained, the court misconstrued Flores’s burden. And though it is true that Flores could not present new allegations at the hearing, *see Savord*, 235 Ariz. at 259–60, ¶¶ 16–18, if the superior court had allowed Flores to testify and present evidence, she could have developed the allegations in her petition to establish that domestic violence had occurred *or* might occur in the future.

² We note a discrepancy between the legal standard the court articulated on the record at the hearing as a basis for its ruling and the legal standard set forth in the minute entry ruling. Unlike at the hearing, the minute entry ruling stated the correct standard. The minute entry stated that Flores had “failed to make a *prima facie* showing that [Jordan] has committed *or may in the future commit* an act of domestic violence.” (Emphasis added). We cannot credit the minute entry’s recitation of the standard because “[w]hen a discrepancy between the trial court’s oral pronouncement . . . and the written minute entry can be clearly resolved by looking at the record, the ‘[o]ral pronouncement in open court controls over the minute entry.’” *State v. Ovante*, 231 Ariz. 180, 188, ¶ 38 (2013) (citation omitted).

FLORES v. JORDAN
Decision of the Court

¶11 Under A.R.S. § 13-3601(A), “domestic violence” means any offense prescribed in specific criminal statutes, including the crimes of harassment (A.R.S. § 13-2921) and stalking (A.R.S. § 13-2923), when the victim and the defendant were formerly married. Depending on the evidence Flores produced, she could have developed her allegations to establish that Jordan had committed—or might commit—a domestic violence offense. By not allowing Flores to present evidence, the superior court denied her the opportunity to satisfy her burden of proof and, thus, her right to due process. *See Volk v. Brame*, 235 Ariz. 462, 468–69, ¶¶ 21, 24 (App. 2014) (holding that the superior court violated party’s right to due process of law by refusing to allow him to testify and present evidence or to challenge opponent’s evidence through cross-examination).

CONCLUSION

¶12 For the reasons set forth above, we reverse the superior court’s order quashing the order of protection. We remand for the superior court to conduct a new hearing to determine whether Flores can show by a preponderance of the evidence that Jordan either has committed an act of domestic violence within the past year (or within a longer period of time, in the court’s discretion) or may commit an act of domestic violence. We award Flores her costs on appeal, subject to her compliance with ARCAP 21.



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