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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

KENDRA RESHAYE FORRESTER, *Petitioner/Appellee*,

*v.*

WAYLON T. FORRESTER, *Respondent/Appellant*.

No. 1 CA-CV 21-0232 FC  
FILED 12-14-2021  
AMENDED PER ORDER FILED 12-14-2021

Appeal from the Superior Court in Yavapai County  
No. V1300PO202180026  
The Honorable Linda Wallace, Judge

**AFFIRMED**

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COUNSEL

Defenders of Children, Phoenix  
By David J. Newstone, Lisa Bivens  
*Counsel for Petitioner/Appellee*

Pursell Law Firm, PLLC, Prescott Valley  
By Brian G. Pursell  
*Counsel for Respondent/Appellant*

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**MEMORANDUM DECISION**

Judge Jennifer M. Perkins delivered the decision of the Court, in which Presiding Judge Cynthia J. Bailey and Judge Maria Elena Cruz joined.

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**P E R K I N S**, Judge:

¶1 Waylon Forrester appeals an order of protection entered against him. For the following reasons, we affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

¶2 We view the facts in the light most favorable to upholding the superior court's ruling. *Mahar v. Acuna*, 230 Ariz. 530, 532, ¶ 2 (App. 2012). Waylon and Kendra Forrester entered a covenant marriage in July 2019. During the dissolution proceedings, Kendra petitioned the court for an order of protection against Waylon. Kendra's petition also sought protection for her son from a prior relationship, E.L., and alleged Waylon repeatedly harassed them. The court held a two-day evidentiary hearing in April 2021 to determine whether to grant Kendra's petition.

¶3 At the hearing, Kendra testified that on January 29, 2021, she asked Waylon to stop coming to her house or contacting her, her son, or her son's father. A few days later, Waylon visited Kendra's home unannounced and against her express wishes. Kendra again asked Waylon not to contact her, except to discuss financial matters related to the divorce. Consistent with their agreement, Kendra sent Waylon an email concerning a credit card payment. Waylon responded with messages unrelated to the parties' finances. Kendra testified that Waylon used various communication methods to contact her multiple times per day.

¶4 Kendra introduced several exhibits to support her petition. Exhibit Four contained screenshots of her cellphone's voicemail and call history. The superior court initially sustained Waylon's objection to Exhibit Four's admission for lack of foundation as to pages four through six. Kendra then clarified that Exhibit Four contained voicemails and calls she received from Waylon. The court instructed Kendra to identify Exhibit Four's other pages and explain the relevant time frames of the listed information. When Kendra testified as to the content on page one, Waylon again objected, arguing Kendra was merely reading the document into

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evidence rather than laying the proper foundation. Kendra then explained that Waylon left the voicemails depicted in page one between January 21 and January 27, 2021. The court admitted Exhibit Four over Waylon's renewed objection.

¶5 The superior court issued the order of protection, finding reasonable cause "to believe that [Waylon] would commit an act of domestic violence or has committed an act of domestic violence in the past year." The court indicated that it did not rely on the evidence contained in Exhibit Four that pre-dated Kendra's January 29 request that Waylon stop contacting her because any earlier communication "could be consistent with attempts at reconciliation." But the court found that Waylon continued to contact Kendra, directly and surreptitiously, after she asked him to stop contact.

¶6 Waylon timely appealed, and we have jurisdiction under A.R.S. §§ 12-2101(A)(1), (5)(b), and Ariz. R. Prot. Order P. 42(B)(2).

**DISCUSSION**

¶7 We review an order of protection for an abuse of discretion. *Savord v. Morton*, 235 Ariz. 256, 259, ¶ 10 (App. 2014). "A trial court abuses its discretion when it makes an error of law in reaching a discretionary conclusion or when the record, viewed in the light most favorable to upholding the trial court's decision, is devoid of competent evidence to support the decision." *Id.* (cleaned up).

**I. Sufficiency of the Evidence**

¶8 The superior court shall issue an order of protection if the plaintiff demonstrates, by a preponderance of the evidence, reasonable cause to believe the defendant may commit an act of domestic violence or committed an act of domestic violence within the past year. A.R.S. § 13-3602(E); *see also Michaelson v. Garr*, 234 Ariz. 542, 545, ¶ 6 (App. 2014). "Domestic violence" includes harassment as defined in A.R.S. § 13-2921 if the defendant and victim are currently or were previously in a romantic relationship. A.R.S. § 13-3601(A)(1), (6). Section 13-2921(E) defines "harassment" as "conduct that is directed at a specific person and that would cause a reasonable person to be seriously alarmed, annoyed or harassed and the conduct in fact seriously alarms, annoys or harasses the person."

¶9 Waylon argues insufficient evidence supports the superior court's findings. We disagree. Waylon repeatedly disregarded Kendra's

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requests to stop contacting her. He visited her home unannounced and without permission in addition to sending multiple text messages, emails, and letters. Kendra testified that Waylon contacted her son and parents trying to reach her. She also testified Waylon's behavior made her feel "seriously alarmed, annoyed and harassed." Waylon claims he did not intentionally or knowingly harass Kendra. But competent evidence supports a finding that a reasonable person would be seriously annoyed, alarmed, or harassed by Waylon's conduct and Kendra was in fact, seriously annoyed, alarmed, or harassed. *See* A.R.S. § 13-2921(E).

¶10 Waylon also argues that the superior court erred in finding reasonable cause "without finding preponderance of the evidence." The court did not specifically state the burden of proof it applied, but we assume the court applied the proper standard. *See In re William L.*, 211 Ariz. 236, 238, ¶ 7 (App. 2005).

## II. Evidentiary Challenges

¶11 Waylon argues the superior court erred by permitting Kendra to read Exhibit Four into the record before its admission. Waylon also contends the court violated his due process rights by admitting evidence and permitting testimony outside the scope of Kendra's petition. "Due process protections provided under the Fourteenth Amendment of the United States Constitution and Article 2, Section 4, of the Arizona Constitution, guarantee that [Waylon] receive notice, reasonably calculated to apprise him of the action in order to adequately prepare his opposition." *Savord*, 235 Ariz. at 259-60, ¶ 16 (cleaned up). We review due process claims *de novo*. *Id.* at 260, ¶ 16.

### A. Exhibit Four

¶12 Admission of evidence is within the superior court's discretion, and we will not disturb it absent an abuse of that discretion. *State v. Cooney*, 233 Ariz. 335, 338, ¶ 6 (App. 2013). Kendra testified that Exhibit Four contained screenshots of her voicemails and incoming calls. Contrary to Waylon's argument that Kendra improperly read the Exhibit into the record before its admission, Kendra's testimony could be characterized as providing proper foundation for the exhibit. We thus reject Waylon's characterization of Kendra's testimony and find no abuse of discretion.

¶13 Waylon contends Exhibit Four falls outside the scope of Kendra's petition because it includes evidence of voicemails Waylon left before the dates listed in the petition. The petition addresses Exhibit Four in a section labeled January 27, 2021. The petition then contextualizes

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Exhibit Four's contents, including Waylon's repetitive calls and Kendra's decision to block his phone number. While Exhibit Four does contain calls and voicemails that occurred before the date listed in the petition, Waylon received sufficient notice of the exhibit's contents to have a reasonable opportunity to defend himself. *See Savord*, 235 Ariz. at 259–60, ¶ 16.

¶14 In any event, the superior court did not rely on communications predating January 29, 2021. Rather, the court found that Exhibit Four contained “a lot of communications that happened prior to that time could be consistent with attempts at reconciliation.” The court also found that Kendra did not ask Waylon to stop contacting her until January 29. We find no error.

**B. Cross-Examination**

¶15 Waylon asserts the superior court also violated his due process rights by allowing Kendra to cross-examine him about issues outside the petition's scope. During cross-examination, Kendra asked Waylon about a text message she sent. Kendra asked, “[o]n February 18, 2021, did I ask you to stop [calling] and your reply was no?” Waylon objected, arguing the question exceeded the petition's scope. But the court overruled his objection because his attorney asked him about that specific text message during direct examination, thereby opening the door to that line of inquiry on cross-examination. *See State v. Lindsey*, 149 Ariz. 472, 477 (1986) (a party “opens the door” by procuring specific testimony, and the opposing party is allowed to respond or retaliate). Moreover, the petition expressly addressed the contents of this same text message, albeit with a different attributed date. Again, we find no error.

**III. Reasonable Cause as to E.L.**

¶16 We review the interpretation and application of court rules *de novo*. *DiPasquale v. DiPasquale*, 243 Ariz. 156, 157, ¶ 6 (App. 2017). The superior court must make separate reasonable cause determinations “to the plaintiff individually and as to any other person listed in the petition, including any child with whom the defendant has a legal relationship.” Ariz. R. Prot. Order P. 23(e)(2). The court need not make a separate determination if the child and defendant have no legal relationship. *Id.*

¶17 Waylon argues he and E.L. have a legal relationship as stepfather and stepson, and the superior court erred by failing to make a separate reasonable cause determination. Waylon specifically argues a separation determination is required if the defendant and a protected person share a Rule 23(f) relationship. We disagree. Subsection (f), which

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encompasses non-adopted stepchildren, merely identifies the relationships that justify issuance of an order of protection as opposed to an injunction against harassment. *See* Ariz. R. Prot. Order P. 23(f); *but c.f.* Ariz. R. Prot. Order P. 25 (no relationship test). Subsection (f) does not establish what constitutes legal relationships under subsection (e)(2). The court thus did not err by not making a separate reasonable cause determination as to E.L.

¶18 Both parties request attorneys' fees on appeal. After considering the factors in Rule 39, we deny both requests. Kendra is entitled to her costs on appeal upon compliance with ARCAP 21.

CONCLUSION

¶19 We affirm.



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