

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

BIANCA PAREDES,
Plaintiff/Appellee,

v.

FERNANDO RAMIREZ,
Defendant/Appellant.

No. 2 CA-CV 2022-0007
Filed September 7, 2022

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. DV20211448
The Honorable Deborah Pratte, Judge Pro Tempore

VACATED AND REMANDED

COUNSEL

Jesús Roberto Romo Véjar, Tucson
Counsel for Defendant/Appellant

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which
Vice Chief Judge Staring and Judge Brearcliffe concurred.

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E P P I C H, Presiding Judge:

¶1 Fernando Ramirez appeals from the trial court's order upholding an order of protection entered against him in favor of his wife Bianca Paredes and their two minor children, E.R. and O.R. He contends the court violated his right to due process by preventing him from fully presenting his case. For the following reasons, we vacate the court's order affirming the order of protection and remand for further proceedings.

Factual and Procedural Background

¶2 In September 2021, Paredes requested an order of protection against Ramirez. She alleged that in April 2020, Ramirez had pulled and threatened to use a gun on her and E.R., and had brought up a family member who had killed his wife, saying that would happen to her. She further alleged that in September 2021, Ramirez went to her workplace and threatened to kill her. She alleged that he later attacked and harassed E.R., chasing the child around with the gun. The trial court, ex parte, granted the order of protection, and Ramirez subsequently requested a hearing.

¶3 The matter was set for a telephonic thirty-minute contested hearing in November 2021. At the hearing, the trial court noted there was limited time that would be divided equally between the parties, both of whom required interpretation.¹ Neither party objected, and Paredes testified regarding the incidents alleged in her petition. Ramirez cross-examined her. He then requested to call to testify their adult son, who had apparently witnessed the incidents. The court allowed the witness but warned Ramirez that he had approximately seven minutes to conclude his case.

¶4 The trial court's interpreter had another hearing to attend and requested a moment to see if someone could cover the other matter. The court agreed and noted it had provided the parties with additional time, which appeared no longer workable. When the interpreter reported that no one was able to cover, the court stated that it would have to speed things up.

¹The interpreter had Paredes on the interpreter's line at the start of the hearing, but Ramirez had to disconnect and call in to the interpreter's line during the hearing.

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¶5 After an exchange about the most appropriate way for the witness to testify in order to facilitate interpretation, the trial court instructed the witness to call in on another line. The court asked that, in the meantime, Ramirez present his own testimony, again reminding him that he only had a few minutes and stating that it was concerned the time was going to disappear.

¶6 Ramirez testified, denying the allegations against him. Before he was apparently finished, the trial court stated his available time had concluded and the witness had not called in.² Ramirez did not object but asked to make an offer of proof as to what the witness would have testified to. The court allowed it but noted that the hearing had lasted for almost double the time allotted and Ramirez had used more than half that time.

¶7 Ramirez avowed that the witness would have testified he never saw a weapon, his father did not have a weapon, and he never saw his father abuse his mother or E.R. After providing Paredes with an opportunity to respond, the trial court found she had met her burden of proof and affirmed the order of protection. This appeal followed and we have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 12-2101(A)(5)(b), and Rule 42(A)(2), Ariz. R. Protective Order P. *See Moreno v. Beltran*, 250 Ariz. 379, ¶ 11 (App. 2020).

Discussion

¶8 On appeal, Ramirez contends the trial court violated his Fourteenth Amendment right to due process and his Sixth Amendment right to present a complete defense by limiting his testimony and preventing him from calling his witness due to lack of time.³ Paredes has not filed an answering brief. “When debatable issues exist and an appellee

²Despite the witness’s apparent availability to testify earlier in the hearing, the court did not inquire into whether there were technical difficulties or if the witness could use Ramirez’s line.

³Ramirez did not raise any objection during the hearing, and we typically do not address issues not first raised to the trial court. *See Cardoso v. Soldo*, 230 Ariz. 614, ¶ 18 (App. 2012). However, courts of appeal have discretion to address arguments for the first time, and our supreme court has exercised that discretion when constitutional issues are raised. *See City of Tucson v. Tanno*, 245 Ariz. 488, ¶¶ 22-23 (App. 2018). We therefore consider the issue here.

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fails to file an answering brief, we may consider such failure a confession of reversible error.” *Savord v. Morton*, 235 Ariz. 256, ¶ 9 (App. 2014). An order of protection is a “very serious matter” that “carries with it an array of ‘collateral legal and reputational consequences’ that last beyond the order’s expiration,” and Ramirez has raised a debatable issue. *Id.* ¶ 11 (quoting *Cardoso v. Soldo*, 230 Ariz. 614, ¶ 14 (App. 2012)). Thus, under these circumstances, we consider Paredes’s failure to file an answering brief as a confession of error.

¶9 Even absent the confession of error, reversal here is proper. We review a trial court’s decision on an order of protection for an abuse of discretion, but we review due process claims de novo. *See id.* ¶¶ 10, 16. We also review the court’s enforcement of a time limit for an abuse of discretion, and to prevail, Ramirez must show he suffered harm because of the time limit. *See Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 30 (App. 1998).

¶10 A trial court has the duty, and broad discretion, to manage its own docket and control its own courtroom. *Id.* ¶ 33; *Findlay v. Lewis*, 172 Ariz. 343, 346 (1992) (appellate court does not substitute its judgment for trial court in case management). Thus, the court may impose time limits on proceedings. *Brown*, 194 Ariz. 85, ¶ 29. But any limit should be reasonable under the circumstances and flexible to allow for adjustments; rigid time limits are disfavored. *Id.*; Ariz. R. Civ. P. 16(j) (“court may impose reasonable time limits on trial proceedings”); *see also* Ariz. R. Protective Order P. 2 (rules of civil procedure apply when not inconsistent with protective order rules).

¶11 When both parties appear for a contested order of protection hearing, “[t]he judicial officer must ensure that both parties have an opportunity to be heard, to present evidence, and to call and examine and cross-examine witnesses.” Ariz. R. Protective Order P. 38(g)(1). Due process entitles a party “an opportunity to be heard at a meaningful time and in a meaningful manner” and “entitles a party to offer evidence and confront adverse witnesses.” *Curtis v. Richardson*, 212 Ariz. 308, ¶ 16 (App. 2006). Due process is not a rigid, technical conception; procedural protections must be tailored to the circumstances at hand given the interests affected. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976) (due process requires consideration of the private interest affected, the risk of erroneous deprivation of that interest through procedures used, and the government’s interest). Although trial courts have considerable discretion to set and

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enforce time limits, limits that deprive litigants of their due process rights are unreasonable. *See Curtis*, 212 Ariz. 308, ¶ 16; *Brown*, 194 Ariz. 85, ¶ 29.

¶12 Ramirez contends the trial court violated his due process rights by not permitting him to finish his own testimony and by preventing him from presenting the only witness who was not a party to the case. He further contends that because the court deprived him of an opportunity to fully present his case, he was harmed.⁴ We agree.

¶13 The trial court set the hearing for thirty minutes. This was despite the hearing being conducted telephonically and both parties requiring the services of an interpreter. Although Ramirez cross-examined Paredes, the court informed him he had only a few minutes to testify, and apparently concluded his testimony before he was finished. Further, the court noted that Ramirez's witness had not made contact per its instructions and thus concluded the hearing, despite the witness's apparent readiness to testify earlier. And although the court had stated it needed to "speed [the hearing] up" because of the interpreter's time restraints, immediately after the court announced its ruling, while all parties were still present, the courtroom clerk informed the court that the interpreter no longer needed to attend the other hearing.

¶14 Given the prolonged discussions regarding the interpreter's availability and apparent confusion over how the witness should contact the court, the court-imposed time limits deprived Ramirez of due process. Even assuming the limits were facially reasonable, when unexpected delays and technical challenges arose, the court failed to account for those circumstances and provide Ramirez a reasonable opportunity to "be heard, to present evidence, and to call and examine and cross-examine witnesses." Ariz. R. Protective Order P. 38(g)(1); *see also Curtis*, 212 Ariz. 308, ¶ 16.

¶15 We also conclude Ramirez has demonstrated he was harmed by the trial court's time limits. *See Brown*, 194 Ariz. 85, ¶ 30. Significantly, Ramirez was not provided a meaningful opportunity to present the

⁴Although Ramirez also contends his Sixth Amendment right to present a complete defense was denied, the Sixth Amendment applies only in "criminal prosecutions," U.S. Const. amend. VI, and Ramirez concedes a hearing on an order of protection is not a criminal proceeding. In any event, we need not reach this argument because we conclude the hearing violated his due process rights. *See Schwab v. Matley*, 164 Ariz. 421, 422 (1990) (not addressing other issues raised given dispositive issue).

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testimony of the only non-party witness to the incident. And although Ramirez made a brief offer of proof as to what the testimony would have been, on appeal, he further asserts that the witness could have impeached Paredes's testimony regarding her motivations for filing the petition. Accordingly, on the record before us, the time limits were unreasonable and deprived Ramirez of his due process.

Disposition

¶16 For the foregoing reasons, we vacate the trial court's order affirming the order of protection and remand for further proceedings consistent with this decision.