

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TERESA M. ENCINAS,
Plaintiff/Appellee,

v.

DERRICK SMITH,
Defendant/Appellant.

No. 2 CA-CV 2022-0154
Filed June 2, 2023

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NOT FOR PUBLICATION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. DV20221630
The Hon. Cynthia T. Kuhn, Judge

AFFIRMED

Derrick Smith, Tucson
In Propria Persona

MEMORANDUM DECISION

Judge Gard authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vásquez concurred.

G A R D, Judge:

ENCINAS v. SMITH
Decision of the Court

¶1 Derrick Smith appeals from a contested order of protection preventing him from having contact with Teresa Encinas and their child, E.S. 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 order. *See Michaelson v. Garr*, 234 Ariz. 542, n.1 (App. 2014). In October 2022, Encinas filed a petition for an order of protection, alleging that Smith had committed multiple acts of domestic violence within the prior year against her and E.S. On the same day, the court granted Encinas's petition after an ex parte hearing. The court thereafter upheld the order of protection after a contested hearing. This appeal followed. We have jurisdiction under A.R.S. § 12-2101(A)(5)(b).

Discussion

¶3 We review a superior court's decision to continue an order of protection for an abuse of discretion. *See Michaelson*, 234 Ariz. 542, ¶ 5. A 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 [superior] court's decision, is devoid of competent evidence to support the decision.'" *Id.* (quoting *Mahar v. Acuna*, 230 Ariz. 530, ¶ 14 (App. 2012)).

¶4 As a preliminary matter, Smith has failed to comply with the rules of appellate procedure, thereby waiving his claims on appeal. An opening brief must contain the "[a]ppellant's contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities and appropriate references to the portions of the record on which the appellant relies." Ariz. R. Civ. App. P. 13(a)(7)(A). And "[w]e generally decline to address issues that are not argued adequately, with appropriate citation to supporting authority." *In re J.U.*, 241 Ariz. 156, ¶ 18 (App. 2016). Moreover, although self-represented, Smith is "entitled to no more consideration than if he had been represented by counsel" and is "held to the same familiarity with required procedures . . . as would be attributed to a qualified member of the bar." *Copper State Bank v. Saggio*, 139 Ariz. 438, 441 (App. 1983).

¶5 In his opening brief, Smith generally denies the allegations in Encinas's petition. However, he fails to present any discernable legal argument and does not provide "citations of legal authorities . . . on which [he] relies" to establish that the superior court erred. Ariz. R. Civ. App. P.

ENCINAS v. SMITH
Decision of the Court

13(a)(7)(A). In fact, he identifies no specific error below. By failing to comply with applicable rules and failing to identify any manner in which the court below erred, Smith has waived his claims on appeal. *See State v. Carver*, 160 Ariz. 167, 175 (1989) (“Failure to argue a claim usually constitutes abandonment and waiver of that claim.”).

¶6 Even if we were to overlook the deficiencies in Smith’s opening brief, we would find no abuse of discretion on this record.¹ Smith was responsible for ensuring that the record on appeal was complete for our review, but he failed to include a transcript of the contested hearing on the order of protection. *See Blair v. Burgener*, 226 Ariz. 213, ¶ 9 (App. 2010) (appellant’s burden to provide all documents necessary for appellate court to consider issues). In the absence of the transcript, “we presume the evidence and arguments presented at the hearing support the [superior] court’s ruling.” *Id.* As a result, we cannot say the court abused its discretion by continuing the order of protection against Smith.

Disposition

¶7 For the foregoing reasons, we affirm the order of protection.

¹Encinas did not file an answering brief. “When debatable issues exist and an appellee 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). However, for the reasons stated above, we find no debatable issues here.