

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MICHELLE RENEE FISHER,
Plaintiff/Appellee,

v.

GILBERT DEAN LUCERO,
Defendant/Appellant.

No. 2 CA-CV 2022-0182
Filed July 31, 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NOT FOR PUBLICATION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. DV20221665
The Honorable Gilbert Rosales Jr., Judge Pro Tempore

AFFIRMED

Gilbert Dean Lucero, Tucson
In Propria Persona

MEMORANDUM DECISION

Judge Sklar authored the decision of the Court, in which Vice Chief Judge Staring and Judge O’Neil concurred.

S K L A R, Judge:

¶1 Gilbert Lucero appeals the trial court’s order of protection, which prohibits him from having contact with his adult daughter and minor granddaughter. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 In October 2022, Lucero’s daughter, Michelle Fisher, petitioned for an order of protection against Lucero. After an ex parte hearing, the trial court granted the petition. The order also included Fisher’s husband and daughter as protected parties, and it prohibited Lucero from going near their residence.

¶3 Lucero requested a hearing to contest the order. After the hearing, the trial court modified the order of protection by removing Fisher’s husband as a protected party. Lucero appealed. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 12-2101(A)(5)(b), and Rule 42 of the Arizona Rules of Protective Order Procedure.

ANALYSIS

¶4 We review the entry of an order of protection for an abuse of discretion. *Savord v. Morton*, 235 Ariz. 256, ¶ 10 (App. 2014). A trial court abuses its discretion by making “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.* (quoting *Mahar v. Acuna*, 230 Ariz. 530, ¶ 14 (App. 2012)).

¶5 On appeal, Lucero argues that the order should be vacated because Fisher falsely testified concerning a “hug incident” in June 2022. He argues that Fisher was motivated to lie because he had refused to co-sign an auto loan.

¶6 Lucero’s opening brief contains no table of contents or citations, and it contains no cogent statement of the case, facts, or issues. *See* Ariz. R. Civ. App. P. 13(a)(1), (2), (4), (5), (6). It also fails to cite any legal

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authorities or any portion of the trial court record. *See* Ariz. R. Civ. App. P. 13(a)(4), (5), (7). Nor does it provide any meaningful legal argument as to why the trial court erred. *See* Ariz. R. Civ. App. P. 13(a)(7)(A). On this basis, we could conclude that Lucero has waived his argument on appeal. *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009).

¶7 Nevertheless, we will address the merits of Lucero’s appeal in our discretion, though our review is hampered by Lucero’s failure to supply us with a transcript of the contested hearing. We must therefore presume that the evidence and testimony support the trial court’s findings and conclusions. *See Baker v. Baker*, 183 Ariz. 70, 73 (App. 1995); Ariz. R. Civ. App. P. 11(c)(1).

¶8 Given that presumption, we see no basis for concluding that the trial court abused its discretion. The court granted the order of protection based on allegations, set forth in Fisher’s petition, that Lucero had sent Fisher and her husband a letter demanding unsupervised visitation with their child, made false accusations against them, called child-welfare authorities, and caused the child to fear being taken away. On their face, the allegations do not appear to include anything concerning a “hug incident.” The court was not authorized to grant or affirm an order of protection based on incidents not alleged in the petition. *See Savord*, 235 Ariz. 256, ¶¶ 14, 17-18. And absent a transcript, we must presume that the court did not do so. *See Baker*, 183 Ariz. at 73. Thus, any testimony concerning the “hug incident” was collateral at best, and it does not supply a basis for vacating the order of protection.

¶9 Lucero also makes numerous factual assertions concerning his relationships with his ex-wife and his client from his work as a caregiver. Neither his ex-wife nor his client are parties to this case, and it is unclear how these asserted facts relate to the order of protection. They do not provide us with a basis for vacating the order.

¶10 Finally, we note that Fisher 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*, 235 Ariz. 256, ¶ 9. However, as we have explained, Lucero has not raised debatable issues. We therefore affirm the order of protection.