

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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SOMAYEH ASHTARI,  
*Petitioner/Appellee,*

*v.*

ATAOLLAH GHASSEMI,  
*Respondent/Appellant.*

No. 2 CA-CV 2024-0059  
Filed November 25, 2024

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pima County  
No. DV20230928  
The Honorable Lisa I. Abrams, Judge

**AFFIRMED**

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COUNSEL

Southern Arizona Legal Aid Inc., Tucson  
By Kristin Fitzharris  
*Counsel for Petitioner/Appellee*

Ames-Light & Associates P.C., Tucson  
By Susan A. Light  
*Counsel for Respondent/Appellant*

**MEMORANDUM DECISION**

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

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E P P I C H, Vice Chief Judge:

¶1 Ataollah Ghassemi appeals from the trial court’s order continuing, as amended, an order of protection filed against him by his wife, Somayeh Ashtari.<sup>1</sup> He contends there was insufficient evidence to uphold the protective order. For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 We view the facts in the light most favorable to upholding the trial court’s order. *Savord v. Morton*, 235 Ariz. 256, ¶ 10 (App. 2014). In June 2023, Ashtari filed a petition for an order of protection against Ghassemi. She alleged, in part, that around July 2022, Ghassemi had pushed her out of the house, causing her phone to slip out of her hand and break. When she returned a few hours later, Ghassemi yelled at her and called her names. She further alleged that around May 2023, Ghassemi had “grabbed [a] chair and made like he was going to throw the chair at [her]” saying “I will kill you here [and] no one will know that you are dead.” The trial court granted an ex parte order of protection which was later amended. Ghassemi sought a hearing to contest the protective order.

¶3 Ashtari, Ghassemi, and a neighbor testified at the contested hearing. At the end of the hearing, the trial court found: (1) Ghassemi had assaulted Ashtari by pushing her and the allegation was “credible based on [her] testimony, along with the physical gestures she used when describing the incident”; (2) Ghassemi had harassed Ashtari when he locked her out of the house and the allegation was credible because the “neighbor testified as to being present during the incident and seeing [Ashtari] outside . . . trying to get inside of the home” for fifteen to twenty minutes, and when

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<sup>1</sup>At the time of the petition, the parties were married, though they were later parties to a dissolution proceeding. At one point, the court held a joint hearing on the order of protection and the dissolution proceeding. The result, if any, of the dissolution proceeding is not included in our record on appeal.

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Ghassemi eventually came out of the house “his demeanor was angry, and he was speaking in Farsi, which is exactly what [Ashtari] had testified to”; and (3) Ghassemi had assaulted Ashtari when he grabbed a chair and held it over her head and the allegation was credible as Ashtari’s testimony “was very clear and [she] made physical gestures as if she was holding an object over her head.”

¶4 The trial court amended and continued the order of protection. This appeal followed. 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.

**Discussion**

¶5 We review the trial court’s decision to uphold a protective order following a contested hearing for an abuse of discretion. *See Cardoso v. Soldo*, 230 Ariz. 614, ¶¶ 4, 16 (App. 2012). “The 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.’” *Michaelson v. Garr*, 234 Ariz. 542, ¶ 5 (App. 2014) (quoting *Mahar v. Acuna*, 230 Ariz. 530, ¶ 14 (App. 2012)). “Our duty on review does not include re-weighing conflicting evidence,” rather, we give “due regard to the trial court’s opportunity to judge the credibility of the witnesses.” *Hurd v. Hurd*, 223 Ariz. 48, ¶ 16 (App. 2009).

¶6 A trial court must affirm an order of protection if the petitioner shows by a preponderance of the evidence that “there is reasonable cause to believe . . . [that] [t]he defendant has committed an act of domestic violence within the past year.” A.R.S. § 13-3602(E)(2); *see* Ariz. R. Protective Order P. 38(g)(3). If the petitioner and defendant are married, assault and harassment are acts of domestic violence. A.R.S. § 13-3601(A)(1); *see also* A.R.S. §§ 13-1203(A) (assault), 13-2921(A), (E) (harassment).<sup>2</sup>

¶7 Ghassemi contends there was insufficient evidence to support the protective order, but his arguments amount to a request that we

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<sup>2</sup>Although the current statute defining harassment became effective after Ghassemi’s conduct, *see* § 13-2921, the changes are not material to our analysis, *see* 2008 Ariz. Sess. Laws, ch. 205, § 2. We therefore cite to the current version of the statute.

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reweigh the evidence and reassess the witnesses' credibility on appeal, something we will not do. *See Hurd*, 223 Ariz. 48, ¶ 16. Contrary to his assertion, competent evidence exists supporting the trial court's continuation of the order of protection. At the contested hearing, Ashtari testified that Ghassemi had pushed her and tried to hit her on the head with a chair, supporting the court's findings of assault. *See* § 13-1203(A)(2), (3). Ashtari also testified that she begged Ghassemi to let her into the house and that he yelled at her – testimony corroborated by a neighbor. That evidence supports the court's finding of harassment. *See* § 13-2921(A)(1), (E).

¶8 We also disagree with Ghassemi that Ashtari's testimony was "contrary" to her petition. Ashtari merely testified to the details of the incidents that she had alleged in her petition.<sup>3</sup> Even assuming those details were not wholly consistent with the descriptions in her petition, this did not render the evidence insufficient. *See Hurd*, 223 Ariz. 48, ¶ 16 ("Even though conflicting evidence may exist, we affirm the trial court's ruling if substantial evidence supports it."). And although Ghassemi disputed the allegations through his own testimony, which he argues is credible, the trial court found Ashtari "more credible" than Ghassemi, and we defer to that assessment. *See id.*; *Cardoso*, 230 Ariz. 614, ¶ 17. Ghassemi has not shown an abuse of discretion.

¶9 Ashtari requests her attorney fees and costs on appeal pursuant to Rule 21, Ariz. R. Civ. App. P., Rule 39, Ariz. R. Protective Order P., and § 13-3602(T). In our discretion, we grant Ashtari her reasonable attorney fees in defending against this appeal. *See* § 13-3602(T) ("After a hearing with notice to the affected party, the court may enter an order requiring any party to pay the costs of the [order of protection] action, including reasonable attorney fees, if any."); Ariz. R. Protective Order P. 39(a) (rule permitting reasonable attorney fees consistent with § 13-3602(T)); *see also Arnold v. Ariz. Dep't of Health Seros.*, 160 Ariz. 593, 608 (1989) ("Attorney's fees should not be limited by the fact that the plaintiffs are indigent and that their attorneys accepted the case on a *pro bono* basis.").

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<sup>3</sup>For example, among other instances, Ghassemi contends Ashtari's testimony that he had "kicked [her] out of the house . . . without shoes" conflicts with her statement in her petition that she had "grabbed [her] shoes" when he pushed her out. When asked about this alleged inconsistency, Ashtari testified that she had left the house with only one shoe.

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And, as the prevailing party, Ashtari is also entitled to her costs upon compliance with Rule 21, Ariz. R. Civ. App. P.

**Disposition**

¶10 For the foregoing reasons, we affirm the trial court's order continuing the order of protection.