

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2011-000001-001 DT

04/25/2011

THE HON. CRANE MCCLENNEN

CLERK OF THE COURT
T. Melius
Deputy

JENNY DALGLISH

JENNY DALGLISH
1523 W JOAN DE ARC
PHOENIX AZ 85029

v.

JEANNE HENDERSON (001)

JEANNE HENDERSON
2220 S 66TH LANE
PHOENIX AZ 85043

PHX MUNICIPAL CT
REMAND DESK-LCA-CCC

RECORD APPEAL RULING / REMAND

Lower Court Case No.: 10P4214348

The Phoenix Municipal Court continued an order of protection in place against Defendant-Appellant Jeanne Henderson (Defendant). Defendant contends the trial court erred. For the reasons stated below, this Court affirms the judgment.

I. FACTUAL BACKGROUND.

On July 14, 2010, Plaintiff-Appellee Jenny Dalglish (Plaintiff) filed a petition for an order of protection against Defendant. The trial court granted the petition on an *ex parte* basis. Subsequently, at Defendant's request, an evidentiary hearing was held on September 21, 2010. Based on the evidence presented, the trial court continued the order in place. Defendant filed a timely notice of appeal on September 23, 2010. This Court has jurisdiction pursuant to ARIZONA CONSTITUTION Art. 6, § 16, and A.R.S. § 12-124(A).

II. ISSUE: DID DEFENDANT PROPERLY PRESENT HER ISSUES FOR APPEAL.

Defendant has submitted a narrative memorandum that fails to reference the record. Accordingly, Defendant's appellate memorandum fails to comply with Rule 8(a)(3), Super. Ct. R. App. P.—Civil, which states:

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Memoranda shall include a short statement of the facts with reference to the record, a concise argument setting forth the legal issues presented with citation of authority, and a conclusion stating the precise remedy sought on appeal.

This Court “is not required to assume the duties of an advocate and search voluminous records and exhibits” to substantiate a party’s claims. *Adams v. Valley National Bank*, 139 Ariz. 340, 343, 678 P.2d 525, 528 (Ct. App. 1984). When a litigant fails to include citations to the record in an appellate brief, the court may disregard that party’s unsupported factual narrative and draw the facts from the opposing party’s properly-documented brief and the record on appeal. *Arizona D.E.S. v. Redlon*, 215 Ariz. 13, 156 P.3d 430, ¶ 2 (Ct. App. 2007). Fundamental error aside, allegations without specific contentions or references to the record do not warrant consideration on appeal. *State v. Cookus*, 115 Ariz. 99, 104, 563 P.2d 898, 903 (1977). Fundamental error rarely exists in civil cases. *See Monica C. v. Arizona D.E.S.*, 211 Ariz. 89, 118 P.3d 37, ¶ 23 (Ct. App. 2005) (explaining that courts apply the doctrine sparingly and that fundamental error is error going to the case’s very foundation that prevents a party from receiving a fair trial). *See also Bradshaw v. State Farm Mutual Automobile Ins. Co.*, 157 Ariz. 411, 420, 758 P.2d 1313, 1322 (1988) (doctrine of fundamental error in civil cases may be limited to situations where a party was deprived of a constitutional right). This Court finds no fundamental error in the record.

Moreover, to the extent that Defendant is challenging the sufficiency of the evidence, this Court has carefully considered the record. Based on the evidence presented at trial, any reasonable trier of fact could have continued the order of protection in place.

III. CONCLUSION.

Based on the foregoing, this Court concludes Defendant failed to properly present her issues for appeal.

IT IS THEREFORE ORDERED affirming the judgment and sentence of the Phoenix Municipal Court.

IT IS FURTHER ORDERED remanding this matter to the Phoenix Municipal Court for all further appropriate proceedings.

IT IS FURTHER ORDERED signing this minute entry as a formal Order of the Court.

/s/ Crane McClennen
THE HON. CRANE MCCLENNEN
JUDGE OF THE SUPERIOR COURT

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