[Cite as *J.L.D. v. A.S.D.*, 2019-Ohio-4106.]

IN THE COURT OF APPEALS OF OHIO
SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

J.L.D.

Appellant

v.

A. S.D.

Appellee

Court of Appeals No. 19-CO-00015

Trial Court No. 2019-DR-00045

DECISION AND JUDGMENT

Decided: September 24, 2019

* * * * *

David L. Engler, for appellant.

Tracey A. Laslo and C. Bruce Williams, for appellee.

* * * * *

OSOWIK, J.

{¶ 1} This is an accelerated appeal from an April 10, 2019 judgment of the Columbiana County Court of Common Pleas, Domestic Relations Division, adopting an April 1, 2019 magistrate's decision dismissing a January 10, 2019 petition for a civil

protection order which had been transferred to Columbiana County shortly after it was filed in Mahoning County. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Jamie Dattilio, sets forth the following assignment of error:

> 1. The Court erred in dismissing *sua sponte* the O.R.C. 3113.31 domestic violence protection order final hearing because there was a custody matter pending in a different court.

{¶ 3} The following undisputed facts are relevant to this appeal. On January 10, 2019, appellant filed a petition for a domestic violence protection order in Mahoning County. The petition was signed on an ex parte basis by a Mahoning County magistrate. Shortly thereafter, the petition was transferred to Columbiana County.

{¶ 4} The propriety of the transfer to another jurisdiction underlies this appeal. The petition encompasses the two minor children born of the former marriage between the parties to this case.

{¶ 5} Prior to these events, the parties were divorced in Mahoning County. Appellee was named as custodial parent of the children. Appellant was granted enumerated periods of visitation. Of significance to the premise of this appeal, post-divorce custody proceedings remain pending pertaining to the subject children in the Mahoning County Court of Common Pleas, Domestic Relations Division. (Mahoning County Case No. 15-DR-049).

{¶ 6} On February 5, 2019, the civil protection order issued by Mahoning County was transferred to Columbiana County despite the simultaneously pending custody proceedings in Mahoning County encompassing the same minor children.

{¶ 7} On February 7, 2019, a conference call was held between the Columbiana County trial court and counsel for the parties. Counsel was advised that Columbiana County had determined, in accordance with R.C. 3113.31(E)(1)(d), that it lacked jurisdiction in the matter due to the allocation of parental rights proceedings on the children pending in Mahoning County.

{¶ 8} Regardless of the statutory prohibition of the exercise of jurisdiction in this matter by Columbiana County that was conveyed to the parties, counsel for appellant declined to dismiss the transferred matter so that all related proceedings could be conducted in the same jurisdiction, Mahoning County, in conformity with R.C. 3113.31(E)(1)(d).

{¶ 9} Confronted with these circumstances, in conjunction with appellant's unwillingness to do a voluntary dismissal in order to remedy the statutory breach, on April 1, 2019, the Columbiana County Court of Common Pleas dismissed the case previously transferred to it from Mahoning County.

{¶ 10} In the dismissal, the trial court noted that pursuant to R.C. 3113.31(E)(1)(d), its jurisdiction over such petitions is limited to those cases in which, "[N]o other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children."

{¶ 11} The trial court determined that an application of the above-quoted statutory language to the current case, in which post-divorce custody proceedings remained pending in Mahoning County covering the same children, mandated the dismissal due to a statutory prohibition of the exercise of jurisdiction by Columbiana County.

{¶ 12} The trial court concluded that the plain meaning of the language of R.C. 3113.31(E)(1)(d) clearly precludes concurrent jurisdiction by Mahoning and Columbiana counties under the facts of this case.

{¶ 13} On April 3, 2019, appellant filed objections to the magistrate's dismissal. In support, appellant asserted that the R.C. 3113.31(D)(2)(a) language stating that, "The court *shall* schedule a full hearing," precluded the underlying dismissal in the absence of a hearing on the matter. (Emphasis added).

{¶ 14} On April 10, 2019, the trial court dismissed appellant's objections to the dismissal. In affirming the magistrate's dismissal, the trial court emphasized that appellant's position fails to acknowledge that *the "shall" language of R.C. 3113.31(D)(2)(a) is subsequently restricted by R.C. 3113.31(E)(1)(d)'s language establishing that jurisdiction in such matters only exists, "[I]f no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children*." (Emphasis added).

{¶ 15} The trial court held in pertinent part, "The basis in law supporting Magistrate Allison is clearly set forth in R.C. 3113.31(E)(1)(d). As correctly determined, that statute prohibits him from allocating parental rights and responsibilities for the minor

children in this case because Mahoning County has determined and/or is determining that allocation." As such, the trial court dismissed the objections and affirmed the dismissal. This appeal ensued.

{¶ 16} On appeal, appellant maintains that the trial court erred in its dismissal of appellant's objections and affirmation of the dismissal of the transferred case. We do not concur.

{¶ 17} It is well-established that an abuse of discretion standard of review is applicable to appellate review of a trial court's adoption of a disputed magistrate's decision. Further, there is a presumption of validity and deference granted to the trial court's decision as the independent fact-finder. *State Farm Mutual Ins. Co. v. Fox*, 182 Ohio App.3d 17, 2009-Ohio-1965, 911 N.E.2d 339, ¶ 11 (2d Dist.).

{¶ 18} In conjunction with the above, we note that the demonstration of an abuse of discretion requires more than showing a mere error of law or judgment. It must be shown that the disputed trial court action was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

{¶ 19} In applying these principles to the manifest facts present in this case, we find that appellant's position that the R.C. 3113.31(D)(2)(a) language that, "[T]he court shall schedule a full hearing," should be construed as reversible trial court error given the dismissal without a hearing fails to recognize the impact of the applicable jurisdictional limiting language, delineated in R.C. 3113.31(E)(1)(d).

{¶ 20} The plain language of R.C. 3113.31(E)(1)(d) limits the exercise of jurisdiction over petitions involving, and thereby impacting, parental rights with regards to minor children to only those cases in which, "[N]o other court has determined or is determining the allocation of parental rights and responsibilities for the minor children."

{¶ 21} This applicable statutory provision establishing defined, finite parameters to the exercise of jurisdiction clearly required the trial court in Columbiana County to dismiss the subject petition pertaining to the minor children given the post-divorce custody proceedings already pending in Mahoning County involving the same children.

{¶ 22} Notably, although appellant goes to great lengths to challenge the trial court's action as, "confused," having a "lack of understanding," "clearly wrong," and perpetrating a, "miscarriage of justice," the record reflects that appellant's audacious allegations are rooted solely in conjecture and innuendo.

{¶ 23} Appellant insinuates that the trial court dismissal was driven by some sort of preferential treatment towards the opposing party, rather than a legitimate course of action necessitated by an application of relevant statutory provisions to the facts of the case. The record is devoid of any objective evidence in support of appellant's supposition.

{¶ 24} Conversely, the record does contain objective evidence in contravention to appellant's misleading allegation on appeal that the trial court, "placed the minor children back into harm's way." The record of evidence does not bear out this assertion.

{¶ 25} The record reflects that, in addition to appellant's unconvincing statutory interpretation in this case, appellant has conspicuously failed to acknowledge that the

Mahoning County trial court conducted a full hearing on January 25, 2019, on the underlying allegations against the opposing party. The trial court denied the claims on the merits.

{¶ 26} The trial court found in pertinent part that the minor child was, "inconsistent in her testimony," and more importantly found that *no evidence of any kind had been presented, "that the children were physically harmed [by appellant's ex-husband]*." (Emphasis added).

{¶ 27} Given the full context of the circumstances, appellant's suggestion that the trial court placed the subject children at risk of harm is dubious and unsupported by the record.

{¶ 28} We find that the trial court properly dismissed appellant's petition in Columbiana County pursuant to the plain language delineated in R.C. 3113.31(E)(1)(d). The trial court could not properly exercise jurisdiction over the matter given pending post-divorce custody proceedings on the same children simultaneously pending in Mahoning County.

{¶ 29} The record is devoid of any evidence establishing an abuse of discretion in the April 10, 2019 dismissal of appellant's objections to the magistrate's decision and affirmation of the April 1, 2019 dismissal of the transferred matter.

{¶ 30} Given our decision adverse to appellant in this case, appellant's pending April 17, 2019 motion to stay is moot. It is hereby denied.

{¶ 31} On consideration whereof, the judgment of the Columbiana County Court of Common Pleas, Domestic Relations Division, is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

Christine E. Mayle, P.J
CONCUR. _____
JUDGE

Judges Arlene Singer, Thomas J. Osowik, and Christine E. Mayle, Sixth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.