[Cite as *Twitty v. Bowe*, 2010-Ohio-1391.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Lucille O. Twitty,	:	
Petitioner-Appellee,	:	No. 09AP-953 (C.P.C. No. 09DV-04-628)
v.	:	(REGULAR CALENDAR)
Timothy Bowe,	:	
Respondent-Appellant.	:	

D E C I S I O N

Rendered on March 31, 2010

Timothy Bowe, pro se.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations.

PER CURIAM.

{¶1} Timothy Bowe, respondent-appellant, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, in which the court denied his motion to terminate a civil protection order ("CPO"). Lucille O. Twitty, petitioner-appellee, has filed a motion to dismiss.

{¶2} On April 29, 2009, appellee filed a petition for a domestic violence CPO against appellant, alleging the two had lived as spouses and seeking to prohibit appellant from harming, threatening, stalking, harassing or contacting her or her current husband. A

first hearing on the petition was scheduled, at which appellant failed to appear. The trial court granted an ex parte domestic violence CPO against appellant on April 29, 2009, effective until May 6, 2009. A full hearing was scheduled for May 6, 2009, but was continued until May 26, 2009, because appellant had not been served with the petition. A full hearing was then held on May 26, 2009, service having been made, but appellant failed to appear. On May 26, 2009, the trial court issued a domestic violence CPO against appellant effective until May 26, 2014.

{¶3} On May 29, 2009, appellant filed a motion to dismiss the CPO (sometimes referred to herein as "first motion"), alleging he did not attend the full CPO hearing on May 26, 2009, because he was told it had been moved to May 28, 2009. A hearing on the motion to dismiss was held, and the trial court denied it on July 21, 2009, finding appellant failed to state a claim upon which relief could be granted.

{¶4} On July 23, 2009, appellant filed another motion to terminate the CPO (sometimes referred to herein as "second motion"), alleging (1) it was impossible for him to do the things appellee alleged in her petition (i.e., cutting the brake lines on appellee's vehicle) because he had recently undergone a major surgery; (2) he missed the first court date because he had been taking pain medications at the time; (3) appellee had other boyfriends; and (4) he was "innocent."

{¶5} A hearing was held on appellant's second motion and, on September 25, 2009, the trial court issued judgment denying appellant's second motion to terminate the CPO, finding the matter was res judicata because appellant's first motion to terminate the CPO requested the same relief and was denied. Appellant, pro se, appeals the judgment of the trial court, asserting the following assignment of error:

> The Trial Judge erred in dismissing appellant's motion to terminate protection order.

{¶6} In appellant's sole assignment of error, appellant argues that the trial court erred when it denied his motion to terminate the CPO. R.C. 3113.31(E)(8)(a) provides that a court may modify or terminate a CPO that was issued after a full hearing. The word "may" in a statute usually connotes an intent on the part of the Ohio General Assembly to vest the court with discretion in those matters. *Kuptz v. Youngstown City School Dist. Bd. of Edn.*, 175 Ohio App.3d 738, 2008-Ohio-1676, ¶18. Accordingly, absent an abuse of discretion, we will not disturb a ruling on a motion to modify or terminate a CPO. *Jones v. Rose*, 4th Dist. No. 09CA7, 2009-Ohio-4347, ¶5. Generally, an abuse of discretion is more than an error of law or judgment; rather, it implies that a trial court's attitude is unreasonable, arbitrary or unconscionable. *Landis v. Grange Mut. Ins. Co.* (1998), 82 Ohio St.3d 339, 342.

{¶7} R.C. 3113.31(E)(8)(b) provides that a respondent in a CPO proceeding may bring a motion for termination of the CPO, and the moving party has the burden of proof to show, by a preponderance of the evidence, that termination of the CPO is appropriate because either the CPO is no longer needed or because the terms of the original CPO are no longer appropriate. In the present case, appellant argues that the trial court's dismissal of his second motion was in error because the court did not provide him the opportunity to plead his case, even though he missed the original hearing due to his recovery from abdominal surgery, which he supported by submitting medical records to the court. Appellant also complains that the trial court told him that if he filed anything else he would lose and be responsible for appellee's costs.

{¶8} The trial court dismissed appellant's second motion to terminate the CPO based upon res judicata, finding that the matter had been fully litigated before in a hearing on appellant's first motion to terminate CPO. Under the doctrine of res judicata, "[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, syllabus. In appellant's first motion to terminate the CPO, appellant indicated that he was told that the original full CPO hearing had been moved to May 28, 2009. Although a full hearing was held on the first motion, we have no transcript to know what transpired or what other reasons appellant gave for his failure to appear at the full CPO hearing. In appellant's second motion to terminate the CPO, appellant indicated his surgery would have prevented him from doing the things appellee alleged in her petition for CPO, and he did not attend the full CPO hearing because he was given misleading information about the court date. Thus, it is clear that appellant raised the same issue regarding his reason for missing the full CPO hearing in both the first and second motions to terminate the CPO, and the trial court did not err when it found the issue barred by res judicata. Although we do not know whether appellant, at the hearing on his first motion to terminate the CPO, also raised the issue of his inability to have done the things appellee alleged because of his medical condition, he had the opportunity to do so; thus, res judicata also applies to preclude this claim in his second motion. See *State v. Saxon*, 109 Ohio St.3d 176, 2006-Ohio-1245, ¶18 (the doctrine of res judicata precludes a party who has had his day in court from seeking a second chance to litigate an issue that he could have raised earlier). We note that appellant, in his appellate brief, states that he did raise the issue of his

medical condition at the hearing on his first motion to terminate the CPO, thus, further supporting the application of res judicata to the issue.

{¶9} Furthermore, appellant did not appeal the trial court's denial of his first motion to terminate the CPO. Errors of law that were either previously raised or could have been raised through an appeal may be barred from further review based upon the operation of res judicata. See *State v. Perry* (1967), 10 Ohio St.2d 175, paragraph nine of the syllabus. Thus, appellant's failure to appeal the trial court's denial of his first motion also requires the application of the doctrine of res judicata to his second motion.

{¶10} Therefore, application of the doctrine of res judicata in the present case prevents endless litigation of an issue on which appellant already received a full and fair opportunity to be heard. For these reasons, the trial court did not abuse its discretion when it denied appellant's second motion to terminate CPO. Appellant's assignment of error is overruled. Given this determination, we find appellee's motion to dismiss moot.

{¶11} Accordingly, appellant's assignment of error is overruled, appellee's motion to dismiss is moot, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Motion to dismiss moot;
judgment affirmed.

BROWN, BRYANT, and KLATT, JJ., concur.

_____