[Cite as *Nkurunziza v. Nkurunziza*, 2010-Ohio-5966.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Consolata Nkurunziza,	:	
Petitioner-Appellee,	:	
		No. 10AP-134
v.	:	(C.P.C. No. 09DV-10-1603)
Leonard Nyamusevya,	:	(REGULAR CALENDAR)
Respondent-Appellant.	:	

D E C I S I O N

Rendered on December 7, 2010

Consolata Nkurunziza, pro se.

Leonard Nyamusevya, pro se.

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

FRENCH, J.

{¶1} Respondent-appellant, Leonard Nyamusevya ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, which granted a domestic violence civil protection order ("DVCPO") that restrained appellant from abusing petitioner-appellee, Consolata Nkurunziza ("appellee"). For the following reasons, we affirm.

{¶2} On October 20, 2009, appellee filed a petition for a DVCPO against appellant pursuant to R.C. 3113.31. In her petition, appellee stated that appellant had "made threats to kill himself and the whole family," and that there was "a long history of domestic violence against [appellee] at the hands of [appellant]." In a statement attached to the petition, appellee alleged that appellant had "kicked, hit, and restrained" her throughout their marriage. He had described how he would kill appellee with tools from their garage; he restrained her from leaving the house without their children; he threatened to harm himself; and he threatened to force sexual relations upon her. Appellee was "very frightened" of appellant and believed he would harm her if she were not granted protection.

{¶3} The trial court granted a DVCPO ex parte, gave notice to appellant, and set the matter for hearing. Following a hearing on January 14, 2010, the court granted a DVCPO that restrained appellant from abusing appellee, required him to vacate the home, gave exclusive use of the home to appellee, and precluded appellant from having contact with appellee.

{¶4} Appellant filed a timely notice of appeal, and he raises the following assignments of error:

> FIRST ASSIGNMENT OF ERROR: The trial court erred to Appellant's prejudice in granting the petition for a civil protection order because doing so was against the manifest weight of the evidence.
>
> SECOND ASSIGNMENT OF ERROR: Appellant's Due Process rights were violated because the hearing was not recorded and there was no transcript of the proceeding.

{¶5} We begin with R.C. 3113.31(E)(1), which authorizes a trial court, after a hearing, to grant a DVCPO "to bring about a cessation of domestic violence" against a family or household member. "Domestic violence" means one or more of the following acts: (1) attempting to cause or recklessly causing bodily injury; (2) placing another person by threat of force in fear of imminent serious physical harm or committing menacing by stalking or aggravated trespass; (3) abusing a child; or (4) committing a sexually oriented offense. R.C. 3113.31(A)(1). We will not reverse a trial court's issuance of a DVCPO as contrary to the manifest weight of the evidence if there is some competent, credible evidence supporting it. *Fleckner v. Fleckner*, 177 Ohio App.3d 706, 713, 2008-Ohio-4000, ¶15, citing *Kabeer v. Purakaloth*, 10th Dist. No. 05AP-1122, 2006-Ohio-3584, ¶7.

{¶6} In his first assignment of error, appellant contends that granting a DVCPO was against the manifest weight of the evidence. As to that evidence, appellant explains that, because the hearing was not recorded, he submitted a proposed statement of the evidence to the trial court on April 20, 2010, pursuant to App.R. 9(C). The court rejected appellant's version of the facts and proceedings and submitted its own statement, which is part of our record on appeal.

{¶7} In a judgment entry dated May 26, 2010, the trial court found that appellant "had been making threats and talking about killing" appellee. In particular, appellant had printed media reports about men killing their wives and stated that he agreed with the killings. The court also found that, in 2004, appellant hit appellee and blackened her eye. Appellant's adult son witnessed the punch and provided

corroborating testimony. Although criminal charges were filed, appellant forced appellee to sign a statement that she had mistakenly filed the charges. The court also found that appellee would not call the police because appellant threatened to rape her, abandon her and the children, divorce her, and interfere with her ability to obtain citizenship.

{¶8} Before this court, appellant denies that he blackened appellee's eye in 2004 and contends that, in any event, the 2004 incident "alone" is too remote in time to support the DVCPO. The court's entry makes clear, however, that the court did not rely on the 2004 incident alone to find a pattern of abuse during their marriage. The entry refers to multiple threats by appellant to establish a pattern of abuse, which the court found included the 2004 incident.

{¶9} Appellant also contends that the record lacks evidence that his alleged threats placed appellee in fear of imminent physical harm, as R.C. 3113.31(A)(1) requires. We disagree. "[I]mminence does not require an offender to carry out a threat immediately or be in the process of carrying it out." *Young v. Young*, 2d Dist. No. 2005-CA-19, 2006-Ohio-978, ¶105. "[T]he critical inquiry under R.C. 3113.31 'is whether a reasonable person would be placed in fear of imminent (in the sense of unconditional, non-contingent), serious physical harm.' " *Maccabee v. Maccabee* (June 29, 1999), 10th Dist. No. 98AP-1213, citing *Strong v. Bauman* (May 21, 1999), 2d Dist. No. 17256. Here, the trial court's findings, as well as the court's case notes, provide sufficient detail of appellant's threats of physical harm against appellee—his threats to rape her, kill her or hire someone to kill her. As for the imminence of that threatened harm, the trial

court's case notes indicate that appellant's adult son was living with appellee for protection and that they both lived in fear at the time of the hearing.

{¶10} Finally, appellant contends that the trial court gave too much weight to appellee's testimony. In doing so, appellant asks us to consider the fact that he, not appellee, filed for divorce and generally argues that appellee lacks credibility. "On the trial of a case, either civil or criminal, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Here, the trial court was in the best position to observe the demeanor of the parties and to determine their credibility. The trial court could also determine the credibility of appellant's adult son, who testified in support of appellee. We will not second-guess those credibility determinations on appeal.

{¶11} For all these reasons, we conclude that competent, credible evidence supported the issuance of the DVCPO, and it was not against the manifest weight of the evidence. Therefore, we overrule appellant's first assignment of error.

{¶12} In his second assignment of error, appellant contends that his due process rights were violated because the hearing before the trial court was not recorded. While he acknowledges that App.R. 9(C) allows him to file a proposed statement of the evidence if a transcript is lacking, and he did so, he also contends that a statement is not as accurate as a transcript. Finally, he argues that a hearing of this nature should be recorded because violation of a DVCPO may subject him to serious criminal

consequences. Appellant offers no precedent to support these contentions directly, nor have we found any.

{¶13} First, appellant can point to no rule requiring that hearings held pursuant to R.C. 3113.31 be recorded. The statute itself does not require it, nor do the rules of the trial court. Instead, appellant looks to Crim.R. 22, which states: "In serious offense cases all proceedings shall be recorded." While appellant may be correct that his failure to comply with the DVCPO issued against him could result in criminal charges being filed against him, the January 14 hearing before the trial court was not a criminal proceeding, and no criminal charges were pending. Therefore, the due process principles at work in a criminal proceeding do not apply here.

{¶14} Furthermore, appellant could have requested that the hearing be recorded, but he failed to do so. Although appellant's proposed statement of the evidence stated that he requested that the hearing be recorded, the trial court expressly rejected appellant's statement. In the court's May 6, 2010 judgment entry, it found: "[Appellant] *at no time* requested **either** the presence of a court reporter or that the hearing be recorded." (Emphasis sic.) Appellant offers no evidence to refute the trial court's finding, beyond his own recollection.

{¶15} We note, too, that the appellate rules provide appellant an opportunity to file a proposed statement of the evidence, and he did so. Appellant's complaint appears to be that the trial court did not adopt his version of the evidence or the proceedings. As to the evidence, however, the trial court's findings are consistent with the court's case notes. In fact, the court's findings are consistent with much of appellant's proposed

statement of the evidence, at least as to the testimony by appellee and appellant's son. In the end, the trial court believed that testimony over his.

{¶16} For all these reasons, we conclude that appellant's rights were not violated. Therefore, we overrule appellant's second assignment of error.

{¶17} In conclusion, we overrule appellant's first and second assignments of error. We affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

McGRATH and CONNOR, JJ., concur.