

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

JODIE J. DORAN,	:	
	:	
Petitioner-Appellee,	:	CASE NO. CA2009-05-050
	:	(Accelerated Calendar)
	:	
- vs -	:	<u>OPINION</u>
	:	10/19/2009
	:	
PATRICK DORAN,	:	
	:	
Respondent-Appellant.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS,  
DOMESTIC RELATIONS DIVISION  
Case No. 08DV4173

Jodie J. Doran, 8222 Winters Lane, Mason, OH 45040, petitioner-appellee, pro se  
Patrick Doran, P.O. Box 81, Lambertville, MI 48144, respondent-appellant, pro se

**POWELL, J.**

{¶1} Appellant, Patrick Doran, appeals the decision of the Warren County Court of Common Pleas, Domestic Relations Division, granting a civil protection order in favor of his former spouse, appellee, Jodie Doran.

{¶2} On December 5, 2008, appellee filed a petition for a domestic violence civil protection order, alleging that appellant called her on various occasions threatening to "ruin [her] life" and that he "was going to get [her]." The magistrate issued an ex parte civil

protection order that day based upon the allegations.

{¶3} A response hearing was held on February 2, 2009, during which appellee testified as to the alleged acts of domestic violence from which she sought protection. According to appellee, appellant called her on numerous occasions threatening that he would "take everything away from [her] and [was] going to get [her]." Appellee also testified that appellant slept outside her residence on one occasion and "watched every move from the moment that [she] woke up \* \* \*." Finally, appellee testified that appellant threatened to "ruin [her] financially," and told her he "had complete access to [her] email, cell phone records, all financial accounts \* \* \* and [could] find out information about anybody anywhere at any time." Appellee indicated she suffered "extreme duress" as a result of appellant's behavior such that she was prescribed anti-depressant medication.

{¶4} Appellant testified that he currently resides in Michigan. He disputed ever having verbally threatened to ruin appellee financially, and testified that he has never threatened to physically harm appellee. Appellant also disputed that he slept outside appellee's home. Appellant indicated that he is a semi-truck driver, and that on the night in question, he slept at a rest stop and arrived at appellee's home early the next morning to take the parties' children to school.

{¶5} At the conclusion of the hearing, the magistrate issued a civil protection order, which included a provision restricting appellant from possessing, using, carrying or obtaining any deadly weapon for the duration of the order. Appellant filed objections to the magistrate's decision, arguing the decision was against the manifest weight of the evidence where the alleged acts of domestic violence did not involve a "threat of force" that placed appellee in fear of serious physical harm. Appellant also argued the magistrate abused her discretion in prohibiting him from presenting evidence of appellee's threats to "take him back to Court." The trial court overruled appellant's objections and adopted the magistrate's

decision in its entirety on April 2, 2009.

{¶6} Appellant now appeals the trial court's decision, advancing four assignments of error for review.

{¶7} Assignment of Error No. 1:

{¶8} "TRIAL COURT ERRORED IN NOT ALLOWING RESPONDENT TO DEFEND HIMSELF." [sic]

{¶9} In his first assignment of error, appellant argues the trial court erred in prohibiting him from introducing evidence of appellee's alleged threats to "take him to back to Court." We find appellant's contention without merit.

{¶10} It is well-established that "the admission or exclusion of evidence rests within the sound discretion of the trial court and a reviewing court may reverse only upon a showing that this discretion was abused." *Kreuzer v. Kreuzer*, Greene App. No. 2001 CA 49, 2002-Ohio-105, at \*3-4. In this case, the record demonstrates that the magistrate would not allow either party to discuss previous threats involving court action. Specifically, when appellant's counsel questioned appellee as to whether she ever threatened appellant in such a manner, the magistrate stated: "This Court in a domestic violence case is not concerned about threats to take each other to court \* \* \*. The only thing this Court is concerned about \* \* \* is whether or not there's been an act of domestic violence as defined in [R.C.] 3113.31."

{¶11} As the proceedings below involved the issuance of a domestic violence civil protection order, we find the trial court did not abuse its discretion in prohibiting the parties from discussing reciprocal threats of court action. See *Kreuzer*. Appellant's first assignment of error is therefore without merit and is overruled.

{¶12} Assignment of Error No. 2:

{¶13} "THE TRIAL COURT ERRORED AS NO EVIDENCE WAS EVER ESTABLISHED AS TO ANY TYPE OF REPLATIONSHIP BY CONSANQITY OR AFFINITY,

MARRIAGE, OR COHABITATION." [sic]

{¶14} In his second assignment of error, appellant argues the trial court erred in issuing a civil protection order where no evidence was presented demonstrating a family or household relationship between the parties. The record demonstrates, however, that appellant failed to object to the magistrate's decision with respect to this matter.

{¶15} Civ.R. 53(D)(3)(b)(i) provides that "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i)." Civ.R. 53(D)(3)(b)(ii) further provides that "[a]n objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Pursuant to Civ.R. 53(D)(3)(b)(iv), "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)."

{¶16} The record demonstrates that appellant filed objections to the magistrate's decision on February 20, 2009, arguing the magistrate's decision was against the manifest weight of the evidence where no evidence was presented that appellant placed appellee, "by threat of force, in fear of imminent serious physical harm." Appellant thereafter filed a supplemental objection to the magistrate's decision, arguing the magistrate erred in prohibiting him from presenting evidence of appellee's previous threats to "take him back to Court." Nowhere in either filing, however, did appellant contest the issue of whether a family or household relationship existed between the parties. Accordingly, with respect to this matter, appellant has waived all but plain error on appeal. See *In re M.W.R.*, Butler App. Nos. CA2007-04-105, CA2007-04-106, 2007-Ohio-6169, ¶¶14-15; *Fidler v. Fidler*, Franklin App. No. 08AP-284, 2008-Ohio-4688, ¶17.

{¶17} We find no error, plain or otherwise, concerning this issue. R.C. 3113.31(A)(3) provides that a "[f]amily or household member' means any of the following:

{¶18} "Any of the following who is residing with or has resided with the respondent:

{¶19} "A spouse, a person living as a spouse, or a former spouse of the respondent;

{¶20} \* \* \*

{¶21} "The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent."

{¶22} The record demonstrates that appellant is appellee's former spouse and the father of the parties' two children. As such, we find no merit to appellant's argument concerning the existence of a family or household relationship in this case. Appellant's second assignment of error is without merit and is overruled.

{¶23} Assignment of Error No. 3:

{¶24} "TRIAL COURT ERROR WHEN IT FAILED TO PERFORM AN INDEPENDENT ANALYSIS OF THE EVIDENCE ABUSING ITS DISCRETION AND DENYING RESPONDANT-APPELLANT DUE PROCESS OF THE LAW." (Sic).

{¶25} Appellant also argues the trial court abused its discretion in adopting the magistrate's decision without performing an independent review of the evidence. Appellant maintains that the trial court's consideration of alleged hearsay evidence demonstrates the court did not engage in the requisite independent analysis. We find appellant's contention without merit.

{¶26} As previously discussed, the record demonstrates that appellant filed two sets of objections to the magistrate's decision. In neither instance, however, did appellant object to the magistrate's consideration of appellee's testimony concerning appellant's threat that he had access to her email, cell phone records, and financial accounts. In failing to so object, appellant has waived all but plain error. Civ.R. 53(D)(3)(b)(iv). See, also, *Fidler*, 2008-Ohio-

4688 at ¶17.

{¶27} We find no error with respect to this matter, as it is clear from the trial court's decision that the court conducted an independent review of the magistrate's decision, and ultimately agreed with the magistrate's findings. Civ.R. 53(D)(4)(d); *Inman v. Inman* (1995), 101 Ohio App.3d 115, 118. While appellant maintains that the trial court improperly considered appellee's testimony concerning appellant's threats, the transcript is unclear as to whether the testimony in question referred to statements appellant made to appellee or statements appellant made to appellee's coworkers. The record demonstrates, however, that the magistrate sustained appellant's objection when appellee attempted to testify as to what her co-workers told her, and specifically instructed appellee that she was not permitted to discuss the topic. Accordingly, we presume the magistrate properly considered appellee's subsequent testimony concerning appellant's threats.

{¶28} Based upon the foregoing, we find appellant's third assignment of error without merit and overrule the same.

{¶29} Assignment of Error No. 4:

{¶30} "THE TRIAL COURT ERRER IN PROHIBITING APPELLANT TO POSSESS, USE, CARRY, OR OBTAIN AND DEADLY WEAPON." [sic]

{¶31} In his final assignment of error, appellant argues the trial court erred in imposing a weapons restriction as part of the protection order. Once again, however, the record demonstrates that appellant did not object to the magistrate's decision with respect to the restriction. Accordingly, appellant has waived all but plain error with respect to this matter. Civ.R. 53(D)(3)(b)(iv). See, also, *Fidler*, 2008-Ohio-4688 at ¶17.

{¶32} "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity,

or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 1997-Ohio-401, syllabus.

{¶33} R.C. 3113.31(E)(1)(h) permits a trial court to impose restrictions on an individual incident to a civil protection order, provided the restrictions are "equitable and fair." While R.C. 3113.31 affords a trial court discretion in imposing restrictions as part of a civil protection order, such discretion is not without limit. *Butcher v. Stevens*, 182 Ohio App.3d 77, 2009-Ohio-1754, ¶15, citing *Sistek v. Grendence*, Lake App. No. 2005-L-212, 2006-Ohio-4169, ¶36. In determining the reasonableness of a restriction, some appellate districts have adopted a standard similar to that used in determining whether a condition of probation is unduly restrictive. *Maag v. Maag*, Wyandot App. No. 16-01-16, 2002-Ohio-1401, at \*3; *Butcher* at ¶15-17; *Sistek* at ¶36-41. Under this standard, the restriction "must bear a sufficient nexus to the conduct that the trial court is attempting to prevent." *Maag*.

{¶34} Ohio courts have found that a trial court abuses its discretion in imposing a weapons restriction as part of a civil protection order where no evidence is presented that the respondent used or threatened to use a deadly weapon to harm the petitioner. *Newhouse v. Williams*, 167 Ohio App.3d 215, 2006-Ohio-3075, ¶16; *Butcher* at ¶17. Even where evidence is presented that a physical altercation occurred between the petitioner and respondent, some courts have found the imposition of a weapons restriction unreasonable, absent evidence that weapons or a threat to use weapons were involved. *Butcher*.

{¶35} In this case, appellee testified that appellant called her on numerous occasions threatening to "take everything away from [her]" and that he was "going to get [her]." Appellee testified that appellant told her he would "ruin [her] financially" and had "complete access to [her] email, cell phone records, [and] all financial accounts \* \* \*." Appellee also testified that appellant slept outside her residence on one occasion and "watched every move

from the moment [she] woke up \* \* \*."

{¶36} Upon cross-examination by appellant's counsel as to whether appellant ever threatened to physically harm her, appellee responded: "He has threatened to do everything possible to ruin my life. I take that as a physical threat." No evidence was presented, however, that a physical altercation occurred between the parties, or that appellant used or threatened to use a weapon to harm appellee.

{¶37} In granting the civil protection order, the magistrate found that appellant violated R.C. 3113.31(A)(1)(b) "when he told [appellee] that he had access to all her email and financial accounts causing [appellee] to believe that [appellant] was stalking her all of which caused [appellee] to fear for her physical safety and to be under a physician's care to receive anti-depressant medication." In adopting the magistrate's decision, the trial court found the evidence presented supported a finding that appellant caused appellee "mental distress" in threatening to "ruin her financially," warranting the issuance of the civil protection order. The trial court specifically overruled appellant's objection to the magistrate's decision wherein appellant argued that domestic violence requires a demonstration that the respondent placed the petitioner, by threat of force, in fear of imminent serious physical harm.

{¶38} Based upon the testimony presented during the response hearing, as well as the grounds upon which the trial court issued the protection order, we find the weapons restriction imposed against appellant lacks a sufficient nexus with the conduct the trial court was attempting to prevent. Accordingly, the court committed plain error in imposing the weapons restriction as part of the civil protection order. Appellant's fourth assignment of error is sustained.

{¶39} Judgment affirmed in part and reversed in part.

BRESSLER, P.J., and HENDRICKSON, J., concur.

[Cite as *Doran v. Doran*, 2009-Ohio-5521.]