

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

JUANA LUNA-CORONA, :
 :
 Petitioner-Appellee, : CASE NO. CA2008-07-175
 :
 - vs - : OPINION
 : 6/8/2009
 :
 RICARDO ESQUIVEL-PARRALES, :
 :
 Respondent-Appellant. :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DV08060678

Juana Luna-Corona, 13 Waco Way, Hamilton, Ohio 45015, petitioner-appellee, pro se

Marilyn Zayas-Davis, 323 West Fifth Street, Suite 1N, Cincinnati, Ohio 45202, for respondent-appellant

HENDRICKSON, J.

{¶1} Respondent-appellant, Ricardo Esquivel-Parrales, appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, approving a consent agreement and domestic violence civil protection order entered between appellant and his wife, petitioner-appellee, Juana Luna-Corona. We affirm the decision of the domestic relations court.

{¶2} On June 13, 2008, appellee filed a petition for a civil protection order against

appellant as a result of alleged domestic violence. The matter was referred to a magistrate for an ex parte hearing on that date. Based on appellee's testimony, the magistrate issued a temporary order prohibiting appellant from "committing further acts of abuse or threats of abuse" against appellee. The order also required appellant to have supervised visitation with the parties' two children pending a final hearing on appellee's petition.

{¶3} The trial court held a final hearing on the matter on June 24, 2008. Appellee appeared pro se, and appellant was represented by counsel. Appellant did not contest the allegations of domestic violence made by appellee at the ex parte hearing, and his counsel represented to the court that appellant would be willing to enter into a consent agreement if he received increased parenting time with the children. After a discussion regarding the allocation of parenting time, an apparent agreement was reached on the record between the parties. Pursuant to the agreement, appellee was granted temporary custody of the children, with appellant receiving parenting time on alternating weekends.

{¶4} Appellant appealed the trial court's decision, raising three assignments of error for our review.¹ Appellant's first and second assignments of error are interrelated, and will be considered together.

{¶5} Assignment of Error No. 1:

{¶6} "THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO PROVIDE MR. ESQUIVEL-PARRALES WITH A QUALIFIED INTERPRETER IN VIOLATION OF [R.C.] 2311.14."

{¶7} Assignment of Error No. 2:

{¶8} "THE TRIAL COURT FAILED TO ESTABLISH THAT MR. ESQUIVEL-PARRALES HAD ENTERED INTO A CONSENT AGREEMENT AND DOMESTIC VIOLENCE PROTECTION ORDER KNOWINGLY AND VOLUNTARILY."

{¶9} In his first and second assignments of error, appellant challenges the validity of the consent agreement and domestic violence civil protection order, arguing that it should be vacated as being void ab initio. First, appellant asserts that because he could not "readily understand English or communicate in English," the trial court should have appointed a qualified interpreter to assist him pursuant to R.C. 2311.14. Second, appellant contends that as a result of the alleged language barrier, he did not enter into the agreement knowingly and voluntarily. Appellant argues that without the aid of an interpreter, he was "deprived [of] the opportunity to have a full understand[ing] of the proceedings."

{¶10} R.C. 2311.14(A)(1) provides, in part, "[w]henever because of a hearing, speech, or other impairment a party to or witness in a legal proceeding cannot readily understand or communicate, the court shall appoint a qualified interpreter to assist such a person." The decision regarding whether a party or witness is entitled to an interpreter is initially based on the trial court's assessment of their apparent ability to comprehend and communicate in English. *State v. Castro*, Montgomery App. No. 14398, 1995 WL 558782, *4. "[A]n imperfect grasp of the English language may be sufficient as long as the defendant has the ability to understand and communicate in English." *Id.* If the trial court determines that the witness or party cannot effectively understand or communicate in English, the court may also consider whether the party's counsel is bilingual, whether the trier of fact is bilingual, and whether a timely request for an interpreter was made when deciding if an interpreter should be appointed. *Id.*

{¶11} The decision to appoint an interpreter is within the trial court's sound discretion. *State v. Marquez*, Ashtabula App. No. 2007-A-0085, 2008-Ohio-5324, ¶30. Accordingly, an appellate court will not reverse the decision of the trial court with respect to the need for an interpreter absent an abuse of discretion. *Id.* An abuse of discretion is more than an error of

1. We note that appellee has failed to file a merit brief in this matter.

law or judgment; it requires a finding that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶12} Our review of the transcript of the final hearing reveals the following discussion between the court, counsel for appellant, and appellant:

{¶13} "[The Court]: * * *. This matter is set on today's docket for a full final hearing. Both of you raise your right hands. Your other right.

{¶14} "[Appellant]: Sorry.

{¶15} "** * *

{¶16} "[The Court]: Is that, yes? You have to answer out loud. This is being recorded.

{¶17} "[Appellant]: Interpret - -.

{¶18} "[Appellant's attorney]: Does he need an interpreter, or may I interpret for him, or how would the Court - -

{¶19} "[The Court]: You can't interpret for him. If we need an interpreter for him, we'll have to set it back for next week to get an interpreter here.

{¶20} "[Appellant's attorney]: Your [h]onor, I don't think there's anything on the - - a question on the *Ex Parte* hearing. (Emphasis sic.) I think what he's asking for is just, uh, to make sure that he gets to visit the kids. There's been some trouble being able to visit with the kids."

{¶21} "** * *

{¶22} "[The Court]: Okay. Are you saying that they want to enter into a [c]onsent [a]greement then - -

{¶23} "[Appellant's attorney]: That would be fine, as long as he - -

{¶24} "[The Court]: - - for the parenting time. Alternating weekends, Friday at 6:00 to

Sunday at 6:00. And the exchange - - we'll put it at a police department so there's no dispute. * * *.

{¶25} " * * *

{¶26} "[The Court]: June 27th at 6:00 p.m. through July [sic] 29th at 6:00 p.m. * * * [appellant] would then start alternating weekend parenting time July 18th at 6:00 p.m. through July 20th at 6:00 p.m. All drop offs and pick ups at the Hamilton Police Department. * * *

Does that make sense?

{¶27} "[Appellant's attorney]: That makes sense, [y]our [h]onor.

{¶28} "[The Court]: Does that make sense, sir?

{¶29} "[Appellant]: Yes.

{¶30} "[Appellant's attorney]: I'll explain it to him further, [y]our [h]onor.

{¶31} "[The Court]: Okay. And you know you've got to walk into the lobby, right?

You've got to go in the building.

{¶32} "[Appellant]: Okay."

{¶33} Initially appellant argues that he requested the assistance of an interpreter and that his counsel stated this need to the court. We disagree. The record reveals that although the court offered to continue the final hearing for an interpreter to be appointed, appellant's counsel did not respond to the court's statement regarding the need for a continuance and did not alert the court that an interpreter was in fact necessary.

{¶34} Moreover, appellant did not demonstrate that he was unable to understand and communicate in English, as the record indicates that he responded to all questions directed to him. We also note that at no time did his counsel represent to the court that as a result of any alleged language barrier, appellant could not communicate with his counsel or that he could not comprehend the proceedings. In addition, counsel's statements that he could interpret for appellant and that he would explain the parenting schedule to him further

suggests that perhaps counsel was bilingual. As a result, we cannot conclude that the trial court's failure to appoint an interpreter was arbitrary, unreasonable or unconscionable. See, also, *Marquez*, 2008-Ohio-5324 at ¶38 (determining that the trial court did not err in failing to appoint an interpreter for the defendant since counsel failed to indicate to the court that she could not meaningfully communicate with her client or vice versa).

{¶35} Appellant also asserts that the consent agreement and domestic violence civil protection order was not entered into knowingly or voluntarily, because without the aid of an interpreter, appellant did not have a full understanding of the proceedings. We disagree with this contention.

{¶36} As an initial matter, we note that the consent agreement was signed only by appellee and the court. It was not signed by appellant or his counsel. A consent agreement is a contract and is founded upon the agreement of the parties. *Save the Lake v. Hillsboro*, 158 Ohio App.3d 318, 2004-Ohio-4522, ¶12. "It has long been held that if the parties voluntarily enter into [an agreement], * * * the agreement becomes a valid and binding contract between [them]." *Eckliff v. Walters*, 168 Ohio App.3d 727, 2006-Ohio-4817, ¶22, quoting *Phillips v. Phillips*, Stark App. Nos. 2004CA00105, 2004CA00005, 2005-Ohio-231, ¶22. The necessary elements of a valid contract include an offer, acceptance, contractual capacity, consideration, a manifestation of mutual asset, and legality of object and of consideration. *Id.* at ¶23. (Internal citations omitted). A meeting of the minds as to a contract's essential terms is also required. *Id.* Although it is preferable for settlement agreements to be memorialized in writing, an agreement entered into in the presence of the court becomes a binding contract. *Id.*; *Walther v. Walther* (1995), 102 Ohio App.3d 378, 383.

{¶37} Contrary to appellant's argument, there is no evidence in the record to indicate that he did not knowingly and voluntarily consent to the terms of the agreement. As previously discussed, appellant has not demonstrated that he did not have a full

understanding of the proceedings or that he could not communicate in English. Appellant's responses to the court's questions do not suggest that he did not comprehend the statements made to him. When asked by the Court whether the terms of the parenting schedule made sense to him, appellant responded, "yes."

{¶38} Based on the foregoing, appellant's first and second assignments of error are overruled.

{¶39} Assignment of Error No. 3:

{¶40} "MR. ESQUIVEL-PARRALES WAS DENIED [THE] EFFECTIVE ASSISTANCE OF COUNSEL AT HIS TRIAL BY THE ACTS AND OMISSIONS OF HIS ATTORNEY, WHICH ARE EVIDENT IN THE RECORD."

{¶41} In his final assignment of error, appellant argues that his trial counsel was ineffective in failing to request the court to continue the hearing to allow for an interpreter to be appointed. Appellant also asserts that his counsel was deficient in representing to the court that appellant agreed to the terms of the protection order and that he did not contest appellee's allegations of domestic violence.² We find no merit to this argument.

{¶42} A right to the effective assistance of counsel in a criminal proceeding is provided for under the Sixth Amendment to the United States Constitution. *Roth v. Roth* (Dec. 29, 1989), 65 Ohio App.3d 768, 776, citing *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052, 2063. However, a request for a domestic violence civil protection order is a civil proceeding. See *Moore v. Moore*, Licking App. No. 02CA00037, 2003-Ohio-1382, ¶26. A party in a civil action enjoys no constitutional right to representation. *Roth* at 776. A reversal of a trial court's decision based upon the ineffective assistance of counsel does not exist when there is no right to counsel. *Dantzig v. Biron*, Highland App. No. 07CA1,

2. Appellant has attached documentation to his brief of a grievance he apparently filed against his trial counsel as a result of counsel's alleged deficient representation. We cannot consider these documents, as they are

2008-Ohio-209, ¶9. Since parties to civil actions voluntarily choose their own attorneys, they cannot avoid the consequences of the acts or omissions of their selected representative. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 152. "In a civil action, a party needs to resolve a complaint of the ineffective assistance of counsel by a malpractice action." *Dantzig* at ¶9. See, also, *Roth* at 776 (concluding that a complaint of ineffective assistance of counsel in a civil matter may only be resolved in a malpractice action).

{¶43} Based on the foregoing, appellant's third assignment of error is overruled.

{¶44} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.

outside the record on appeal. See App.R. 9(A).

[Cite as *Luna-Corona v. Esquivel-Parrales*, 2009-Ohio-2628.]