[Cite as *Henneman v. Schussheim*, 2015-Ohio-829.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

MICHELLE D. SCHUSSHEIM n.k.a. HENNEMAN,	:	
	:	CASE NO. CA2014-03-042
Petitioner-Appellee,	:	O P I N I O N
	:	3/9/2015
- vs -	:	
	:	
ALAN C. SCHUSSHEIM,	:	
Respondent-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. 09 DV 4460

Michelle D. Henneman, 4354 Marival Drive, Mason, Ohio 45040, petitioner-appellee, pro se

Jerry H. Shade, 5181 Natorp Drive, Suite 110, Mason, Ohio 45040, for respondent-appellant

RINGLAND, J.

{¶ 1} Respondent-appellant, Alan Schussheim, appeals a decision of the Warren County Court of Common Pleas, Domestic Relations Division, denying his motion to expunge and seal the record of a civil protection order (CPO) issued against him and later dismissed.

{¶ 2} On July 13, 2009, petitioner-appellee, Michelle Henneman f.k.a. Michelle Schussheim, sought a CPO against appellant, her then husband. An ex parte CPO was

issued against appellant that same day. A week later, Henneman filed for divorce. She subsequently moved to dismiss the CPO. On August 14, 2009, the trial court dismissed the CPO. The parties eventually divorced and now co-parent their minor child under a shared parenting agreement. Appellant was never charged with or convicted of domestic violence in connection with this matter or otherwise.

{¶ 3} In April 2011, appellant moved the trial court to expunge and seal the record of the CPO. Appellant asserted that the CPO was the result of a domestic quarrel and there was no compelling state interest to maintain the record of the CPO against him, an "upstanding citizen" with "an unblemished criminal record." Appellant indicated he was afraid the record of the CPO could have adverse effects on his employment as a section manager for Procter & Gamble with regard to future promotions, transfers, and/or income. Henneman filed an affidavit in support of appellant's motion.

{¶ 4} Following a brief hearing on the motion, the magistrate denied appellant's motion. The magistrate first stated that while there were two statutory methods to expunge or seal criminal records, there was no statutory authority to expunge or seal CPO records. The magistrate then noted that in 1981, the Ohio Supreme Court established the doctrine of judicial expungement, and that the doctrine and its balancing test were applied by the Second Appellate District to a motion to expunge and seal the record of a CPO. Turning to appellant's motion, the magistrate first found that the Twelfth Appellate District has never held that courts have the authority to seal CPO records. The magistrate then found that even under the supreme court's balancing test, appellant's motion failed as "there has been no proof presented that [appellant] has had any negative consequences from the record of the ex parte [CPO] and accompanying dismissal." Appellant filed objections to the magistrate's decision.

{¶ 5} On July 13, 2011, the trial court overruled the objections and denied appellant's

motion to expunge and seal the record of the CPO. The trial court found that appellant's failure to present evidence that his employment (1) had been affected or directly harmed by the record of the CPO, and/or (2) would be hindered or terminated under a company policy as a result of the CPO, was detrimental to his motion.

{¶ 6} Appellant appealed that decision to this court. We affirmed, holding that the trial court lacked statutory authority to expunge the CPO records. *Schussheim v. Schussheim*, 12th Dist. Warren No. CA2011-07-078, 2012-Ohio-2573. On appeal to the Ohio Supreme Court, a divided court reversed our decision, holding that "[c]ourts have the inherent authority to expunge and seal records when a case involves unusual and exceptional circumstances and when the interests of the party seeking expungement outweigh the legitimate need of the government to maintain records." *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529, ¶ 17.

{¶ 7} On remand to the trial court, a hearing was held on appellant's request for expungement. The trial court denied appellant's request, finding there to be a legitimate need of the government to maintain its record of the CPO, at least until the parties' minor child is emancipated.

{¶ 8} Appellant now appeals that decision, raising three assignments of error for review.

{¶ 9} Assignment of Error No. 1:

{¶ 10} THE TRIAL COURT ERRED IN FINDING A COMPELLING INTEREST IN MAINTAINING THE CPO RECORDS GREATER THAN APPELLANT'S INTEREST IN HAVING THE MATTER EXPUNGED, WHERE THE MANIFEST WEIGHT OF THE EVIDENCE FAVORED APPELLANT.

{¶ 11} Assignment of Error No. 2:

{¶ 12} THE TRIAL COURT SHOULD NOT HAVE RE-QUESTIONED APPELLANT'S

EX-WIFE REGARDING INCIDENTS OCCURING DURING THE APPEALS PROCESS.

{¶ 13} Assignment of Error No. 3:

{¶ 14} BUT IF SUCH TESTIMONY IS ALLOWED [AS DISCUSSED IN ASSIGNMENT OF ERROR NO. 2], AND WHERE THE COURT BY INFERENCE INFUSED MEANING AGAINST APPELLANT THAT WAS NOT PRESENTED AT THE HEARING, THEN APPELLANT SHOULD BE PERMITTED TO SUPPLEMENT THE RECORD WITH EXCULPATORY EVIDECNE [SIC] AGAINST THE INFERENCE.

{¶ 15} Ohio courts have recognized the inherent authority of a court to seal records independent of statutory authority. *See Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529; *Pepper Pike v. Doe*, 66 Ohio St.2d 374 (1981); *Wetz v. Pomeroy*, 12th Dist. Warren No. CA2014-03-039, 2014-Ohio-5085. We note that the exercise of this inherent authority to seal a court record is limited:

> The inherent authority of a court to expunge and seal a record does not turn on whether a proceeding is criminal or civil. Rather, the determination is whether "unusual and exceptional circumstances" exist and whether the interests of the applicant outweigh the legitimate interest of the government to maintain the record.

Schussheim at ¶ 16.

{¶ 16} A trial court's decision to grant or deny an application to seal criminal records is a matter of judicial discretion. *State v. Gross*, 12th Dist. Warren No. CA2010-03-030, 2011-Ohio-55, ¶ 4. We apply the same standard to a trial court's decision to grant or deny an application to seal civil records.

{¶ 17} In the original appeal of this case, the Ohio Supreme Court found "unusual and exceptional circumstances appear to exist in this case, as the complainant who petitioned the court for an ex parte CPO later moved to dissolve the CPO and submitted an affidavit that expungement was in the best interest of herself and her children." *Schussheim* at ¶ 17.

{¶ 18} At the hearing on remand, Henneman testified as to an altercation between appellant and their minor daughter during the preceding months that led to Henneman calling the police. As the trial court stated at the hearing, the state has an interest in maintaining the record where there are repetitive instances of conduct. Here, the original CPO was granted based on an altercation between appellant and his daughter. Then at the hearing to determine whether to seal the record of that CPO, the trial court was made aware of a recent altercation between appellant and his daughter which led to the contacting of police. Despite no charges being filed in the recent incident, it is certainly a relevant issue for the trial court to consider when deciding whether to seal the record of the previous altercation.

{¶ 19} Furthermore, when asked at the hearing whether Henneman still believes it is in her and her daughter's best interests that the CPO be expunged given the recent altercation, Henneman responded, "[m]aybe not, no." Finally, while Henneman has otherwise supported appellant's effort to have the record sealed, she has never denied that the actions which gave rise to the CPO occurred.

{¶ 20} Thus, while we recognize that the Ohio Supreme Court has found that unusual and exceptional circumstances may exist in the present case, we cannot find that the trial court abused its discretion in determining that the state's interest in maintaining the record outweighs appellant's interest in "clearing his name."

{¶ 21} We also find no merit in appellant's arguments that either (1) the trial court should not have questioned Henneman on the intervening altercation with their daughter, or (2) this court should remand the matter to the trial court in order to provide appellant an opportunity to supplement the record with exculpatory evidence. As discussed above, it is axiomatic that intervening events are relevant in a trial court's determination of whether to seal a record. Second, appellant was present and represented by counsel at the hearing on remand. He had the opportunity to supplement the record and present evidence at that time.

The record reveals that appellant did, in fact, provide the court with a detailed account of what occurred in that altercation. Therefore, we cannot find that the trial court erred in considering that altercation, nor do we find that appellant is entitled to a second opportunity to present evidence on the matter.

{¶ 22} In light of the foregoing, having found that (1) the trial court did not abuse its discretion in finding that the state's interest in maintaining the record outweighed appellant's interest in "clearing his name," (2) the trial court properly considered intervening events, and (3) appellant was afforded an opportunity to supplement the record and present evidence at the hearing on remand, appellant's assignments of error are overruled.

{¶ 23} Judgment affirmed.

M. POWELL, P.J., and HENDRICKSON, J., concur.