[Cite as *Merriman v. Merriman*, 2011-Ohio-128.]

IN THE COURT OF APPEALS OF DARKE COUNTY, OHIO

ABBY MERRIMAN	**:**	
Plaintiff-Appellee	**:**	**C.A. CASE NO. 2010-CA-09**
vs.	**:**	**T.C. CASE NO. 10-DR-125**
	:	**(Civil Appeal from**
STEPHEN MERRIMAN		**Common Pleas Court)**
Defendant-Appellant	**:**	

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O P I N I O N

Rendered on the 14th day of January, 2011.

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GRADY, P.J.:

{¶ 1} Defendant, Stephen Merriman, appeals from a final judgment overruling his objections to a magistrate's decision and granting a civil protection order to Plaintiff, Abby Merriman.

{¶ 2} Stephen[1] and Abby were married in 2000. Two children were born during their marriage. The parties separated in early 2009. Abby filed a petition for divorce in August 2009. The pending divorce proceeding is not at issue in this appeal.

{¶ 3} On February 18, 2010, Abby filed a petition for a domestic violence civil protection order against Stephen based on events that allegedly occurred on February 12, 2010, when Stephen was picking up their children at the property of Rachelle Downing, Abby's sister. (Dkt. 1.) Following a hearing, the magistrate granted Abby's petition for a civil protection order on February 23, 2010. (Dkt. 4.) Stephen filed objections to the magistrate's decision, which the trial court overruled on April 5, 2010. (Dkt. 12-13.) Stephen filed a notice of appeal.

ASSIGNMENT OF ERROR

{¶ 4} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT ADOPTED THE MAGISTRATE'S DECISION GIVEN THAT THERE WAS INSUFFICIENT COMPETENT, CREDIBLE EVIDENCE TO SUPPORT A FINDING OF DOMESTIC VIOLENCE."

{¶ 5} Stephen argues that the trial court's finding of domestic violence is against the manifest weight of the evidence, because Abby failed to prove by a preponderance of the evidence that

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[1] For clarity and convenience, the parties are identified by their first names.

Stephen's actions placed her in fear of serious physical harm. We do not agree.

{¶ 6} A weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive. *State v. Hufnagle* (Sept. 6, 1996), Montgomery App. No. 15563. "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Const. Co.* (1978), 54 Ohio St.2d 279, at syllabus.

{¶ 7} R.C. 3113.31(E)(1) authorizes the court to "grant any protection order . . . to bring about a cessation of domestic violence against the family or household members", following a hearing. R.C. 3113.31(A)(1) provides, in pertinent part:

{¶ 8} "'Domestic violence' means the occurrence of one or more of the following acts against a family or household member:

{¶ 9} "(a) Attempting to cause or recklessly causing bodily injury;

{¶ 10} "(b) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 or 2911.211 of the Revised Code[.]"

{¶ 11} The trial court found that Stephen committed an act of

domestic violence as defined in R.C. 3113.31(A)(1)(b). The trial court found:

{¶ 12} "Respondent's actions placed Petitioner in fear of imminent serious physical harm. Respondent also pushed the Petitioner and placed items under her shirt. Respondent threw Petitioner's clothes in the street in anger. A previous protection order expired shortly before this incident." (Dkt. 4, p. 2.)

{¶ 13} At the hearing, Abby testified that during the February 12, 2010 incident in question, Stephen approached her while the children were in the car. He was yelling obscenities at her and was reaching for something in his coat pocket. Abby began to walk backwards away from Stephen. Stephen then pulled out a couple of condoms and pushed Abby several times before successfully shoving his hand down Abby's sweater and stuffing the condoms into Abby's bra. Abby struggled to keep her balance as she moved backwards and Stephen pushed her. (Tr. 10-11, 18, 25, 29-31.)

{¶ 14} Rachelle Downing, Abby's sister, witnessed the incident and testified that Stephen shoved condoms at Abby's throat and stuffed them down Abby's sweater while he was yelling obscenities at Abby. (Tr. 52-53.)

{¶ 15} Stephen testified that he was angry during the incident and attempted to toss the condoms down Abby's sweater. He stated that he did not touch Abby with his hands and has never laid a

hand on her. Stephen testified that he did not push Abby during the incident. (Tr. 68-70.)

{¶ 16} The credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve. *State v. DeHass* (1967), 10 Ohio St.2d 230. In *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288, we observed:

{¶ 17} "Because the factfinder . . . has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness."

{¶ 18} This court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at its verdict. *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03.

{¶ 19} It is clear that the trial court believed Abby and Rachelle Downing's versions of the events that unfolded on February 12, 2010, rather than Stephen's version, which it had a right to

do. Further, the testimony of Abby and Rachelle Downing is sufficient to establish by a preponderance of competent, credible evidence that Stephen placed Abby "by the threat of force in fear of imminent serious physical harm." R.C. 3113.31(A)(1)(b).

{¶ 20} The assignment of error is overruled. The judgment of the trial court will be affirmed.

FAIN, J., and DONOVAN, J., concur.

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Hon. Jonathan P. Hein