

[Cite as *Moore v. Higgins*, 2015-Ohio-1751.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

TAMIKA A. MOORE	:	
	:	Appellate Case No. 26512
Plaintiff-Appellee	:	
	:	Trial Court Case No. 14-DV-298
v.	:	
	:	(Civil Appeal from Montgomery
PAULETTA HIGGINS	:	County Domestic Relations Court)
	:	
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 8th day of May, 2015.

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TAMIKA A. MOORE, 2014 Pineforest Road, Miamisburg, Ohio 45342  
Plaintiff-Appellee, *pro se*

PAULETTA HIGGINS, Post Office Box 3063, Orlando, Florida 32801  
Defendant-Appellant, *pro se*

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HALL, J.

{¶ 1} Pauletta Higgins appeals *pro se* from the trial court’s denial of her Civ.R. 60(B) motion for relief from a domestic-violence civil protection order obtained against her

by her sister, plaintiff-appellee Tamika Moore.

{¶ 2} The record reflects that Moore petitioned for a protection order against Higgins in March 2014. (Doc. #1). The petition alleged that Higgins had sent the police to Moore's house seven times over five days based on false allegations. It also alleged that Higgins has called Moore's phone more than fifty times a day, had come to Moore's house despite a no-contact order, and had stalked Moore and her son. The trial court granted Moore an ex parte protection order on March 19, 2014. (Doc. #2). The matter then proceeded to a May 21, 2014 hearing on the protection-order issue. The record reflects that Moore and Higgins both were present for the hearing before a magistrate. (Doc. #13). After the hearing, the magistrate issued the following findings of fact:

The parties are sisters. Hamilton County Juvenile Court has given temporary custody of respondent's child to its Children Services; Children Services has placed the child in petitioner's home. Custody proceedings are on-going in Hamilton County.

Petitioner filed the petition for a Civil Protection Order as a response to respondent's sending the police to her home on several occasions, constantly calling her, and threatening to have someone do something to her. The mother of both parties testified that respondent called her upset about the placement and said she had people out there to do something to petitioner; there was also a reference that the witness (mother) would need a black dress.

Respondent was less than coherent in her questions and responses to questions. She insists that all of her actions are to protect her child. She

denies the threat and the harassment. Respondent acknowledged calling petitioner a few names. There is a no contact order from the Hamilton County Court, and respondent has supervised parenting time with her child.

Petitioner has a no trespass order/notice against respondent through Miamisburg. There was an admission by respondent that she was convicted and served only 10 days in jail pertaining to her behavior toward a CSB caseworker.

Testimony from the witnesses was credible. The parties' mother was credible in stating that respondent had threatened petitioner. The parties' brother was credible in stating that the issues should be addressed in Hamilton County Juvenile Court and that neither sister should have a Civil Protection Order against the other. Petitioner was credible as to her fear of respondent's behavior.

There was testimony that respondent has a guardian ad litem in Juvenile Court but does not have an attorney in those proceedings.

Respondent confirmed that she requested a continuance of this hearing date because of medical reasons. There appeared to be no medical issue preventing her appearance.

It is uncontroverted that respondent is not happy about Children Services' actions regarding her child. It is uncontroverted that respondent's response to the placement of her child with petitioner has caused her to be upset and accusatory toward petitioner and others. Some of respondent's responses have caused criminal repercussions.

In light of respondent's heightened concern and dispute over the child being placed with petitioner, the threat to petitioner by respondent is taken seriously.

It is found that petitioner has proven by the preponderance of the evidence that respondent has committed domestic violence and caused petitioner to reasonably fear that she will cause serious physical harm to petitioner.

(Doc. #13 at findings of fact).

{¶ 3} The magistrate and trial court then granted a full domestic-violence civil protection order filed May 22, 2014. ((Doc. #13). Moore was identified as the protected party, and Higgins was ordered to stay away and have no contact with her. The order specified a one-year term.

{¶ 4} Thereafter, in November 2014, Higgins filed a pro se Civ.R. 60(B) motion for relief from the domestic-violence civil protection order. (Doc. #16). Her motion merely recited the language of the rule and requested a "new trial" on grounds of (1) mistake, inadvertence, surprise, or excusable neglect, (2) newly discovered evidence, (3) fraud, (4) voidness of the protection order, (5) satisfaction, release, or discharge of the protection order, and (6) any other reason justifying relief. Accompanying the motion was an apparent affidavit from Higgins. Therein, she averred, verbatim:

Now comes petitioner Pauletta N. Higgins and state as follow:

1.) I request for a new trail or dismissal of order base on fact of Tamika acted in a fraudulent manner to cause malisous [sic] harm and personal

gain.

2.) Pauletta Higgins was not served.

3.) Distruction of edvidence (Due Process).

4.) Tamika Moore and Theresa Higgins act in a conspiracy act by committed perjury [sic] to this Court.

5.) Dayton Police refuse to prosercute crimes listed in complaint

Tamika had no legal right to put my child's name on this official proceeding paperwork therefore this is a crime of the 3rd degree.

I request a court order to prosecute Tamika Moore due her act of misleading the courts, malisous [sic] act and much more that's listed in this complaint which she clearly did and this matter.

(Affidavit accompanying Doc. #16).

{¶ 5} The trial court denied Civ.R. 60(B) relief in a November 21, 2014 decision and order. In relevant part, it reasoned:

Respondent's motion stems from the Magistrate's Decision and Permanent Order filed May 22, 2014 wherein Tamika Moore (hereinafter "petitioner") was granted a one (1) year domestic violence civil protection order against her sister, Pauletta Higgins (respondent). The full hearing on the petition was had May 21, 2014. Present were petitioner and respondent, both without legal representation. The parties' biological mother, Theresa Higgins, testified on behalf of petitioner.

The magistrate found that respondent had committed an act of domestic violence as defined by R.C. 3113.31 in that respondent

threatened to have someone harm petitioner and by the numerous harassing phone calls placed to petitioner. The magistrate granted petitioner a one (1) year civil protection order naming her as the only protected party.

Respondent alleges that she was not properly served notice of the hearing and she was denied due process. The record in this matter reflects that respondent was served proper notice of the hearing. Further, by her appearance at the May 21, 2014 hearing, she waived any potential defect in service. She was present at the hearing and was provided ample opportunity to cross-examine the petitioner and provide the Court testimony on her behalf. The Court finds that there was no violation of her due process rights.

Respondent requested the Court to issue a court order to allow the respondent to prosecute petitioner, Tamika Moore, for forgery and fraud. This Court is without jurisdiction to prosecute criminal matters.

Respondent claims petitioner fraudulently claimed she has custody of respondent's son \* \* \*. This Court takes judicial notice that pursuant to an order filed June 28, 2013 in case number F06-2497, Hamilton County Juvenile Court, assumed custody of the above named child and placed the child in the care of petitioner, Tamika Moore. That order remains in effect.

The Court finds all of respondent's allegations are without merit and are overruled.

With regard to respondent's Civ.R. 60(B) motion, the Court makes

the following findings:

In order to prevail on a Civ.R. 60(B) motion for relief from judgment, the moving party must demonstrate that: (1) The party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1-5); and (3) the motion is made within reasonable time and where the grounds for relief are Civ.R. 60(B)(1), (2) or (3) not more than one year after the judgment order or proceedings was entered and taken. *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St.2d 146. Further, the moving party must present factual material which on its face demonstrates the timeliness of the motion, reasons why the motion should be granted and that the motion contains a meritorious claim [or] defense. *Youssefi v. Youssefi*, 81 Ohio App.3d 49.

Respondent's motion does not provide the Court with any evidentiary material to support the grounds for her motion for relief. Evidentiary material must present "operative facts" and not mere allegations to justify relief from judgment. *Foster v. Foster* (December 1, 1994), Cuyahoga App. No. 66719, unreported 1994 WL 676720. The only evidence provided in support of respondent's claim are contained in her affidavit. All of the claims in the affidavit have been determined to be without merit as stated above.

Respondent has failed to satisfy the three prong test of *GTE*

*Automatic Electric*. The court further finds that there is insufficient evidence to warrant a hearing on the matter. Respondent's motion for relief is hereby denied.

(Doc. #17 at 2-4).

{¶ 6} On appeal, Higgins claims the trial court discriminated against her based on a disability by denying her "proper service" and a hearing on her Civ.R. 60(B) motion. The essence of her argument, however, is found near the end of her pro se brief. That verbatim argument is as follows:

Tamika forged my child name on official proceeding paper work for personal gain which disallowed me to come near my son. Tamika did not have custody and had no right to put my child name on a temporary injunction whatsoever and I seek relief. Tamika stated she had custody of my child (because she cannot have children of her own) to deprived a judge a person or something and I seek relief o this faseafying acts [sic]. Tamika committed perjury to the court by stating "she never had no other experience like this of her picking me up taking me places than getting made when a erthnication [sic] occur and leaving a person out in the blue for revenge" Tamika took me to her house and told the judge I pop up out of nowhere Tamika has a pattern of conduct of picking people up taking them places as far as Columbus and leaving them to get back the best way they can if a fight or diswording occur there is a lot more to be explained in this matter however I seek relief of a dismissal of this order and a court order to prosecute the crimes of foregey [sic] fraud and perjury that Tamika moore

caused.

(Appellant’s brief at 5-6).

{¶ 7} Upon review, we are unsure precisely what Higgins is arguing. Although she alleges that Moore engaged in forgery—apparently in connection with custody proceedings—the narrow issue before us is whether the trial court erred in denying Civ.R. 60(B) relief from a civil protection order requiring Higgins to stay away from Moore, the only protected party named in the order. Based on the evidence presented at a hearing on the protection-order issue, the magistrate and the trial court both found Moore entitled to a civil protection order. (Doc. #13 and accompanying findings of fact). Higgins did not file objections to the trial court’s adoption of the magistrate’s protection order or a transcript of the protection-order hearing as contemplated by Civ.R. 65.1(F)(3)(d). Finally, with regard to her motion for Civ.R. 60(B) relief, we agree with the trial court that the allegations in her affidavit utterly failed to establish a meritorious claim or defense or any potential grounds for relief. Accordingly, we see no error in the trial court’s denial of her motion without a hearing.

{¶ 8} The judgment of the Montgomery County Common Pleas Court, Domestic Relations Division, is affirmed.

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FROELICH, P.J., and WELBAUM, J., concur.

Copies mailed to:

Tamika A. Moore  
Pauletta Higgins  
Hon. Denise L. Cross