

[Cite as *Jones v. Rose*, 2009-Ohio-4347.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HOCKING COUNTY

DEBRA JONES,

Petitioner-Appellee,

vs.

ALVIN ROSE,

Respondent-Appellant.

:

Case No. 09CA7

:

: DECISION AND JUDGMENT ENTRY

:

APPEARANCES:

COUNSEL FOR APPELLANT: Alvin Rose, 74½ West Water Street, Chillicothe, Ohio
45601, Pro Se

COUNSEL FOR APPELLEE: Debra Jones, 20694 Thompson Ridge Road,
Laurelville, Ohio 43135, Pro Se

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 8-21-09

ABELE, J.

{¶ 1} This is an appeal from a Hocking County Common Pleas Court judgment that denied a motion to modify or suspend a civil protection order (CPO) previously granted to Debra Jones, petitioner below and appellee herein, for the benefit of her grandson, A-Jay Blade Rose. The subject of the CPO is A-Jay's father, Alvin Rose, respondent below and appellant herein. Although appellant's brief does not contain any assignments of error, as App.R. 16(A) requires, the only error that appellant could assign under these circumstances is as follows:

"THE TRIAL COURT ERRED IN DENYING APPELLANT'S

MOTION TO MODIFY OR SUSPEND THE CPO.”

{¶ 2} On July 29, 2008, appellee filed a petition for a CPO on grounds A-Jay was “scared of his father” due to physical abuse, as well as “allegations of sexual abuse.” An *ex parte* judgment ordered appellant to have no contact with his son. A full hearing was set for August 5, 2008, but no transcript of that proceeding appears in the record. Nevertheless, a new CPO continued the order that appellant have no contact with his son through August 2010.

{¶ 3} On September 25, 2008, appellant filed a motion to modify or suspend the CPO because appellee “lied and went by hearsay” to obtain the order. The trial court overruled appellant's motion the following day. Appellant filed another motion to modify or suspend the CPO on January 21, 2009 and repeated his allegations. In addition, appellant argued that his Constitutional rights had been violated and warned that everyone involved with this case was “subjected [*sic*] to be tried and convicted for treason against the [U]nited [S]tates of [A]merica.” The trial court again overruled the motion on January 22, 2009. This appeal followed.

{¶ 4} At the outset, we note that appellant's precise argument is difficult to discern. To the extent that he challenges the evidence adduced at the August 5, 2008 hearing, those challenges should have been raised in an appeal from that order and are not now properly before us. Additionally, although appellate courts do not typically make arguments for the parties, in light of our long-standing policy of affording leniency to pro se litigants, Besser v. Griffey (1993), 88 Ohio App.3d 379, 382, 623 N.E.2d 1326; State ex rel. Karmasu v. Tate (1992), 83 Ohio App.3d 199, 206, 614 N.E.2d 827, we

construe appellant's brief as also challenging the trial court's ruling on his motion and proceed to review that judgment.

{¶ 5} R.C. 3113.31(E)(8)(a) states that a trial court may modify or terminate a CPO. The word “may” in a statute usually connotes an intent on the part of the Ohio General Assembly to vest the court with discretion in those matters. Kuptz v. Youngstown City School Dist. Bd. of Edn., 175 Ohio App.3d 738, 889 N.E.2d 166, at ¶18; In re Carr, Licking App. No. 08Ca17, 2008-Ohio-5689, at ¶17. Accordingly, absent an abuse of discretion we will not disturb a ruling on a motion to modify or terminate a CPO. Generally, an abuse of discretion is more than an error of law or judgment; rather, it implies that a trial court's attitude is unreasonable, arbitrary or unconscionable. Landis v. Grange Mut. Ins. Co. (1998), 82 Ohio St.3d 339, 342, 695 N.E.2d 1140; Malone v. Courtyard by Marriott L.P. (1996), 74 Ohio St.3d 440, 448, 659 N.E.2d 1242. In applying this standard, reviewing courts may not substitute their judgment for that of the trial court. State ex rel. Duncan v. Chippewa Twp. Trustees (1995), 73 Ohio St.3d 728, 732, 654 N.E.2d 1254; In re Jane Doe 1 (1991). 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181. To establish an abuse of discretion, the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance of judgment, not the exercise of reason but, instead, passion or bias. See Nakoff v. Fairview Gen. Hosp. (1996), 75 Ohio St.3d 254, 256, 662 N.E.2d 1; Adams v. Adams, Washington App. No. 05CA63, 2006Ohio-2897, at ¶6.

{¶ 6} In the case sub judice, appellant had the burden to show that modification or termination of the CPO was appropriate because either (1) the protection order was

no longer needed, or (2) its terms were no longer appropriate. See R.C.

3113.31(E)(8)(b). Appellant's motion, however, alleged neither. Instead, appellant averred that appellee lied to obtain the CPO in the first instance and, apparently, committed "treason." This is insufficient to meet the statute's requirements for modification. Thus, we find no abuse of discretion in the trial court's order to deny appellant's motion. Although we understand and respect appellant's professed affection for his child, he must comply with the court's order, but may also in the future pursue other avenues to obtain the modification of that order.

{¶ 7} Accordingly, based upon the foregoing reasons we hereby affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Hocking County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Kline, P.J. & McFarland, J.: Concur in Judgment & Opinion
For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.