[Cite as *Morris v. McQuillen*, 2009-Ohio-2848.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
CONNIE J. MORRIS	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	
-vs-	:	
	:	Case No. 2008-CA-87
CALVIN E. J. MCQUILLEN	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil appeal from the Richland County Court of Common Pleas, Case No. 08-1501D
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	June 11, 2009
APPEARANCES:	
For Plaintiff-Appellee	For Defendant-Appellant
CONNIE J. MORRIS, PRO SE 142 South Home Road Mansfield, OH 44906	PAUL MANCINO, JR. 75 Public Square, Suite #1016 Cleveland, OH 44113-2098

Gwin, J.,

{¶1} Defendant-appellant Calvin E. McQuillen appeals a judgment of the Court of Common Pleas of Richland County, Ohio, which entered a civil protection order pursuant to R.C.2903.214, protecting J.D., a minor aged sixteen at the time of the hearing. J.D.'s mother, Connie J. Morris, is plaintiff-appellee. Appellant assigns two errors to the trial court:

{¶2} "I. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT GRANTED A PROTECTION ORDER AGAINST DEFENDANT.

{¶3} "II. DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE COURT ISSUES A CIVIL PROTECTION ORDER."

{¶4} We will address both assignments of error together. Essentially, appellant argues the court violated his right to due process by admitting and relying on hearsay evidence.

{¶5} In *Henry v. Coogan*, Clermont Co. App. No. CA2002-05-042, 2002-Ohio-6519, the appellant alleged his due process rights were violated in a civil protection stalking action because the court permitted evidence to be introduced on incidents not alleged in the petition. The court found the essential elements of due process are notice and an opportunity to respond. Paragraph 10, citing *Lindsay v. Jackson*, (September 8, 2000), Hamilton App. Nos. C-990786 & A-9905306. Due process requires that the notice be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections. Id. Appellant here argues he was not afforded an opportunity to fully present

his objections to the issuance of the civil protection order because the declarants of the hearsay were not present for him to cross examine.

{¶6} The court granted an ex parte civil stalking protection order on July 31, 2008. On August 26, 2008, the court conducted a full hearing on whether to extend the order. At the hearing, appellee was the only witness. Appellee testified J.D. was born on June 11, 1992. She testified appellant had been seeing J.D. for over a year, against appellee's wishes. Appellee testified on or about June 4, 2008, appellant had picked J.D. up at school and J.D had subsequently admitted they engaged in sexual conduct. Appellee testified she was only aware of this one incident of sexual conduct. On another occasion J.D. ran away and was found at appellant's home.

{¶7} Appellee testified J.D. was in counseling and wanted to move forward and leave all this behind her. Appellee expressed her fear J.D. would become pregnant. She testified she and her husband had asked appellant to stay away from J.D. Appellee also attempted to read police reports to the court, but the court instructed her not to do so. It does not appear the police reports were admitted into evidence.

{¶8} On cross, appellee testified J.D. had run away after an argument with her mother, and was found with appellant over one hour later. Appellee appeared to reluctantly concede J.D. wanted to continue to see appellant.

{¶9} J.D. was not present at the hearing and appellant did not testify.

{¶10} The trial court found "prior to her 16th birthday, Respondent engaged, on at least two occasions by his own admission, in sexual intercourse with [J.D.], an act that violates Ohio's unlawful sexual conduct with a minor statute, a sexually oriented offense as defined in Section 2950.01 of the Revised Code." The court found by a

preponderance of the evidence that petitioner or petitioner's family or household members are in danger of or have been a victim of a sexually oriented offense and that it was equitable, fair, and necessary to protect the person named in the order.

{¶11} Appellant argues the court's findings are based on inadmissible hearsay. The court also misstated the evidence: appellee testified J.D. had admitted to a single act of sexual conduct, but the court found appellant had admitted to two acts of sexual intercourse.

{¶12} A decision to grant a civil protection order lies within the sound discretion of the trial court, *Olenic v. Huff*, Ashland App. No. 02-COA-058, 2003-Ohio-4621. A reviewing court will not disturb the trial court's decision as being against the manifest weight of the evidence if the decision is supported by some competent, credible evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279. The Supreme Court has held an abuse of discretion implies the court's attitude is unreasonable, arbitrary, or unconscionable, *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140. We may not substitute our judgment for that of the trier of fact. *Pons v. Ohio State Med. Bd*. (1993), 66 Ohio St.3d 619, 621, 614 N.E.2d 748.

{¶13} The record indicates when appellee attempted to read from the police report, appellant's counsel objected on the grounds she had no personal knowledge of the contents. Thereafter, counsel for appellant did not object while appellee testified at length regarding statements J.D., the police, and appellee's husband had made. Appellant's counsel cross examined appellee about J.D.'s statements and sentiments, and about the various incidents appellee had testified to on direct.

{¶14} It is well-settled that a party must object in order to preserve an issue for appeal. See, e.g., *State v. Jones* (2001), 91 Ohio St.3d 335, 343, 2001-Ohio-57, 744 N.E.2d 1163; *State v. Robb* (2000), 88 Ohio St.3d 59, 75, 2000-Ohio-275, 723 N.E.2d 1019; *State v. Lindsey* (2000), 87 Ohio St.3d 479, 482, 2000-Ohio-465, 721 N.E.2d 995. Because appellant failed to object to the testimony during the hearing, we must determine whether the trial court committed plain error in allowing the testimony. Plain error is reversible error to which no objection was lodged at trial; it is obvious and prejudicial, and if permitted it would have a material adverse effect on the character and public confidence in judicial proceedings. *State v. Craft* (1977), 52 Ohio App.2d 1, 7, 367 N.E.2d 1221. See, also, Crim.R. 52(B). Notice of plain error is to be taken with utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice. *State v. Long* (1978), 53 Ohio St.2d 91, 372 N.E.2d 804, paragraph three of the syllabus.

{¶15} We cannot find plain error here, where appellant objected specifically to the police reports but not only failed to object to the balance of the testimony, but cross examined appellee about it.

{¶16} The trial court misstated the evidence regarding who admitted to sexual conduct, and found it had occurred on two occasions, although appellee testified she only knew of one instance. It was nevertheless uncontroverted that at least one act did take place. In closing argument appellant informed the court criminal charges were pending in another court, although no decision had been entered.

{¶17} R.C. 2903.214 provides in pertinent part:

{¶18} "(C) A person may seek relief under this section for the person, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state all of the following:

{¶19} "(1) An allegation that the respondent engaged in a violation of section 2903.211 of the Revised Code against the person to be protected by the protection order *or* committed a sexually oriented offense against the person to be protected by the protection order***" (emphasis ours).

{¶20} The statute does not require the court to find a pattern of sexually oriented offenses. Thus, we find the court's misstatement of the evidence is not significant; there is evidence in the record that supports the court's conclusion the appellant had committed at least one sexually oriented offense. Based upon this evidence the court found by a preponderance of the evidence J.D. had been a victim of a sexually oriented offense and the order was necessary to protect her from sexually oriented offenses.

{¶21} We conclude the court committed no prejudicial error. Both of appellant's assignments of error are overruled.

{¶22} For the foregoing reasons, the judgment of the Court of Common Pleas of Richland County, Ohio, is affirmed.

By Gwin, J.,

Farmer, P.J., and

Hoffman, J., concur

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER

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HON. WILLIAM B. HOFFMAN

WSG:clw 0521

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IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

CONNIE J. MORRIS	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
CALVIN E. J. MCQUILLEN	:	
Defendant-Appellant	:	CASE NO. 2008-CA-87

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Richland County, Ohio, is affirmed. Costs to appellant.

_____
HON. W. SCOTT GWIN

_____
HON. SHEILA G. FARMER

_____
HON. WILLIAM B. HOFFMAN