

[Cite as *Traut v. Leiby*, 2010-Ohio-2563.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ANTHONY TRAUT

Respondent-Appellant

-vs-

REGAN LEIBY

Petitioner-Appellee

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 09 CA 130

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Domestic Relations Division, Case
No. 09 CPO 1343

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 24, 2010

APPEARANCES:

For Respondent-Appellant

For Petitioner-Appellee

GEORGE R. KEYSER
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Wise, J.

{¶1} Appellant Anthony Traut appeals the decision of the Richland County Court of Common Pleas, Domestic Relations Division, which granted a domestic violence civil protection order (“CPO”) in favor of Appellee Regan Leiby, his former girlfriend. The relevant procedural facts leading to this appeal are as follows.

{¶2} On September 29, 2009, appellee filed a request for a civil protection order on behalf of herself, her daughter, and her present boyfriend. The court issued an ex parte civil protection order, and the matter was set for a full hearing on October 14, 2009. The hearing went forward on that date as scheduled.

{¶3} On October 22, 2009, the trial court granted the CPO in favor of appellee, effective until September 29, 2011.

{¶4} On November 4, 2009, appellant filed a notice of appeal. He herein raises the following three Assignments of Error:

{¶5} “I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY GRANTING A DOMESTIC VIOLENCE CIVIL PROTECTION ORDER SOLELY BASED UPON PAST ACTIONS OF RESPONDENT WHICH DID NOT CONSTITUTE DOMESTIC VIOLENCE AND WHICH WERE NOT CONTEMPORANEOUS TO THE FILING OF THE PETITION PURSUANT TO R.C. 3113.31.

{¶6} “II. THE GRANTING OF THE CIVIL PROTECTION ORDER WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶7} “III. THE TRIAL COURT ABUSED ITS DISCRETION BY BASING ITS DECISION ON AN INCIDENT THAT THE COURT STATED WAS NOT RELEVANT TO THESE PROCEEDINGS.”

I, II, III

{¶8} In his First, Second, and Third Assignments of Error, appellant argues on various bases that the trial court erred in granting appellee's request for a CPO. We disagree.

{¶9} In Ohio, a person seeking a civil protection order under R.C. 3113.31 must prove domestic violence or danger of domestic violence by a preponderance of the evidence. *Felton v. Felton* (1997), 79 Ohio St.3d 34. Ohio's civil domestic violence statutory scheme provides remedies which are specifically "in addition to, and not in lieu of, any other available civil or criminal remedies." *LeBeau v. LeBeau* (Oct. 29, 2001), Stark App.No. 2001 CA 00111. See, also, R.C. 3113.31(G).

{¶10} Generally, a judgment supported by competent and credible evidence going to all the elements of the case must not be reversed by a reviewing court as being against the manifest weight of the evidence. *Masitto v. Masitto* (1986), 22 Ohio St.3d 63. In addition, the decision on whether to grant a civil protection order lies within the sound discretion of the trial court. *Olenik v. Huff*, Ashland App. No. 02-COA-058, 2003-Ohio-4621, ¶ 21. "The parameters of a trial court's discretion must also encompass the determination of whether a CPO is actually necessary to ensure the family member's protection." *Rader v. Rader*, Licking App.No. 07CA5, 2007-Ohio-4288, ¶ 19, citing *LeBeau*, supra. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217.

{¶11} According to appellee's testimony, she sought the CPO in September 2009 because appellant had recently been "trying to get a hold of [her] and blackmailing

[her] and trying to get [her] alone at the house.” Tr. at 7. She conceded that appellant had never threatened her or caused her to believe she was in physical harm. Id. She also testified that appellant had never struck her, but had “come close.” Id. She nonetheless recalled that about a year before the hearing, appellant was upset at her and had thrown a kitchen chair and smashed several glasses on the floor in her presence. Tr. at 7-8. She noted that this experience scared her and her minor daughter. Tr. at 8. Appellee also recalled an incident where appellant had grabbed his AR-15 rifle and attempted to chase on foot a speeding motorist near the house. Id.¹ Appellee stated that this “freaked out” her and her daughter. Id. Additionally, appellee found out that appellant had been attempting to contact appellee’s daughter’s school after the couple had broken up. Tr. at 9. Appellant denied the glass-breaking incident in his testimony. Tr. at 24-29.

{¶12} We herein remain mindful that the focus in a CPO proceeding should be on whether the “petitioner or petitioner’s family or household members are in *danger of domestic violence*.” *Folmar v. Griffin*, Delaware App.No. 07 CAE 06 0025, 2008-Ohio-2941, ¶ 21 (emphasis added), quoting *Felton*, supra, at 42, citing R.C. 3113.31(D). Furthermore, R.C. 3113.31 provides no specific time restrictions for bringing allegations to the court in petitioning for a protective order. *Hoff v. Brown* (July 30, 2001), Stark App.No. 2000CA00315. Upon review of the record, while we express caution toward over-application of the CPO remedy in cases where there is an absence of direct threats against or actual violence toward a petitioner or his or her family/household member, we are unpersuaded the court in the case sub judice acted in an

¹ This is the incident referenced in the text of appellant’s Third Assignment of Error.

unreasonable, arbitrary, or unconscionable fashion in deciding to issue the CPO, and we are not inclined in this instance to substitute our judgment for that of the trial court, which had the opportunity to observe the witnesses and hear the testimony firsthand.

{¶13} Accordingly, appellant's First, Second, and Third Assignments of Error are overruled.

{¶14} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Richland County, Ohio, is affirmed.

By: Wise, J.

Edwards, P. J., concurs.

Hoffman, J., dissents.

/S/ JOHN W. WISE_____

/S/ JULIE A. EDWARDS_____

JUDGES

Hoffman, J., dissenting

{¶15} I respectfully dissent from the majority opinion. I would sustain Appellant's second assignment of error as I find the evidence insufficient to support the issuance of a civil protection order under R.C. 3113.31.

HON. WILLIAM B. HOFFMAN

