

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Theresa Rangel

Court of Appeals No. L-09-1084

Appellant

Trial Court No. DV2008-1001

v.

David Woodbury

DECISION AND JUDGMENT

Appellee

Decided: August 28, 2009

* * * * *

Clint M. McBee, for appellant.

Robert B. Scott, for appellee.

* * * * *

SINGER, J.

{¶ 1} This accelerated appeal comes to us from the Lucas County Court of Common Pleas, Domestic Relations Division, wherein appellant, Theresa Rangel, was denied a civil protection order. For the reasons that follow, we affirm.

{¶ 2} The parties are the unmarried parents of two young children. Appellant is the custodial parent and appellee, David Woodbury, has visitation rights. On November 25, 2008, appellant filed a petition for a domestic violence civil protection order pursuant to R.C. 3113.31 against appellee. On the same date, the court issued appellant a temporary protection order. A final hearing was scheduled for December 18, 2008. After the hearing, the magistrate dismissed the temporary protection order finding that appellee's actions did not rise to the level of domestic violence. Appellant filed timely objections. On March 5, 2009, the trial judge affirmed the magistrate's decision in its entirety. Appellant now appeals setting forth the following assignment of error:

{¶ 3} "I. The trial court committed prejudicial error by failing to find that the appellee committed domestic violence against the appellant as defined in the Ohio Revised Code Section 3113.31."

{¶ 4} Pursuant to R.C. 3113.31, one who is the subject of domestic violence may petition a domestic relations court or a common pleas court for a protection order. "Domestic violence" occurs, inter alia, when one attempts to cause, or recklessly causes, bodily injury to a family or household member or places such person in fear of imminent serious physical harm by threat of force, R.C. 3113.31(A)(1)(a)(b), or engages in a pattern of conduct that the actor knows will cause the family or household member to believe that the actor will cause physical harm or mental distress to such person. *Id.*, R.C. 2903.211. "Immediate and present danger of domestic violence to the family or household member constitutes good cause for purposes of this section. Immediate and

present danger includes, but is not limited to, situations in which the respondent has threatened the family or household member with bodily harm * * *." R.C.

3113.31(D)(1). A person seeking a civil protection order must demonstrate by a preponderance of the evidence that they are in danger of domestic violence. *Felton v. Felton* (1997), 79 Ohio St.3d 34.

{¶ 5} At the hearing, appellant testified that she sought a civil protection order against appellee because of the events that occurred on November 13, 2008. Appellant testified that on that date, appellee was scheduled to pick up their children for a visit. The parties have always exchanged the children at a local police station. On November 13, appellee was unable to be at the police station in time to retrieve his children so his girlfriend, Megan LaVoy, went in his place. Appellant testified that LaVoy has picked up and watched the children in the past and it normally has not been a problem. On this particular evening, however, appellant did not want LaVoy to pick up or watch her children alone so she went to the police station, without the children, to tell LaVoy, in person, that the children would not be visiting appellee. Appellant testified that she cancelled the visit due to information she had newly received. Specifically, the children had recently told her that LaVoy had left them alone, in a parked car, for three hours one day while she visited her parents. After speaking to LaVoy, appellant left the police station.

{¶ 6} Later that evening, appellant drove alone to her son's school for a parent-teacher conference. On her way, she noticed that she was being followed in another car

driven by appellee. Appellant testified that appellee followed her approximately eight blocks. Knowing her friend was in the vicinity, she called her friend and asked her to pull her car in between appellee's car and appellant's car. Appellant's friend arrived and drove her car in between appellee's and appellant's car. Appellant testifies that this gave her time to get farther away from appellee and she ultimately entered the expressway and drove home. That same night, she went to the police department and filed a complaint against appellee.

{¶ 7} Appellant testified that she filed a complaint because she: "* * * was really scared as to what [appellee's] state of mind was, why he was chasing me." She testified that she has had many incidents of threats and violence with appellee in the past and that she has filed charges against him before. She testified that she is still afraid of appellee.

{¶ 8} Appellee testified that on November 13, he called appellant and told her he would come to her house to pick up the children after he got off of work. When he got to her house, she was not home. Appellee testified that he then went to the home of appellant's parents who live in Oregon, Ohio. Before going there, he called the Oregon Police Department and had police escort him to the home. Appellee testified that he wanted the police there so he would not be unjustly accused of being unruly. When he got to appellant's parents' home, he found that appellant was not there. An Oregon Police Officer told appellee to call the Toledo Police Department for assistance and to go back to appellant's house and wait for her to return. Appellee testified that just as he arrived at appellant's house and before he could call the Toledo police, he saw appellant drive by.

He immediately began following appellant. Appellee testified that he believed appellant had the children in the car with her and that he began following, hoping to catch up with her, so he could ask her to give him the children for his authorized visitation.

{¶ 9} In dismissing appellant's petition for a protection order, the magistrate noted there was no physical contact between the parties at any time, that two previous charges of domestic violence between the parties have been dismissed following court hearings, and that there are motions pending in the juvenile court concerning the children. Further, in concluding that an act of domestic violence did not occur, the magistrate stated:

{¶ 10} "The court believes that the incident described herein is an extension of the Juvenile Court proceedings. * * * [Appellee's] following of the petitioner in his car was certainly inappropriate but the court is not convinced that the petitioner was in fear of [appellee]. * * * Petitioner and respondent both need to redirect their energy to resolving the outstanding issues pending in Juvenile Court in an attempt to reach a resolution that would be in the best interest of the minor children. Constant litigation is not an avenue to be utilized to achieve this goal."

{¶ 11} The decision to grant or dismiss a request for a civil protection order is within the discretion of the trial court. *Deacon v. Landers* (1990), 68 Ohio App.3d 26, 31. An appellate court will not reverse a trial court's decision regarding a civil protection order absent an abuse of discretion. *Parrish v. Parrish* (2000), 146 Ohio App.3d 640, 646. An abuse of discretion, "connotes more than an error of law or judgment; it implies

that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. If the trial court's decision is supported by credible and competent evidence, the appellate court will not reverse the decision as an abuse of discretion. *Jarvis v. Jarvis*, 7th Dist. No. 03-JE-26, 2004-Ohio-1386, ¶ 13.

{¶ 12} Upon a full review of the record in this case, we find that the trial court's decision was based upon competent, credible evidence and not an abuse of discretion. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶ 13} On consideration whereof, the court finds that substantial justice has been done the party complaining the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Arlene Singer, J.

JUDGE

Mary J. Boyle, J.

CONCUR.

JUDGE

Judge Mary J. Boyle, Eighth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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