[Cite as *Jackson v. Jackson*, 2011-Ohio-5529.]

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

Shonda J. Jackson	Court of Appeals No. L-11-1031
Appellee	Trial Court No. DV 2009-0121
v.	
Zeb I. Jackson	**DECISION AND JUDGMENT**
Appellant	Decided: October 28, 2011

* * * * *

John L. Straub and Rebecca E. Shope for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant appeals the issuance of a domestic violence civil protection order by the Lucas County Court of Common Pleas, Domestic Relations Division. For the reasons that follow, we affirm.

{¶ 2} The facts of this matter are more fully explored in our initial consideration of this matter, *Jackson v. Jackson*, 188 Ohio App.3d 493, 2010-Ohio-3531. In 2009,

appellee, Shonda J. Jackson, obtained a domestic violence civil protection order against her then husband, appellant Zeb I. Jackson. After the permanent order was issued, appellant moved to vacate. Appellant suggested that the evidence presented at the magistrate's hearing was insufficient to support a finding that appellee was reasonably in fear of domestic violence.

{¶ 3} The trial court treated appellant's motion as a request for relief from judgment pursuant to Civ.R. 60(B). Id. at ¶ 11. When the court denied the motion, as well as a subsequent request that the motion instead be construed as a Civ.R. 53(D) motion to set aside the magistrate's order, appellant appealed. On appeal, we found that, although appellant's motion was "inartfully drafted," its substance could be logically construed as an objection to the magistrate's decision. Id. at ¶ 26. We remanded the matter to the trial court to apply that standard. Id. at ¶ 30. On remand, the trial court overruled appellant's objections and again adopted the magistrate's decision. From this judgment, appellant again appeals, setting forth the following single assignment of error:

{¶ 4} "The trial court committed reversible error in granting Appellee's Petition for Civil Protection Order where the evidence failed to establish any element under R.C. §3113.31 and failed to establish that Appellee was in fear of imminent serious physical harm on the date of the Petition, as required by Ohio law."

{¶ 5} "[O]ne 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." *Rangel v. Woodbury*, 6th Dist. No. L-09-1084, 2009-Ohio-4407, ¶ 4. One who seeks such a protection order bears the responsibility to show by a preponderance of the evidence that he or she is in danger of domestic violence. Id., citing *Felton v. Felton* (1997), 79 Ohio St.3d 34, paragraph two of the syllabus.

{¶ 6} A trier of fact determines whether a petitioner for a protection order has satisfied his or her burden of proof. A reviewing court must determine whether that determination is properly supported. Judgments supported by some competent, credible evidence will not be reversed on appeal as against the manifest weight of the evidence. Moreover, deference to the findings of a trier of fact must be given regarding determinations of the credibility of witnesses. *Boals v. Miller*, 5th Dist. No. 10-COA-03, 2011-Ohio-1470, ¶ 5, citing *C.E. Morris v. Foley Construction Company* (1978), 54 Ohio St.2d 279, syllabus, and *Seasons Coal Company, Inc. v. City of Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶ 7} Both the magistrate, who was the initial trier of fact, and the court that reviewed the proceedings found that there was sufficient evidence to prove that appellant committed acts of domestic violence in January 2009, and that those acts engendered in

appellee a reasonable fear that she might be subject to future domestic violence at appellant's hands.

{¶ 8} As we noted in our initial consideration of this matter, at the magistrate's hearing appellee testified to several alcohol-fueled instances of physical and verbal abuse at appellant's hands; an attempt to physically throw her out of the house, *Jackson*, supra, at ¶ 3, awakening and striking her with a pillow, id. at ¶ 4, threatening to urinate on her as she used the toilet, id. at ¶ 5, and appellant stating in an overheard telephone conversation that he really wanted to "f—her up." Id. at ¶ 6. Appellee reported an earlier physical altercation that resulted in injury to her nose. Additionally, appellee testified at several points in the hearing that she was in fear of future violence at appellant's hands.

{¶ 9} Although minimizing the importance of these incidents, appellant does not dispute that they occurred. Instead, he argues that, given the relatively benign nature of appellee's complaints, it is simply unreasonable for her to fear future violence from him. Appellant also suggests that appellee's behavior in accompanying him to one of their children's athletic events and coming unaccompanied to confront him when he reoccupied the family home belies her assertion that she was in fear of him.

{¶ 10} Whether appellee's asserted fear was reasonable or not is yet another question of fact. See *Eichenberger v. Eichenberger* (1992), 82 Ohio App.3d 809, 815. Appellee testified that she feared appellant. This is sufficient evidence by which the magistrate and the trial court could have found such fear. The evidence of the

surrounding circumstances was sufficient to support the court's conclusion that appellee's fear was reasonable.

{¶ 11} Consequently, we must conclude that there was competent, credible evidence by which the trial court could have found the elements of R.C. 3113.31 satisfied and the trial court did not err in granting appellee's petition for a civil protection order. Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 12} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. It is ordered that appellant pay the court costs of the 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.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE