[Cite as *Highfield v. Highfield*, 2013-Ohio-3466.]

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

Bonnie Highfield	Court of Appeals No. OT-12-020
Appellee	Trial Court No. 09DR060H
v.	
Richard Highfield	**DECISION AND JUDGMENT**
Appellant	Decided: August 9, 2013

* * * * *

Richard Highfield, pro se.

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SINGER, P.J.

{¶ 1} Appellant appeals the order of the Ottawa County Pleas Court, denying his motion to terminate a civil protection order before its expiration. Because the trial court's decision to deny the motion was within the court's discretion, we affirm.

{¶ 2} Appellant, Richard K. Highfield, and appellee, Bonnie Highfield, nka Canfield, were married. According to appellee, it was an abusive relationship that began

to unravel in 2009. On March 27, 2009, appellee petitioned the trial court for an ex parte civil protection order, alleging that appellant had engaged in acts of domestic violence against her and that she feared for her safety. The court issued the ex parte order and subsequently, following a full hearing, a permanent civil protection order to be effective for five years. It is due to expire on March 27, 2014. The parties are since divorced. Appellee now lives in California.

{¶ 3} On February 14, 2012, appellant filed a pro se motion to terminate the protective order early. Appellant alleged that the purpose of the protective order was negated by the fact that the parties now lived a considerable distance apart and the existence of the order in law enforcement databases inhibited his ability to travel. He contends he was twice detained by the U.S. Border Patrol when attempting to re-enter the country from Canada.

{¶ 4} Appellee filed a memorandum in opposition to the motion, observing that as the result of their divorce settlement appellant holds a $200,000 insurance policy on her life. Appellee asserted that she still is in fear of appellant.

{¶ 5} The trial court set the motion for a hearing and granted appellee's motion to participate telephonically. At the hearing, appellant reiterated his argument that the purpose of the protective order no longer existed and that its existence interfered with his travel. Appellee responded with complaints about appellant's compliance with the terms of the divorce.

{¶ 6} At that point the court interrupted, advising both parties that the subject matter of the hearing was the protective order and "if there is or is not a continuing threat." The court also advised the parties that it would be "an extraordinary event" to dismiss a protective order without consent of both parties.

{¶ 7} Appellee responded, reiterating her concern about the insurance policy and noting that appellant has traveled to the west before. At the conclusion of the hearing, the court declined to disturb the original order. From this judgment, appellant now brings this appeal. Appellant sets forth a single assignment of error:

> The trial court committed several procedural errors pursuant to various Ohio Rules of Evidence, namely: Rule 603. failure to administer "Oath or Affirmation" before testifying, Rule 611. failure to "exercise reasonable control" over the mode and order of interrogating witnesses and presenting evidence, Rule 614. failure to permit parties to cross-examine witnesses thus called, Rule 615. failure to require a person whose presence is shown by a party to be essential to the presentation of the party's cause, and failure to consider generally accepted criteria for modifying or terminating a domestic violence civil protection order.

{¶ 8} Appellant offered no objections during the hearing. Ordinarily, errors not brought to the attention of the court in the course of a proceeding are deemed waived and may not be raised on appeal. *Stores Realty Co. v. Cleveland*, 41 Ohio St.2d 41, 43, 322 N.E.2d 629 (1975). This includes the omission of the administration of the oath to a

witness, *id.* at syllabus, and separation of witness issues under Evid.R. 615. *In re Lyon Children,* 5th Dist. Stark No. 1998CA00185, 1999 WL 100374 (Feb. 1, 1999).

{¶ 9} Appellant complains that the trial court violated Evid.R. 611 by permitting appellee to participate in the hearing by telephone. The conduct of a proceeding and the accommodations the court may make to any party are in the court's discretion and will not be disturbed on appeal absent an abuse of that discretion. *Cox v. Cardiovascular Consultants,* 5th Dist. Stark No. 2006 CA 00389, 2007-Ohio-5468, ¶ 26. An abuse of discretion is more than a lapse of judgment or a mistake of law, the term connotes that the court's attitude is arbitrary, unreasonable or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). We find no abuse of discretion in allowing appellee to participate in the proceeding via telephone.

{¶ 10} Evid.R. 614 deals with witnesses called and interrogated by the court. We see no application of this rule to the matter before us.

{¶ 11} Finally, appellant complains that the trial court ignored "generally accepted criteria" for modifying or terminating a protection order. The authority appellant cites as criteria is an online brochure from Ohio Legal Services. There is nothing in the record to suggest that these "criteria" were ever presented to the court. The brochure does resemble the statutory items of consideration contained in R.C. 3113.31(E)(8).

{¶ 12} R.C. 3113.31(E)(8)(b) provides that a protection order may be modified on the motion of either party. To do so, the moving party must show by a preponderance of the evidence that such modification is appropriate because it is no longer needed or no

longer appropriate. The decision to modify a protection order rests in the discretion of the court. *Jones v. Rose*, 4th Dist. Hocking No. 09CA7, 2009-Ohio-4347, ¶ 5. R.C. 3113.31(E)(8)(c) directs a court considering a modification to consider all relevant factors, including whether the non-moving party consents to the modification and whether the original petitioner for the order continues to fear the respondent.

{¶ 13} From the filings by, and testimony from appellee, it is clear that she does not consent to modification and she continues to fear appellant. Given this, the trial court could have reasonably found that appellant failed to meet his burden of proof on the motion. Consequently, the court acted within its discretion in denying appellant's motion to modify the protection order. Appellant's sole assignment of error is not well-taken.

{¶ 14} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is affirmed. It is ordered that appellant pay the court 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.

Arlene Singer, P.J. _____ JUDGE

Thomas J. Osowik, J. _____ JUDGE

James D. Jensen, J. _____ JUDGE
CONCUR.