[Cite as *Tabatabai v. Tabatabai*, 2009-Ohio-3139.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF MEDINA	)	

MARGARITA TABATABAI	C.A. No. 08CA0049-M
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
VAHID TABATABAI	COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO
Appellant	CASE No. 07DV0211

DECISION AND JOURNAL ENTRY

Dated: June 29, 2009

BELFANCE, Judge.

{¶1} Margarita Tabatabai petitioned the Medina County Court of Common Pleas, Domestic Relations Division, for a civil protection order restraining her husband, Vahid Tabatabai. A magistrate granted an ex parte protection order, then granted the five-year protection order after a hearing that lasted two days. The trial court adopted and approved the magistrate's decision on the same day. Mr. Tabatabai objected to the magistrate's evaluation of the evidence, but the trial court overruled his objections, "affirmed" the magistrate's decision, and ordered the civil protection order to "remain in full force and effect."

{¶2} Mr. Tabatabai appealed, arguing that the trial court erred by: (1) failing to conduct an independent review of the proceedings before the magistrate; and (2) affirming the magistrate's decision although it was against the manifest weight of the evidence. This Court affirms because the trial court independently reviewed the matters before the magistrate and did

not abuse its discretion by concluding that the magistrate's factual determinations were supported by competent, credible evidence.

FACTS

{¶3} Mr. and Mrs. Tabatabai married in 2002 after a six-year romantic relationship. They had no children as a result of their marriage, but Mrs. Tabatabai has an adult son and Mr. Tabatabai an adult daughter. Mr. and Mrs. Tabatabai enjoyed a high standard of living, but their lifestyle took a downturn when Mr. Tabatabai lost his employment as an executive. The couple lived in Anaheim, California, before moving to Medina County, where they owned a diner. On October 25, 2007, Mrs. Tabatabai moved from the marital residence with the help of her son, Luis Valencia. She and Mr. Valencia removed certain items of personal property from the home, including several automatic weapons that Mr. Valencia removed from a gun safe and surrendered to the Medina County Sheriff. On the same date, Mrs. Tabatabai requested an ex parte protection order, citing recent threats of violence by Mr. Tabatabai and his access to an extensive cache of firearms.

JURISDICTION

{¶4} Before this Court considers Mr. Tabatabai's assignments of error, we must address, sua sponte, the matter of our jurisdiction to review his appeal. See *Whitaker-Merrell Co. v. Geupal Constr. Co.* (1972), 29 Ohio St.2d 184, 186. Section 3(B)(2), Article IV of the Ohio Constitution grants courts of appeals jurisdiction to review judgments and final orders. With respect to matters referred to a magistrate pursuant to Civ.R. 53, this Court has held that there must be an order of the trial court judge that resolves objections to the magistrate's decision, terminates the controversy at hand, informs the parties of the relief granted by the court, and enters judgment. *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211,

218. When a trial court enters judgment pursuant to Civ.R. 53(D)(4)(e)(i) during the fourteen days permitted for the filing of objections, execution of the judgment is stayed until the court disposes of any timely filed objections and vacates, modifies, or adheres to the judgment previously entered. Civ.R. 53(D)(4)(e)(i). In that scenario, as in this case, this Court must consider the trial court's earlier order entering judgment to determine our jurisdiction to consider the appeal. See *In re K.K.*, 9th Dist. No. 22352, 2005-Ohio-3112, at ¶7.

{¶5} Recently, this Court has applied its decision in *Harkai* to civil protection orders, and has concluded that form orders signed by both the magistrate and the trial court judge do not conform to the jurisdictional requirements set forth therein. See, e.g., *Mills v. Mills*, 9th Dist. No. 24063, 2008-Ohio-3774. In *Mills*, we considered another civil protection order that was signed by the magistrate and the trial court judge before objections were filed. We observed that the trial court judge's signature "not[ed] merely approval and adoption, rather than a full reiteration of the orders therein." Id. at ¶3. We also noted, with respect to the trial court's ruling on the objections that followed, that "[t]he trial court did not reiterate any orders regarding the issuance of the CPO." Id. at ¶5. This Court concluded that because the trial court "failed to enter its own judgment granting the CPO," we lacked jurisdiction over the appeal. Id. at ¶8. We have followed this reasoning in several cases since *Mills* was decided. See *Harig v. Hall*, 9th Dist. No. 24170, 2008-Ohio-5705; *Stano v. Stano*, 9th Dist. No. 08CA0029-M, 2008-Ohio-5527; *DiDomenico v. DiDomenico*, 9th Dist. No. 07CA0126-M, 2008-Ohio-5305; *Kelly v. Kelly*, 9th Dist. No. 07CA009256, 2008-Ohio-3884. This case, however, provides us with an opportunity to revisit this aspect of our jurisdiction.

{¶6} R.C. 3113.31(G) states that *any* order that grants or denies a petition for a protection order or a motion to modify or terminate a protection order is a final, appealable order.

The language of the statute broadly encompasses any order that grants the relief described, and other courts of appeals have acknowledged the general principle that such orders are final and appealable. See, e.g., *Cauwenbergh v. Cauwenbergh*, 11th Dist. No. 2006-A-0008, 2007-Ohio-1070, at ¶9; *Wardeh v. Altabchi*, 158 Ohio App.3d 325, 2004-Ohio-4423, at ¶5; *Martin v. Fisher* (Apr. 12, 2001), 8th Dist. No. 78993, at *2; *Jeffers v. Jeffers* (Feb. 13, 2001), 10th Dist. No. 00AP-442, at *3; *Toohill v. Toohill* (Aug. 18, 2000), 2nd Dist. No. 99 CA 138, at *1; *Stella v. Platz* (June 17, 1999), 4th Dist. No. 98CA18, at *4.

{¶7} This case concerns a particular type of order that is unique to R.C. 3113.31. When considering and ruling on a petition for a protection order, courts of common pleas must use forms provided by the Supreme Court of Ohio or substantially similar forms. See Rule 10.01(C) of the Rules of Superintendence for the Courts of Ohio. The commentary to Rule 10.01(C) explains the Court's rationale for the adoption of these forms:

> "On December 9, 1994, Am. Sub. H.B. No. 335 became effective, which made significant changes to Ohio's domestic violence laws. Section 4 of Am. Sub. H.B. No. 335, states as follows:
>
> > "'The General Assembly hereby requests the Supreme Court, in consultation with the Department of Human Services, to prescribe a form that is to be filed by a petitioner seeking a civil protection order under section 3113.31 of the Revised Code and that makes reference to all the forms of relief that a court is authorized to grant under division (E) of section 3113.31 of the Revised Code, as amended by this act, contains space for the petitioner to request any of those forms of relief, and includes instructions for completing the form so that a petitioner may file the form without the assistance of an attorney.'
>
> "The Supreme Court, in consultation with its Domestic Violence Task Force, developed Forms 10.01-C and 10.01-D in response to the General Assembly's request in Am. Sub. H.B. No. 335.
>
> "During its eighteen months of study, the Supreme Court's Domestic Violence Task Force determined that pro se victims of domestic violence often do not have access to the forms necessary to obtain a civil protection order pursuant to section 3113.31 of the Revised Code. The Task Force also found that due to the variety

> of protection order forms used by Ohio courts, it can be difficult for law enforcement officers to recognize valid protection orders and understand the pertinent provisions of such orders. Further, the Task Force discovered that misconceptions exist in regard to the penalties for violating protection orders."

{¶8} Form 10.01-I, authorized by Rule 10.01, is the Order of Protection recommended by the Supreme Court of Ohio. It consists of four pages, on which the court of common pleas must fill in all appropriate blanks and check all boxes that apply to the petition at hand. These options reflect the restrictions that may be imposed by the court of common pleas pursuant to R.C. 3113.31(E). In other words, the form permits the court of common pleas to define in a concise and standard way the contours of the order of protection in a given case. Page one of Form 10.01-I sets forth a "Federal Full Faith & Credit Declaration" pursuant to the Violence Against Women Act, 18 U.S.C. §2265. The last page of Form 10.01-I sets forth instructions to the clerk of court for service upon the parties, local law enforcement agencies, and other agencies specific to the terms of the order. The body of the final page ends with the statement, "IT IS SO ORDERED."

{¶9} The form contains three notice components: (1) notice to the respondent of the consequences of violating the order; (2) notice to the petitioner that the terms of the order can only be changed by order of the court; and (3) notice to law enforcement agencies that the terms of the protection order must be enforced. In this respect, use of the form adopted by the Supreme Court of Ohio is especially significant because the concise, uniform nature of the document enables agencies that receive notice to verify the validity and terms of a civil protection order efficiently and to act in furtherance of the order without unnecessary delay or confusion.

{¶10} R.C. 3113.31(G) explains that the Ohio Rules of Civil Procedure apply to proceedings for civil protection orders. Consequently, these proceedings may be heard by a magistrate as provided by Civ.R. 53. Form 10.01-I contemplates this scenario by providing

space for the signature of a magistrate and, immediately to the right of the magistrate's signature line, a second signature line for the judge beneath the phrase "APPROVED AND ADOPTED." It is in this context that R.C. 3113.31(G) provides that any order that grants or denies a petition for a protection order or a motion to modify or terminate a protection order is a final, appealable order.

{¶11} We conclude that a civil protection order that is entered on Form 10.01-I, or such other form approved by the Supreme Court of Ohio, and signed by a magistrate and a judge is, pursuant to R.C. 3113.31(G), a final, appealable order. See, generally, *Dobos v. Dobos*, 179 Ohio App.3d 173, 2008-Ohio-5665, at ¶8 (concluding that a magistrate's decision on a civil protection order "was later signed by the trial court, making the decision a final, appealable order."); *Burke v. Melton*, 8th Dist. No. 81994, 2003-Ohio-7054, at ¶21-23 (determining that a civil protection order was final and appealable when it "was signed by both the magistrate and the judge[,] [o]n a preprinted section of the journal entry[.]"); *Burke v. Brown*, 4th Dist. No. 01CA731, 2002-Ohio-6164, at ¶18-25 (analyzing the merits of an appeal from a civil protection order when "the magistrate decided to issue the civil protection order as evidenced by its signature on the order [and] [t]he trial court adopted the magistrate's decision as indicated by its signature on the same order.") To the extent that our previous decisions have reached the opposite conclusion, they were wrongly decided. See, generally, *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, at paragraph one of the syllabus.

{¶12} Although we are mindful that stare decisis constrains the decisions of this Court, we conclude that *Mills*, 2008-Ohio-3774, and the cases that followed must be overruled. As explained above, our prior decisions "def[y] practical workability" by placing trial courts in the unenviable quandary of rejecting a form prescribed by the Supreme Court of Ohio in order to

satisfy this Court's interpretation of Civ.R. 53. See *Galatis*, 2003-Ohio-5849, at paragraph one of the syllabus. Form 10.01-I remains in use, however, and so "abandoning the precedent would not create an undue hardship" caused by reliance on *Mills*. See *Galatis* at paragraph one of the syllabus. In overruling *Mills* and the cases that followed, we emphasize that this decision is limited to our jurisdiction to consider civil protection orders as described above.

THE CIVIL PROTECTION ORDER

{¶13} Mr. Tabatabai's first assignment of error is that the trial court failed to conduct an independent review of the subject matter of his objections. He has argued, specifically, that the trial court incorrectly deferred to the magistrate's evaluations of credibility and applied "an appellate review standard" in evaluating his objection.

{¶14} Civ.R. 53(D)(4)(d) requires a trial court to "undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." In the course of this review, a trial court should not adopt the magistrate's report as a matter of course, but should "carefully examine" the report and the evidence before the magistrate. *Miller v. Miller*, 9th Dist. No. 07CA0061, 2008-Ohio-4297, at ¶15. The independent review requirement of Civ.R. 53(D)(4)(d), however, does not prohibit the trial court from deferring to the magistrate's resolution of credibility because the magistrate retains a superior position, as the trier of fact, to consider the demeanor of witnesses and evaluate their credibility. See *Henneke v. Glisson*, 2nd Dist. No. CA2008-03-034, 2008-Ohio-6759, at ¶29.

{¶15} There is no indication in this case that the trial court fell short in its obligation to conduct an independent review of Mr. Tabatabai's objection. To the contrary, the trial court's decision demonstrates a thorough review of the transcripts that were provided by Mr. Tabatabai

pursuant to Civ.R. 53(D)(3)(b)(iii). Faced with testimony that "conflicted on nearly every point," the trial court examined the magistrate's conclusions and found them supported by the record. We reach this conclusion despite the fact that the trial court phrased a portion of its decision in terms of the standard of review applied by courts of appeals in civil cases, and note that Mr. Tabatabai invited the trial court to do so by framing his objection in the same way. The trial court did not err in the scope of its review of the proceedings before the magistrate, and Mr. Tabatabai's first assignment of error is overruled.

{¶16} Mr. Tabatabai's second assignment of error is that the trial court erred by overruling his objection to the magistrate's decision. Mr. Tabatabai has argued that the conclusion that Mrs. Tabatabai faced fear of imminent, serious physical harm was not supported by competent, credible evidence, which was also the substance of his objection to the trial court.

{¶17} This Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. No. 24150, 2008-Ohio-5232, at ¶9. Under this standard, we must determine whether the trial court's decision was arbitrary, unreasonable, or unconscionable – not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶18} In so doing, we consider the trial court's action with reference to the nature of the underlying matter. See, e.g., *In re J.A. and K.A.* 9th Dist. No. 24332, 2009-Ohio-589 (considering a trial court's determination that a magistrate properly evaluated evidence under a clear and convincing burden of proof); *Wimmer Family Trust v. FirstEnergy*, 9th Dist. No. 08CA009392, 2008-Ohio-6870 (reviewing a trial court's action on a motion for a preliminary injunction referred to a magistrate); *Quintile v. Quintile*, 9th Dist. No. 08CA0015-M, 2008-Ohio-5657 (considering a trial court's determination of objections to a magistrate's decision regarding

child support); *In re B.G.*, 9th Dist. No. 24187, 2008-Ohio-5003 (reviewing a trial court's decision regarding a magistrate's application of the best interest test in the context of a legal custody case). Consequently, we must consider, in this case, whether the trial court abused its discretion by determining that the findings of the magistrate were supported by the weight of the evidence. Because this is a civil case, the appropriate determination was whether the magistrate's decision was "supported by some competent, credible evidence." *Bryan-Wollman v. Domonko*, 115 Ohio St.3d 291, 2007-Ohio-4918, at ¶3, quoting *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶32.

{¶19} In order for a civil protection order to issue, "the trial court must find that petitioner has shown by a preponderance of the evidence that petitioner or petitioner's family or household members are in danger of domestic violence." *Felton v. Felton* (1997), 79 Ohio St.3d 34, paragraph two of the syllabus. Domestic violence, as defined by R.C. 3113.31(A)(1), includes "[a]ttempting to cause or recklessly causing bodily injury" and "[p]lacing another person by the threat of force in fear of imminent serious physical harm," both of which were alleged by Mrs. Tabatabai's petition.

{¶20} Mrs. Tabatabai alleged that she was in danger of domestic violence based on two incidents. With respect to the first incident, she alleged that Mr. Tabatabai attempted to cause physical harm to her and threatened to kill her and himself when she tried to leave him on a previous occasion. With respect to the second incident, she alleged that Mr. Tabatabai threatened her life by telephone on the day that she did leave the marriage. Mrs. Tabatabai and her son, Luis Valencia, testified during the ex parte hearing and the full hearing conducted before the magistrate. Mr. Tabatabai and his daughter, Roya Tabatabai, testified during the full hearing, as well as Theodore Chagaris, an acquaintance of the Tabatabais.

{¶21} During the ex parte hearing conducted on October 25, 2007, Mrs. Tabatabai characterized Mr. Tabatabai as "very violent, especially psychological." She testified about two specific incidents of violence by Mr. Tabatabai. She recalled that, two weeks before the hearing, Mr. Tabatabai threw a pot at her during an argument at their restaurant. She also testified that during her first attempt to move out of the marital residence one week earlier, Mr. Tabatabai pushed her and "said if I move, he will kill me and kill himself." He also threatened to destroy her possessions so that she could not remove them from the residence. According to Mrs. Tabatabai's testimony, she contacted her son Luis after the failed attempt to leave and asked for his help in moving her belongings a week later. Mr. Valencia, who did not witness either of the recent incidents that were the subject of his mother's testimony, testified about other incidents of violence by Mr. Tabatabai, commenting that his mother "must have left half of everything I observed out." Specifically, he recalled an incident two years before in which Mr. Tabatabai "grabbed her by the right arm and held her down in a chicken wing like by the back of the bicep" and "[f]orcefully put her down in front of other people."

{¶22} After granting a temporary ex parte protection order, the magistrate conducted a full hearing on Mrs. Tabatabai's petition on November 5, 2007. Mrs. Tabatabai testified in more detail during this hearing about her ten-year relationship with Mr. Tabatabai and recent incidents of alleged domestic violence. According to Mrs. Tabatabai, the violence spanned the course of her relationship with her husband. Mrs. Tabatabai testified that her husband "never beat" her, but characterized their relationship as violent "every day." She specifically noted Mr. Tabatabai's quick temper, noting that he would "start cussing and screaming for every little thing that happens that is not his way." Mrs. Tabatabai noted several examples.

{¶23} She recalled that early in their relationship, Mr. Tabatabai grabbed a small dog that she owned and "thr[e]w it out" of the house. She also testified that Mr. Tabatabai "got really violent" when she refused to provide him with $12,000 to enter into a business association. According to Mrs. Tabatabai, this incident immediately preceded her first attempt to leave the marriage. She reiterated her previous testimony that Mr. Tabatabai threatened to kill her and himself when she tried to leave him on that occasion:

> "I was leaving the house with just what I have on and a little suitcase. I got in the car. When I was going downstairs, he saw me, so I run to the car, and he went to the back of the car. It is a van, a minivan. He opened the back of the car and went inside. That's when he got in the car and pulled me to the steering wheel and the gun and said if I leave, he's going to kill me."

During the full hearing, however, Mrs. Tabatabai also testified that Mr. Tabatabai held a gun to her head during this incident.

{¶24} Mrs. Tabatabai also testified more specifically about the events of October 25, 2007, the day that she moved from the marital residence with her son's assistance. According to her testimony, she and Mr. Valencia removed a significant amount of personal property from the residence, then contacted Roya Tabatabai and asked her to come home. Once she arrived, Mrs. Tabatabai asked her for the keys to her vehicle, which she and Mr. Valencia then took with them as well. Mrs. Tabatabai testified that shortly thereafter, she received a threatening telephone call from Roya Tabatabai followed by a serious of calls from an undisclosed number. Mrs. Tabatabai recognized the voice of the caller, who claimed to be a law enforcement officer, as that of her husband.

{¶25} Mrs. Tabatabai mentioned one additional concern: the presence of at least thirty-five firearms in a safe in the marital residence. She testified that she had a key to the safe in which the firearms were stored and that she and Mr. Valencia removed several weapons on the

morning of October 25, 2007, and surrendered them to law enforcement. She also testified, however, that many guns remained in the safe and that her husband was living in the house on the date of the hearing.

{¶26} Mrs. Tabatabai's son, Luis Valencia, also testified during the full hearing on the petition. He reiterated his testimony from the ex parte hearing regarding previous incidents of violence on the part of Mr. Tabatabai, and elaborated on one incident that occurred, as he recalled, in July 2005:

> "Mr. Tabatabai was yelling at my mother, and she was crying uncontrollably. He grabbed her by the arm, pushed her down towards his mouth, and said something to her in the ear, pushed her back away, and my mother kept crying uncontrollably. When I saw my mother, again, the fingerprints on her arm were visible. He had bruised her."

Mr. Valencia testified that Mr. Tabatabai threatened his mother "on numerous occasions," explaining that "[e]specially after he drinks, it just gets out of hand. He gets into so many rages, you have to kind of walk on eggshells when you're around him." He testified that Mrs. Tabatabai had never told him that her husband pulled a gun on her, recalling that instead, she mentioned that he had pushed her head toward the steering wheel in her van during the same incident. Mr. Valencia acknowledged that he chose not to become involved in the situation until October 2007 because it was "none of [his] business" and he had "too much to lose."

{¶27} Much of Mr. Valencia's testimony related to Mrs. Tabatabai's allegations regarding Mr. Tabatabai's collection of firearms. Mr. Valencia, who had served in the Marine Corps, testified that he recognized several of the weapons in the Tabatabais' gun safe as fully automatic weapons and suspected that they could not be possessed legally in Ohio. Among those weapons, according to Mr. Valencia, were an Uzi and an AK-47. Mr. Valencia testified that he

and his mother removed four weapons from the home by concealing them in other items of personal property, but that they left many other weapons behind.

{¶28} Mr. Tabatabai and his daughter Roya testified in opposition to Mrs. Tabatabai's petition. Mr. Tabatabai denied Mrs. Tabatabai's and Mr. Valencia's testimony regarding incidents of domestic violence in its entirety. According to Mr. Tabatabai's testimony, there were no incidents of violent behavior on his part during the couple's ten-year relationship. He specifically denied harming his wife's dog, testifying instead that "[t]hat dog was my baby." He also denied that Mrs. Tabatabai tried to leave the marriage earlier in 2007, and denied threatening her on October 25, 2007, by phone. With respect to the weapons, Mr. Tabatabai testified that Mrs. Tabatabai shared his interest in firearms; that all of the weapons in the marital home were purchased legally; and that some of the guns were purchased with his wife.

{¶29} The testimony of Roya Tabatabai and Theodore Chagaris supported Mr. Tabatabai's version of events. Both denied any knowledge of violence between Mr. and Mrs. Tabatabai. Roya, who was also named as a respondent in Mrs. Tabatabai's petition, characterized her relationship with her step-mother as "pretty good." She also testified about the events of October 25, 2007, claiming that Mrs. Tabatabai took the keys to her car and left her behind without access to the marital residence. According to Roya's testimony, she called the police from her cellular phone.

{¶30} There are significant contradictions in the parties' testimony, as might be expected in a matter of this nature. This Court is mindful that our review of the record, while thorough, is necessarily limited by our inability to view the demeanor of the witnesses. This is particularly significant in a case such as this, in which the trial court was compelled to admonish the witnesses and the gallery for inappropriate but unrecorded gestures and comments during the

proceedings. Nonetheless, this Court has reviewed the record, and we cannot conclude that the trial court abused its discretion by overruling Mr. Tabatabai's objection. The testimony of Mrs. Tabatabai and Mr. Valencia, while contradicted at certain points, provided competent, credible evidence that Mr. Tabatabai attempted to cause bodily injury to his wife and placed her in fear of imminent serious physical harm by threat of force. In this respect, we note that the bulk of the testimony adduced by Mr. Tabatabai during the hearing was only marginally relevant to the issue of domestic violence. As the trial court observed, testimony regarding ownership of the firearms, title of the family vehicles, and occupancy of the marital residence was, in the context of this matter, more appropriate for discussion in the underlying domestic relations case. There is no indication in the record that the trial court's decision to overrule Mr. Tabatabai's objection was arbitrary, unreasonable, or unconscionable, and his second assignment of error is overruled.

CONCLUSION

{¶31} The trial did not fail to conduct an independent review of the magistrate's decision, nor did it abuse its discretion in overruling Mr. Tabatabai's objections. Mr. Tabatabai's assignments of error are overruled, and the judgment of the trial court is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
CONCURS

WHITMORE, J.
DISSENTS, SAYING:

{¶32} Since 2000, this Court has consistently applied the holdings of *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, to orders in cases that were referred to a magistrate pursuant to Civ.R. 53. In this case, the majority overrules five recent opinions of this Court, departing from our decision in *Harkai* by creating an ad hoc exception for one type of order. I respectfully dissent and would dismiss this appeal.

{¶33} In *Harkai*, this Court concluded that we did not have jurisdiction to consider an appeal from a trial court order that "affirmed" a magistrate's decision and overruled objections, but did not enter judgment in the case. Id. at 213. We also noted that, because the objections were filed before the trial court judge acted on the magistrate's decision, there had never been an order by the judge that determined the controversy. Id. Our analysis started from the premise that this Court's jurisdiction is limited to "judgments or final orders." Id. at 214. Although we observed that "[f]or the purposes of determining our jurisdiction *** 'judgment' and 'final order'

are the same," we also acknowledged that R.C. 2505.02 defines the contours of what may be considered a "final order" and offered a definition of what is necessary to constitute a judgment:

> "The courts have similarly described a 'judgment': 'A judgment is the final determination of a court of competent jurisdiction upon matters submitted to it.' *State ex rel. Curran v. Brookes* (1943), 142 Ohio St. 107, paragraph two of the syllabus. 'A final judgment is one which determines the merits of the case and makes an end to it.' Id. at 110." *Harkai*, 136 Ohio App.3d at 214.

This Court emphasized that a judgment must terminate the controversy at hand by setting forth a statement of the relief granted by the trial court. Id. at 215. Having defined a judgment, this Court then considered the interplay between Civ.R. 53 and Civ.R. 58, emphasizing that a judgment must reflect "judicial action" to fall within this Court's jurisdiction. See id. at 217. We concluded that "only a judge, not a magistrate, may terminate a claim or action by entering judgment." Id. at 218. This Court then explained that in cases referred to a magistrate, the trial court must act independently to render judgment:

> "Although the judge entirely agrees with the decision of the magistrate, the judge must still separately enter his or her own judgment setting forth the outcome of the dispute and the remedy provided. The judge is not permitted to conclude the case by simply referring to the magistrate's decision, even though it may appear more expedient to do so." (Internal citations omitted.) Id.

It is for that reason that in *Mills v. Mills*, 9th Dist. No. 24063, 2008-Ohio-3774, and the cases that followed, this Court concluded that we lacked jurisdiction when a trial court fails to separately enter judgment granting a civil protection order.

{¶34} I cannot agree with the majority's departure from precedent in this case. In *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, the Supreme Court of Ohio cautioned that prior decisions should only be overruled "with great solemnity and with the assurance that the newly chosen course for the law is a significant improvement[.]" Id. at ¶1.

The Court also articulated the standard by which it would judge when precedent should be overruled:

> "A prior decision of the Supreme Court may be overruled where (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it." Id. at paragraph one of the syllabus.

See, also, *Moody v. Coshocton Cty.*, 9th Dist. No. 05CA0059, 2006-Ohio-3751 (Moore, J., dissenting).

{¶35} Under the first prong of the *Galatis* standard, this Court is not justified in overruling *Mills* and the cases that followed because those cases were correctly decided and there has been no change in circumstances that requires a new course of action. R.C. 3113.31(G) is not an intervening change in the law. It was in effect at the time those decisions were decided by this Court, and I am not persuaded that R.C. 3113.31(G) required a different result. Other statutes also specify that orders of a certain type are final and appealable. See, e.g., R.C. 2107.181 (an order that refuses to probate a will); R.C. 2501.02 (an order that adjudicates a juvenile delinquent, neglected, abused, or dependent); R.C. 2711.02(C) (an order that grants a motion to stay proceedings pending arbitration); R.C. 2711.15 (an order that confirms, modifies, corrects, or vacates an arbitration award); R.C. 2744.02(C) (an order that denies a political subdivision the benefit of sovereign immunity). These statutes relate to the subject matter of the orders at issue and do not supplant this Court's holding in *Harkai* regarding the requirements of Civ.R. 53 that are applicable to all matters referred to magistrates. In short, I agree that pursuant to R.C. 3113.31(G), an order that grants a civil protection order is a final appealable order. But if the matter was referred to a magistrate, R.C. 3113.31(G) does not excuse the trial court's failure to independently enter judgment.

{¶36} *Harkai* was released with the unanimous approval of the judges of this Court. *Harkai*, 136 Ohio App.3d at 221 fn.11. This Court has not overruled *Harkai*. While the majority considers application of *Harkai* to civil protection orders to be impracticable, I am unable to discern why. Though a magistrate now uses a standardized form sanctioned by the Ohio Supreme Court,[1] the magistrate must enter information in several portions of the form. Use of an approved form that requires entry of information unique to the case at hand rather than a composed recommendation by the magistrate does not alter the jurisdictional issues or make it impracticable for the trial court to issue its own separate order as required by *Harkai*. If by "impracticable" the majority means "time consuming and inconvenient," any such impediment would apply equally to a non-form/non-standardized recommendation from the magistrate. In each instance the court can achieve standardization and greater efficiency with the use of a template order or macro from which to build its own final appealable order.

{¶37} The majority approach invites further confusion regarding this Court's jurisdiction as exceptions carved out on a piecemeal basis become the rule. On the basis of stare decisis, and because I continue to believe that *Harkai* correctly sets forth the requirements of our jurisdiction, I respectfully dissent.

APPEARANCES:

GINO PULITO, Attorney at Law, for Appellant.

JAMES B. PALMQUIST, Attorney at Law, for Appellee.

---

[1] Or one "substantially similar." See Sup.R. 10.01(C).