

STATE OF OHIO                    )  
  )ss:  
COUNTY OF MEDINA            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

TONY LUNGARO

C.A. No.       09CA0024-M

Appellee

v.

VICTOR D. LUNGARO SR.

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF MEDINA, OHIO  
CASE No.     08 DV 0260

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 7, 2009

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BELFANCE, Judge.

{¶1} Respondent-Appellant Victor Lungaro appeals the judgment of the Medina County Court of Common Pleas, Domestic Relations Division overruling his objections and affirming the magistrate’s issuance of a civil protection order. For reasons set forth below, we reverse.

FACTS

{¶2} Victor Lungaro is the father of Petitioner-Appellee Tony Lungaro (“Son”). In October 2008, Son filed a petition for a domestic violence civil protection order against Victor Lungaro (“Father”). Son, an adult, alleged that as Son was feeding his cat, Father came into Son’s room and began screaming and yelling at Son and threatening to kill him with a baseball bat. Son alleged that Father then proceeded to chase Son around the house while swinging the baseball bat. An ex parte civil protection order was filed and a hearing was scheduled with a magistrate. A full hearing was held October 28, 2008 at which Son, Father, and Father’s

attorney were present. On November 25, 2008, the magistrate issued a full hearing civil protection order approved and adopted by the trial court judge. The magistrate found that “Petitioner is the son of Respondent. Respondent attempted to cause bodily injury to Petitioner during an argument by grabbing a baseball bat, chasing Petitioner with the bat and threatening to harm him. Respondent committed an act of domestic violence as defined by [R.C.] 3113.31(A)(1)(a) by a preponderance of the evidence.” The civil protection order provides that Father will not abuse Son, that Father would not encourage anyone to do something prohibited by the order, and that Father shall not possess, use, carry, or obtain any deadly weapon. Father filed objections to the magistrate’s decision, but did not file a transcript of the hearing. The trial court judge held a hearing on the objections on February 25, 2009. The trial court overruled Father’s objection and affirmed the issuance of the full hearing civil protection order. Father has appealed and raises five assignments of error for our review. Son has not filed an appellate brief.

#### TRIAL JUDGE DID NOT ISSUE THE OPINION

{¶3} In Father’s first assignment of error he argues it was error for a judge other than the judge assigned to the case to enter judgment in the matter. Under the circumstances of this particular case, we agree.

{¶4} A review of the record indicates that Judge Kovack was initially assigned to the case; her name appears on the top of the filings in this case, she signed the civil protection order, and she held the February 25, 2009 hearing on Father’s objections. However, Judge Donald Ramsey signed the judgment entry overruling Father’s objections, despite the fact that he did not preside over any other proceedings in the case.

{¶5} There is nothing in the record evidencing that Judge Ramsey was ever assigned to this case; even the judgment entry itself does not indicate that Judge Ramsey was sitting by

assignment, or that he was signing the entry for Judge Kovack. The language of the entry gives the reader the impression that Judge Ramsey authored the entry, as he not only signed it, he crossed off Judge Kovack's name entirely. Thus, the record provides us with no insight as to how it came to be that Judge Ramsey issued the final decision in the case, yet Judge Kovack, along with her magistrate, were responsible for all the proceedings. Further, had Son filed an opposing brief in the matter, we might have been provided with some argument substantiating Judge Ramsey's authority in this matter. However, Son has not submitted an opposing brief in this matter.

{¶6} In a case with similar facts, we concluded that “absent an entry indicating proper transfer, ‘the judge assuming to act has no authority and his rulings are voidable on timely objection by any party.’” *White v. Summit Cty.* (2000), 138 Ohio App.3d 116, 117, quoting *Berger v. Berger* (1981), 3 Ohio App.3d 125, 130, overruled on other grounds by *Brickman & Sons, Inc. v. Natl. City Bank*, 106 Ohio St.3d 20, 2005-Ohio-3559. In *White*, for at least ten months the case was handled by the assigned judge; however, a visiting judge signed the judgment entry. *White*, 138 Ohio App.3d at 117. The appellants in *White* argued that the entry was voidable as it was not authored by the assigned judge. *Id.* We agreed. *Id.* Further we concluded that the appellants did not waive the issue, despite not raising the argument in the trial court. *Id.* at 118-119. Since the entry at issue was the final judgment in the case and appellants did not become aware of the transfer until after the judgment was issued, we determined it was appropriate for appellants to seek redress via appeal and concluded that filing a Civ.R. 60(B) motion in the trial court was not necessary. *Id.*

{¶7} Similarly, in the case sub judice, Judge Kovack was assigned to the case and handled all matters *except* for authoring the final judgment entry. As the only matter addressed

by Judge Ramsey was the final judgment entry, Father could not become aware of the issue before us until after the final judgment entry was journalized. As such, Father has preserved this issue for our review. Moreover, because we have no evidence before us explaining how Judge Ramsey came to author the final judgment entry, we sustain Father's assignment of error. *Id.*

#### REMAINING ASSIGNMENTS OF ERROR

{¶8} As we have concluded that Father's first assignment of error warrants reversal, we do not address Father's remaining assignments of error.

#### CONCLUSION

{¶9} In light of the foregoing, we sustain Father's first assignment of error, reverse the judgment of the Medina County Court of Common Pleas, Domestic Relations Division and remand this matter for proceedings consistent with this opinion.

Judgment reversed,  
and cause remanded.

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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 Appellee.

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EVE V. BELFANCE  
FOR THE COURT

CARR, P. J.  
WHITMORE, J.  
CONCUR

APPEARANCES:

MICHAEL L. THAL, Attorney at Law, for Appellant.

TONY LUNGARO, pro se, Appellee.