[Cite as *Chafin v. Chafin*, 2010-Ohio-3939.]

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

HALLIE L. CHAFIN	C.A. No. 09CA009721
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
JOHN S. CHAFIN	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 08DV069946

DECISION AND JOURNAL ENTRY

Dated: August 23, 2010

CARR, Judge.

{¶1} Appellant, John Chafin, appeals the judgment of the Lorain County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I.

{¶2} On November 10, 2008, Hollie Chafin ("Petitioner") filed a petition for a domestic violence civil protection order for herself and her three children against her husband John Chafin ("Respondent"). The domestic relations court issued an ex parte domestic violence civil protection order the same day and scheduled the matter for a full hearing on February 2, 2009. At the conclusion of the full hearing, the magistrate issued a domestic violence civil protection order for Petitioner, but not her children, against Respondent. The domestic relations court judge issued a domestic violence civil protection order the same day.

{¶3} Respondent filed timely objections to the magistrate's decision. He filed supplemental objections after preparation of the transcript. Petitioner responded in opposition.

On May 11, 2009, the domestic relations court issued a judgment entry in which it adopted the magistrate's decision. Respondent appealed. This Court, by journal entry, dismissed the appeal for lack of a final, appealable order in the absence of the trial court's express ruling on the objections. *Chafin v. Chafin* (Aug. 13, 2009), 9th Dist. No. 09CA009598. On November 4, 2009, the domestic relations court issued a supplemental judgment entry in which it overruled Respondent's objections and adopted the magistrate's decision. Respondent filed a timely appeal, raising three assignments of error for review. This Court consolidates the assignments of error to facilitate review.

II.

ASSIGNMENT OF ERROR I

"THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT UPHELD APPELLEE'S PETITION FOR A DOMESTIC VIOLENCE CIVIL PROTECTION ORDER PURSUANT TO R.C. [] 3113.31."

ASSIGNMENT OF ERROR II

"THE TRIAL COURT'S DECISION TO UPHOLD APPELLEE'S PETITION FOR A DOMESTIC VIOLENCE CIVIL PROTECTION ORDER PURSUANT TO R.C. [] 3113.31 WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

ASSIGNMENT OF ERROR III

"THERE WAS INSUFFICIENT EVIDENCE FOR THE TRIAL COURT TO UPHOLD APPELLEE'S PETITION FOR A DOMESTIC VIOLENCE CIVIL PROTECTION ORDER PURSUANT TO R.C. [] 3113.31."

{¶4} Respondent argues that the domestic relations court erred by overruling his objections and upholding the domestic violence civil protection order. This Court disagrees.

{¶5} When reviewing an appeal from the trial court's ruling on objections to a magistrate's decision, this Court must determine whether the trial court abused its discretion in reaching its decision. *Turner v. Turner*, 9th Dist. No. 07CA009187, 2008-Ohio-2601, at ¶10.

"In so doing, we consider the trial court's action with reference to the nature of the underlying matter." *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18. "Any claim of trial court error must be based on the actions of the trial court, not on the magistrate's findings or proposed decision." *Mealey v. Mealey* (May 8, 1996), 9th Dist. No. 95CA0093. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. Id.

{¶6} The civil standards of review for challenges to sufficiency and manifest weight of the evidence are as follows:

> "When applying a sufficiency-of-the-evidence standard, a court of appeals should affirm a trial court when the evidence is legally sufficient to support the jury verdict as a matter of law. When applying a civil manifest-weight-of-the-evidence standard, a court of appeals should affirm a trial court when the trial court's decision is supported by some competent, credible evidence." (Internal citations and quotations omitted.) *Bryan-Wollman v. Domonko*, 115 Ohio St.3d 291, 2007-Ohio-4918, at ¶3; *Rosen v. Chesler*, 9th Dist. No. 08CA009419, 2009-Ohio-3163, at ¶8.

{¶7} The Ohio Supreme Court has held that "when granting a protection order [pursuant to R.C. 3113.31], 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, 42; accord, *Everitt v. Everitt*, 9th Dist. No. 24860, 2010-Ohio-875, at ¶7. Pursuant to R.C. 3113.31(A)(1), "domestic violence" is defined as any of the following as against a family or household member:

> "(a) Attempting to cause or recklessly causing bodily injury;
>
> "(b) Placing another person by threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 [menacing by stalking] or 2911.211 [aggravated trespass] of the Revised Code;
>
> "(c) Committing any act with respect to a child that would result in the child being an abused child, as defined in section 2151.031 of the Revised Code; [or]
>
> "(d) Committing a sexually oriented offense."

{¶8} In her petition for a domestic violence civil protection order, Petitioner alleged that on November 8, 2008, Respondent pounded on her door and told her to get a restraining order and that he would never leave her alone. She alleged that on November 9, 2008, Respondent broke into her home while drunk and threatened her, saying, "If I can't have you – no one will have you[,]" and "You don't know what I know."

{¶9} At the full hearing to determine whether to maintain the domestic violence civil protection order, Petitioner testified that she and Respondent were still married although she had filed for divorce on April 20, 2008. She testified that a June 6, 2008 order in her divorce case had given her the exclusive use of the marital residence.

{¶10} Petitioner testified that Respondent called her on November 8, 2008, to discuss their children and that he was "clearly upset." She testified that at approximately 3:30 a.m. on November 9, 2008, she heard her dog start barking, although she was not too concerned because all the doors in her home were locked. She testified that a sliding glass door in the residence was locked with a block of wood that allowed the door to be cracked only wide enough to let her dog come and go from the house.

{¶11} Petitioner testified that at approximately 4:00 a.m., she heard the sliding glass door open. She testified that Respondent in the past has forced a piece of metal through the door to lift the block of wood to gain entrance to her secured home. She testified that she got up, saw

Respondent, and tried to resecure the door before he could enter. Petitioner testified that she was unsuccessful and that Respondent entered the home, asked who was there with her, and stated, "[I]f I can't have you, no one can." Petitioner testified that Respondent had been drinking and that she was afraid because "[w]hen he's drinking, he is a totally different person." She testified that she is not afraid of Respondent when he is sober.

{¶12} Petitioner testified that she was afraid because she knows that Respondent always carries a pocket knife, that he has commented in the past that he would hurt her, and that he has in fact hurt her in the past. She testified that Respondent has told her in the past that, if he were to kill her, he would do so by cutting her into pieces. She testified that she called the police because Respondent was in the house and she was afraid.

{¶13} Although Petitioner testified that Respondent pushed her to the floor when he entered the residence, she asserted that she did not remember whether she told the police about the physical assault. She admitted that she did not mention the physical assault or any threats by Respondent in her written statement to the police but asserted that the police indicated they would not do anything because there was no protective order in place. In her written statement to the police, Petitioner stated that a male friend in her home "barely restrained" Respondent and "escorted him out of the house."

{¶14} Officer Tom Anadiotis of the Avon Lake Police Department ("ALPD") testified that he responded to a call to Petitioner's home regarding a trespassing complaint in the early hours of November 9, 2008. He testified that the LEADS computer system indicated that there was no active protective order against Respondent.

{¶15} The officer testified that he spoke with Petitioner, who appeared calm and who asked him to arrest Respondent. He testified that Petitioner did not report that Respondent had

assaulted or threatened her, although he admitted that he did not specifically ask her if Respondent had assaulted or threatened her.

{¶16} Officer Anadiotis testified that he arrested Respondent for public intoxication. He testified that he noted in his written report that Respondent "presented a risk of physical harm to himself if allowed to remain under his own care." The officer testified that he believed it was possible that Respondent could have posed a risk of harm to others on November 9, 2008, due to his intoxicated state.

{¶17} Officer Caleb Robinson of the ALPD testified that he also responded to Petitioner's residence on November 9, 2008. He testified that Petitioner reported that she awoke to find Respondent in her home, that a male friend in the home confronted Respondent, and that Petitioner called the police. The officer testified that Petitioner appeared calm and denied having been assaulted, threatened, or injured. He testified that Respondent admitted that he entered Petitioner's home without permission because he wanted to speak with her. Officer Robinson testified that he believed that Respondent would have presented a risk of physical harm to himself due to his intoxicated condition, although he was not aggressive towards the officers.

{¶18} Respondent testified that he spoke with Petitioner by phone on November 8, 2008, about their children. He testified that he told Petitioner that he was sad that he was no longer in a band with her. Respondent admitted drinking six or seven beers before going to Petitioner's residence on November 9, 2008. He admitted letting himself into her home after knocking, although no one gave him permission to enter. He testified that he does not believe that it is wrong to enter someone's home at 4:00 a.m. if he has spoken to that person earlier. He admitted that Petitioner did not invite him to her home that night, but he asserted that "she never

directly told me not to come over." He explained how he was able to enter the home by reaching through a sliding glass door which was ajar and opening a twin door.

{¶19} Respondent testified that Petitioner met him in the living room after he entered her home, told him that a male friend was there, and asked him to leave. Respondent testified that he requested permission to greet her male companion and that Petitioner "wasn't thrilled about [that]." He testified that the male companion pushed him and told him to leave. Respondent testified that he went outside and waited for the police to arrive because Petitioner told him she had called 911.

{¶20} Respondent testified that he has "no recollection" of threatening Petitioner on November 9, 2008, although he admitted that he has experienced blackouts when drinking. He claimed to remember the details of the November 9, 2008, incident, however. He testified that Petitioner says he is "a different person" when he has been drinking, but he did not believe that she was afraid of him during those times. Respondent testified that he would never have gone over to Petitioner's home on November 9, 2008, if he knew there was a man in the house with her. He admitted telling Petitioner that night, "You don't know what I know[,]" but he denied any negative connotations. Rather, he testified that he was referring to things about his family and the alcohol treatment program in which he was participating.

{¶21} Respondent argues that the trial court erred by overruling his objections and adopting the magistrate's decision issuing a domestic violence civil protection order because the only evidence that he physically assaulted Petitioner was Petitioner's testimony at the hearing where she mentioned it for the first time. Petitioner did not allege in either her written statement to the police or in her petition for a domestic violence civil protection order that Respondent caused her physical harm. The trial court, however, did not base its decision upon a finding that

Respondent caused Petitioner physical harm. Rather, the trial court based its decision on a finding that Respondent placed Petitioner in fear of imminent serious physical harm.

{¶22} Respondent further argues that Petitioner's evidence did not establish her fear of imminent serious physical harm pursuant to the standard set out in *Fleckner v. Fleckner*, 177 Ohio App.3d 706, 2008-Ohio-4000. The Tenth District "impose[s] both a subjective test, which inquires whether the respondent's threat of force actually caused the petitioner to fear imminent serious physical harm, and an objective test, which inquires whether the petitioner's fear is reasonable under the circumstances[.]" Id. at ¶23. This Court has recognized that both the totality of the circumstances, as well as the victim's state of mind, are relevant to the determination that the threat of harm was imminent. See *Morris v. Morris*, 9th Dist. No. 24664, 2009-Ohio-5164, at ¶22. We have further recognized that threats of violence constitute domestic violence if the victim's fear is reasonable. *Osherow v. Osherow*, 9th Dist. No. 21407, 2003-Ohio-3927, at ¶12. This Court has stated that the "reasonableness of the fear should be determined with reference to the history between the petitioner and the respondent." *Gatt v. Gatt* (Apr. 17, 2002), 9th Dist. No. 3217-M, citing *Eichenberger v. Eichenberger* (1992), 82 Ohio App.3d 809, 816. However, "'the reasonableness of [a petitioner's] fear of imminent serious physical harm may not be determined by incidents of prior domestic violence absent an initial, explicit indication that she was in fear of imminent serious physical harm on the date contained in the petition.'" *Fleckner* at ¶27, quoting *Bahr v. Bahr*, 5th Dist. No. 03 COA 011, 2003-Ohio-5024, at ¶29. It is significant to note that *Fleckner* involved the threat of legal action by the respondent against the petitioner.

{¶23} A review of the evidence indicates that there was sufficient evidence and some competent credible evidence to demonstrate by a preponderance of the evidence that Petitioner

was in danger of domestic violence by Respondent by reason of his placing her in fear of imminent serious physical harm. There is no dispute that Petitioner and Respondent were married at the time of the incident and that Petitioner had exclusive use of the residence. Respondent admitted that he entered the residence at 4:00 a.m. and that he had not been invited. Petitioner testified that the door through which Respondent entered was locked with a piece of wood and that Respondent had managed to manipulate the wood on several prior occasions to enter her home without permission, as he did on November 9, 2008. Petitioner presented evidence that Respondent had threatened her with serious physical harm in the past, that he discussed cutting her up into little pieces, that he always carries a pocket knife, that he was aware that she had a male companion in the home with her, and that Respondent told her that evening, "[I]f I can't have you, no one can." Petitioner testified that, while she is not afraid of Respondent when he is sober, he is a completely different person when he has been drinking. Respondent admitted that he had been drinking the night he entered Petitioner's residence, and she testified that she was afraid of him on that night due to his drinking. The police officers both testified that Respondent posed a risk of harm to himself in his intoxicated state, and one believed that he might also pose a risk of harm to others. Accordingly, there was both sufficient and some competent, credible evidence to prove that Petitioner was in danger of domestic violence by Respondent, and the trial court did not abuse its discretion by overruling Respondent's objections and adopting the domestic violence civil protection order. Respondent's assignments of error are overruled.

III.

{¶24} Respondent's assignments of error are overruled. The judgment of the Lorain

County Court of Common Pleas, Domestic Relations Division, is affirmed.

Judgment affirmed.

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 Lorain, 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.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
CONCURS

DICKINSON, P. J.
CONCURS, SAYING:

{¶25} I concur in the majority's judgment and in all of its opinion except paragraph five and the phrase "and the trial court did not abuse its discretion by overruling Respondent's objections and adopting the domestic violence civil protection order" in paragraph twenty-three.

The trial court's judgment is supported by sufficient evidence and is not against the manifest weight of the evidence and, therefore, is properly affirmed.

APPEARANCES:

MICHAEL J. TONY, Attorney at Law, for Appellant.

JOHN HEUTSCHE, Attorney at Law, for Appellee.