

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

M.C.

Court of Appeals No. S-14-032

Appellee

Trial Court No. 14DR507

v.

B.K.

DECISION AND JUDGMENT

Appellant

Decided: February 13, 2015

* * * * *

Rose M. Mock, for appellant.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Sandusky County Court of Common Pleas, instituting a domestic violence civil protection order against appellant, B.K. We affirm.

A. Facts and Procedural Background

{¶ 2} On June 16, 2014, appellee, M.C., petitioned for a domestic violence civil protection order under R.C. 3113.31. In her petition, appellee alleged that appellant, her former husband, engaged in persistent emotional and mental abuse, past threats of physical violence, and threats that he would take their minor child, C.K., with him across state lines. Appellee sought protection for C.K., herself, her new husband, D.C., and one other minor child. That same day, the trial court granted an ex parte order of protection, and set the matter for a full hearing.

{¶ 3} On June 23, 2014, a full hearing was held. Appellee appeared pro se, and appellant appeared with counsel. Appellee testified that following the divorce, she and appellant had shared parenting of C.K. When C.K. turned fourteen, C.K. decided that she wanted to live with appellant. After approximately six to nine months of living with appellant, C.K. returned to appellee. Appellee testified that after C.K. returned home, appellant ceased visiting or speaking with C.K. until the spring of 2014, when C.K. attempted suicide. Appellee stated that appellant came and took C.K. while appellee was at work, drove C.K. to a hospital two hours away in Michigan, then demanded that appellee come and sign for all of the financial liability.

{¶ 4} Thereafter, appellant did not speak with C.K. except to send text messages. Appellee explained that C.K. would text appellant to see how he was doing and appellant would reply to the effect of “don’t f***ing talk to me, or, you know, you’re a traitor, you’re -- blah, blah, blah.” In addition, appellee testified that C.K. recently got into

trouble again, and when appellee took C.K.'s phone, she saw "sick" text messages between appellant and C.K. Appellee concluded that C.K. is already having a lot of problems, and appellee cannot continue to allow appellant to affect C.K. emotionally and mentally.

{¶ 5} On cross-examination, in response to appellant's inquiry into what it was that caused appellee to petition for a civil protection order, appellee replied,

I have imminent fear of any further mental and emotional abuse. My daughter is teetering on ending up back in the JVC, going to jail, going to prison. I need to stop this now. It's been going on for far too long. I am in imminent fear that any more emotional or mental abuse from him. I don't know what more could result from that, and I -- I -- as a mother, I can't take that risk.

{¶ 6} Following appellee's testimony, appellant took the stand and testified on his own behalf. Appellant explained that he had conflict with C.K. because he disapproved of how C.K. based her self-worth on her outer beauty. Appellant testified that he tried to teach C.K. that by revealing too much of herself she would attract the wrong kind of attention from the wrong kind of people, which could put her in danger. Appellant offered that they battled because he was trying to help her with the self-esteem issues that had led to her suicide attempt. Regarding C.K.'s suicide attempt, appellant testified that appellee turned away the paramedics that arrived at the scene, despite knowing that C.K. had taken medication, and left C.K. to work through the effects for three days without

medical treatment. It was at that point that appellant took C.K. to the hospital in Michigan to get help. In addition, appellant testified that C.K.'s core issues regarding the suicide attempt stemmed from appellee's withdrawal from C.K.'s life after C.K. made the decision to live with appellant. He stated that C.K. decided to live with him because appellee's new husband, D.C., was abusive. To that end, appellant asserted that D.C. had assaulted him in 2012, causing several fractures.

{¶ 7} In response to inquiry about the text messages, appellant testified that he does not attempt to justify his actions. He stated that the person who sent those messages was not the true him, and that his actions were influenced by the stress of the custody battle, the suicide attempt, the loss of his job, and the effects of the assault. Appellant expressed remorse for the text messages and said that he had apologized for them. He affirmed that he loves C.K., and that he is sure that C.K. knows that he loves her.

{¶ 8} The court then questioned appellee whether she was seeking a protection order that appellant be denied any contact with C.K. Appellee responded,

Your Honor, I feel like at this time I just -- his behavior is so erratic, so up and down, just two weeks ago he was totally believing in God, now, this week he's a prophet. I just -- I feel like it should be supervised. I feel like -- I just don't feel safe. I -- I mean, I -- right now, I guess, he still has made no attempt to speak to my daughter or see her, so I'm really happy about that, but I'm afraid that he could at any time like just say, oh, now I'm here, and I'm going to take her for the weekend.

{¶ 9} Following this, appellant called his counselor, Paul Mikels, to testify.

Mikels testified that he has been working with appellant for approximately seven months. He stated that during this time, he has shown appellant different techniques to learn to control his emotions and deal with prior emotional wounds. Mikels testified that there has been a noticed change in appellant's emotions and intensity. He concluded that he does not think that appellant would "go after somebody," or that he would intentionally hurt C.K.

{¶ 10} After the direct examination, the court asked Mikels what his response is to content of the text messages that appellant sent to C.K. Some of those messages included,

"Yeah, right." "Thanks for the no job." "F*** your Christmas and anything else." "Yeah, I didn't quit either." "I was fired thanks to you and your mother." "F*** off to both of you."

(In response to C.K.'s message that she had learned how to roll king size papers) "Good for you, f***ing tyrant traitor." "Hope you choke on it in the worst way." "You are disgusting and foul."

"I have nothing to overcome." "You made your choice and I made mine." "Why do you still try to remind me that you are just like your mother from the top down, inside and out." "Slut."

“You will become pregnant before 2018 and dance on a pole just like your mother.” “You lie like her.” “You cheat like her.” “You steal her” -- “oh, you even joints (sic) like her.” “Stop contacting me.” “You made your choice not once, but twice.” “Stay gone, g****mn you.”

“Leave me to die in peace.”

Hearing those messages, Mikels admitted that those are extreme comments that he does not condone. Mikels concluded, though, that those messages do not convey where appellant’s heart is, and that some form of supervised visitation would be appropriate, as opposed to saying that appellant can never see his daughter again.

{¶ 11} At the conclusion of the hearing, the trial court found that the text messages were “emotionally, terribly abusive.” The court further found that the past incidents of physical violence against appellant, which appellant believes were instigated by appellee, suggests a tension that can be relieved by having no contact. Thus, the trial court granted the civil protection order, and ordered that appellant was to have no contact with appellee, D.C., C.K., or the other minor child until November 2016, when C.K. turns 18.

{¶ 12} Appellant timely filed a notice of appeal from the trial court’s judgment granting the civil protection order. Subsequently, on October 2, 2014, on the motion of appellee, the trial court modified the civil protection order to remove C.K. from protection.

B. Assignment of Error

{¶ 13} Appellant now presents one assignment of error for our review:

1. The trial court's finding that domestic violence occurred is against the manifest weight of the evidence and therefore should not (sic) have issued a civil protection order.

II. Analysis

{¶ 14} Pursuant to R.C. 3113.31, a person who is subject to domestic violence may petition a court for a protection order. Relevant here, domestic violence is defined as “[p]lacing another person by the threat of force in fear of imminent serious physical harm,” or “[c]omitting 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.” R.C.

3113.31(A)(1)(b)-(c). An abused child under R.C. 2151.031 includes any child who “[b]ecause of the acts of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens to harm the child’s health or welfare.” R.C. 2151.031(D).

A person seeking a civil protection order must demonstrate by a preponderance of the evidence that he or she is in danger of domestic violence. *Felton v. Felton*, 79 Ohio St.3d 34, 42, 679 N.E.2d 672 (1997).

{¶ 15} “The decision to grant or dismiss a request for a civil protection order is within the discretion of the trial court.” *Rangel v. Woodbury*, 6th Dist. Lucas No. L-09-1084, 2009-Ohio-4407, ¶ 11, citing *Deacon v. Landers*, 68 Ohio App.3d 26, 31, 587 N.E.2d 395 (4th Dist.1990). “An appellate court will not reverse a trial court’s decision

regarding a civil protection order absent an abuse of discretion.” *Id.*, citing *Parrish v. Parrish*, 146 Ohio App.3d 640, 646, 767 N.E.2d 1182 (4th Dist.2000). An abuse of discretion connotes that the trial court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). “If the trial court’s decision is supported by credible and competent evidence, the appellate court will not reverse the decision as an abuse of discretion.” *Rangel* at ¶ 11, citing *Jarvis v. Jarvis*, 7th Dist. Jefferson No. 03-JE-26, 2004-Ohio-1386, ¶ 13.

{¶ 16} In his assignment of error, appellant argues that appellee did not present evidence showing that she was in fear for herself, D.C., or the other minor child. He concludes that, as to them, appellee did not demonstrate any of the elements necessary to show domestic violence, and thus should not have been granted a civil protection order.

{¶ 17} We have reviewed the record in its entirety. Based upon our review of the testimony regarding appellant’s conduct, we cannot find that the trial court’s decision to grant a civil protection order for the protection of appellee and her family constitutes an abuse of discretion. Accordingly, appellant’s assignment of error is not well-taken.

III. Conclusion

{¶ 18} For the foregoing reasons, the judgment of the Sandusky County Court of Common Pleas is affirmed. Appellant is ordered to pay the 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

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