[Cite as *Adamski v. Adamski*, 2022-Ohio-32.]

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

Ashley Adamski — Court of Appeals No. L-21-1067

Appellee — Trial Court No. DV2021-0025

v.

Timothy Adamski — **DECISION AND JUDGMENT**

Appellant — Decided: January 7, 2022

* * * * *

Jeffrey P. Nunnari, for Appellee.

James S. Adray, for Appellant.

* * * * *

MAYLE, J.

Introduction

{¶ 1} Appellant, Timothy Adamski, appeals a judgment by the Lucas County Court of Common Pleas, Domestic Relations Division that adopted a magistrate's

decision and granted a domestic violence civil protection order in favor of A.A. and their child, C.A. For the reasons set forth below, we affirm.

Background

{¶ 2} This case began with the filing of a petition for a domestic violence civil protection order (DVCPO) by A.A. on January 14, 2021. A.A. sought protection from appellant for herself and the parties' five-year old son, C.A. At the time of filing, A.A. and appellant were married but were "in the process of separating."

{¶ 3} In her petition for a DVCPO, A.A. specifically identified two incidents that caused her to seek protection. First, on December 27, 2020, A.A. reported that appellant "came into [her] bedroom and without [her] knowledge or permission took photos and [maybe] video of [her] while [she] was indisposed, asleep." A.A. "confronted [appellant] immediately" and called the police. According to A.A., appellant "admitted that he had done it a couple times before," and he agreed to delete the pictures. The record is unclear as to whether appellant was inside A.A.'s Toledo home by permission. But, after police left, A.A. allowed appellant to sleep in the basement, until morning.

{¶ 4} Two days later, appellant returned to A.A.'s home for a "parenting time exchange." Appellant could not let himself in because A.A. had changed the passcode for the door, which made him angry. Appellant "banged very hard on the door." When A.A. opened the door, appellant yelled "vulgarities" at her, calling her a "dumb whore" and a "dumb slut" and demanded that she change the passcode back. Appellant "then

tried to throw [their] son's car seat at [A.A.]," but it struck their son "in the back of the head." A.A. told appellant to leave "immediately" and called the police. When police arrived, A.A. showed them camera footage of the incident that was recorded on a home security camera. A.A. had just installed the camera, after she caught appellant photographing her while sleeping.

{¶ 5} Citing appellant's "impulsivity" and "anger," A.A. sought a protection order. In the petition, appellant also identified a "history of domestic violence starting in 2017," that included appellant having "strangled * * * punched * * * grabbed * * * and sexually assaulted [her] in the past."

{¶ 6} On January 14, 2021, a magistrate issued an ex parte order that precluded appellant from having any contact with A.A. or coming within 500 feet of A.A. or C.A. A full hearing on the petition was set for January 21, 2021, at 10:30 a.m.

{¶ 7} An initial effort to personally serve appellant at his Temperance, Michigan home failed. But, the record indicates that appellant somehow learned of the action against him because appellant met with his lawyer on January 20, 2021—the day before the scheduled hearing—and the lawyer "arrange[d] for service the following morning [on January 21, 2021] upon [appellant]." (Appellant's Objections to Magistrate's Order at 7, n.1). The record indicates that a Lucas County Sheriff's Deputy personally served appellant at the domestic relations court at 8:36 a.m. on January 21, 2021. But, neither appellant nor his counsel attended the 10:30 a.m. hearing.

{¶ 8} A.A. appeared at the hearing pro se. In addition to the events described in the petition, A.A. described other incidents of domestic violence that occurred in Michigan, before A.A. moved to Ohio.

{¶ 9} The first incident occurred in 2017 when appellant "choked [A.A.] from behind." By the time the police arrived, appellant "had already convinced [A.A.] into changing that story."

{¶ 10} The second incident occurred in 2018, when appellant "verbally attacked" A.A.'s nine-year old daughter. When A.A. told him to "stop," appellant "kicked [a] laundry basket" at A.A. Although it did not hit A.A., the daughter ran to a neighbor's home, "very scared," and called the police. The daughter also reported the incident at school, which resulted in the children's services agency opening a case file. A.A. testified that her mental health was "not near[ly]" as strong then, and she denied to investigators that appellant was abusive. Later that year, in September of 2018, appellant and A.A. were married.

{¶ 11} On February 8, 2019, appellant and A.A. got into a "physical altercation" in their living room. In a "split second," appellant was "standing above [A.A.] screaming" at her. Appellant retreated into the corner of a couch, where she held her arms and legs out to defend herself. Appellant then "grabbed [her] right ankle and proceeded to hammer fist punch [her] shin almost in an effort to break it." When it did not break, appellant kicked her "repeatedly" and "punched" her "with his knuckles."

The next day, A.A. reported for work, and was asked by her boss why she was limping. That was the "first time that [A.A.] admitted to anybody [what] was happening."

{¶ 12} Two days later, on February 10, 2019, while at an R.V. show in Auburn Hills, Michigan, appellant threw their son at A.A. and called her a "dumb bitch" and then left them there. A.A. attempted suicide that day by overdosing on sleeping pills. While hospitalized, "the nurses discovered all of the bruising on [her] body" and contacted A.A.'s mother. They told the mother that they suspected A.A. was "experiencing domestic violence" and "would not release [A.A]" to appellant.

{¶ 13} A.A. was admitted for a psychiatric consultation, "which was the best thing" that could have happened. Upon her release, A.A. left appellant but continued to live in Michigan until April of 2020, when she moved to Toledo.

{¶ 14} The magistrate found A.A. to be credible and concluded that A.A. had established, by a preponderance of the evidence, the necessary elements for a DVCPO. By order dated January 27, 2021, the magistrate ordered appellant to have no contact with A.A. or C.A., among other conditions, until January 21, 2023, unless modified by court order. The trial court reviewed the order and, finding no error of law or other defect evident on the face of the order, adopted the magistrate's order.

{¶ 15} Appellant filed written objections, which the trial court overruled on

March 17, 2021. Appellant appealed and assigns seven assignments of error for our review.[1]

> ASSIGNMENT OF ERROR NUMBER ONE: The entire process by which the respondent was found to have committed domestic violence is violative of due process and equal protection.
>
> ASSIGNMENT OF ERROR NUMBER TWO: The record does not support that this court had subject matter jurisdiction or jurisdiction over the person of the respondent.
>
> ASSIGNMENT OF ERROR NUMBER THREE: Even assuming he was served with "papers" the court cannot independently verify that a summons a notice of hearing was attached. [sic]
>
> ASSIGNMENT OF ERROR NUMBER FOUR: There is nothing in the record to support the finding of fact #3.
>
> ASSIGNMENT OF ERROR NUMBER FIVE: The notice of hearing that hearing less than two (2) hours from the receipt of the same and that is not reasonable notice and an opportunity to be heard violating his right to due process and equal protection. [sic]

[1] In addition to the assignments of error listed above, appellant identified a different set of errors, on pages "i" and "vi" of his brief. Those assignments, however, are completely unrelated to this case. Thus, we assume that the appellant included them in his brief by mistake, and we do not address them.

ASSIGNMENT OF ERROR NUMBER SIX: If this court examines the record and the entire process of the domestic violence statutory scheme it can set the standard.

ASSIGNMENT OF ERROR NUMBER SEVEN: There is nothing in the findings of fact or the conclusions of law that show by any evidence much less a preponderance of the evidence that the minor child was or continues to be in any danger.

{¶ 16} For ease of discussion, we will address appellant's assignments of error out of order.

The trial court's exercise of jurisdiction over the case and parties was proper.

{¶ 17} In his second assignment of error, appellant claims that the trial court lacked both subject matter and personal jurisdiction over him.

{¶ 18} We review de novo, as questions of law, whether a trial court had subject matter and personal jurisdiction. *Cirino v. Ohio Bur. of Workers' Comp.*, 153 Ohio St.3d 333, 2018-Ohio-2665, 106 N.E.3d 41, ¶ 17 (Subject matter jurisdiction); *Kauffman Racing Equip., L.L.C. v. Roberts,* 126 Ohio St.3d 81, 2010-Ohio-2551, 930 N.E.2d 784, ¶ 27 (Personal jurisdiction).

{¶ 19} Subject matter jurisdiction "refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case." *Id.* A court's subject matter jurisdiction "is determined without regard to the rights of the individual parties involved

in a particular case. * * * Instead, the focus is on whether the forum itself is competent to hear the controversy." *Id.* at ¶ 6.

{¶ 20} "'Article IV, Section 4(B) of the Ohio Constitution grants exclusive authority to the General Assembly to allocate certain subject matters to the exclusive original jurisdiction of specified divisions of the courts of common pleas.'" *State v. Harper*, 160 Ohio St.3d 480, 2020-Ohio-2913, 159 N.E.3d 248, ¶ 24, quoting *State v. Aalim*, 150 Ohio St.3d 489, 2017-Ohio-2956, 83 N.E.3d 883, ¶ 2. To that end, R.C. 3113.31 vests the domestic relations division of the court of common pleas (among others) with "jurisdiction over all proceedings under this section," including civil protection orders. R.C. 3113.31(A)(2) and (B).

{¶ 21} There is a "territorial limitation with respect to civil protection orders." *M.W. v. D.M.,* 8th Dist. Cuyahoga No. 105758, 2018-Ohio-392, ¶ 12 (Applying R.C. 2903.214, a civil protection order statute that applies to violations of the menacing by stalking statute). Thus, "when a petitioner seeks a civil protection order from a common pleas court in a county in which [s]he does not reside, the court lacks subject matter jurisdiction over the case." *Vilk v. Dinardo*, 8th Dist. Cuyahoga No. 103755, 2016-Ohio-5245, ¶ 12. However, "[t]here is no requirement * * * to include an allegation establishing subject-matter jurisdiction in a pleading." *M.W.* at ¶ 9.

{¶ 22} Here, A.A. filed a petition for a DVCPO under R.C. 3113.31 with the Lucas County Court of Common Pleas, Domestic Relations Division. Pursuant to R.C.

3113.31(B), that court had subject matter jurisdiction over her case. *Sanchez v. Sanchez,* 1st Dist. Hamilton No. C-150441, 2016-Ohio-4933, ¶ 11. Moreover, it is undisputed that A.A. resided within the territorial limit of the trial court, i.e. Lucas County, at the time of filing. In the petition and supporting affidavit, A.A. identified a Toledo home-address and indicated that she had lived there since April of 2020.

{¶ 23} On appeal, appellant complains that the trial court lacked subject matter jurisdiction because it failed to make any finding "that any event occurred in the State of Ohio or the County of Lucas that would vest [the trial court] with subject matter jurisdiction."

{¶ 24} To the contrary, A.A.'s testimony at hearing made clear that the two December of 2020 events that gave rise to her seeking court protection occurred at her Toledo home. That is, A.A. testified that when she caught appellant photographing her "in [her] bedroom," she contacted "the Toledo Police Department," and "they arrived." Two days later, appellant "returned" to A.A.'s home and threw the car seat, striking C.A. In short, appellant is simply wrong in asserting that there is "nothing in the record where anyone describes where these events occurred," nor is there any evidence to dispute their location. We find that the record fully supports the trial court's conclusion that it had subject matter jurisdiction in this case.

{¶ 25} Appellant, a Michigan resident, also argues that "[t]here is no basis for finding [that] the court [had] personal jurisdiction over [him]."

{¶ 26} Determining whether an Ohio trial court has personal jurisdiction over a nonresident defendant involves a two-step analysis: (1) whether the long-arm statute and the applicable rule of civil procedure confer jurisdiction and, if so, (2) whether the exercise of jurisdiction would deprive the nonresident defendant of the right to due process of law under the Fourteenth Amendment to the United States Constitution. *Kauffman Racing Equip,* 126 Ohio St.3d 81, 2010-Ohio-2551, 930 N.E.2d 784, at ¶ 27.

{¶ 27} Ohio's long-arm statute, R.C. 2307.382, authorizes an Ohio court to exercise personal jurisdiction over a non-resident defendant. It provides, in pertinent part, that a "court may exercise personal jurisdiction over a person who acts directly * * * as to a cause of action arising from the person's: * * * [c]ausing tortious injury by an act or omission in this state. R.C. 2307.382(A)(3); *see also* Civ.R. 4.3 (Providing for service of process on nonresidents "(3) Causing tortious injury by an act or omission in this state * * *."). In addition to satisfying the long-arm provisions, an Ohio court cannot exercise personal jurisdiction over a non-resident if doing so would violate his constitutional right to due process. Due process is satisfied if the defendant has "minimum contacts" with the forum state such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Internatl. Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *see also Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, __U.S.__, 141 S. Ct. 1017, 1019, 209 L. Ed.2d 225 (2021) (Commenting that *International Shoe* remains "[t]he canonical decision in this area.").

{¶ 28} The trial court's exercise of personal jurisdiction over appellant was proper. "Under 2307.382(A)(3), a court may exercise personal jurisdiction over a party who causes tortious injury by an act or omission in Ohio." *M.W.,* 8th Dist. Cuyahoga No. 105758, 2018-Ohio-392 at ¶ 14 (Personal jurisdiction established over defendant who was alleged to have sent harassing electronic communications to petitioner in Ohio.). Thus, because appellant's alleged tortious conduct (i.e. violating R.C. 3113.31) took place within this state's territorial boundaries, the long-arm provisions permit the exercise of personal jurisdiction over appellant in Ohio. Likewise, appellant's physical presence at A.A.'s Toledo home, at the time he committed the acts giving rise to A.A.'s petition under R.C. 3113.31 is sufficient to establish minimum contacts with Ohio, such that notions of fair play and substantial justice were not offended by requiring appellant to defend here. *See, e.g., Haas v. Semrad,* 6th Dist. Lucas No. 2007-Ohio-2828, ¶ 19-21; *Peterson v. Butikofer,* 10th Dist. Franklin No. 18AP-364, 2019-Ohio-2456, ¶ 20-31. Therefore, we find that the trial court had personal jurisdiction over appellant and had authority to issue a DVCPO.

{¶ 29} Notably, although appellant claims that the trial court lacked "personal jurisdiction," he makes no mention of the long-arm provisions or the minimum contacts. Instead, appellant argues, fervently and repeatedly, that he was not properly served and that he received inadequate notice of the hearing. We address those arguments in the sections that follow.

{¶ 30} In sum, because the trial court had subject matter jurisdiction and personal jurisdiction over appellant, his second assignment of error is found not well-taken.

Appellant received proper service of process.

{¶ 31} In his third assignment of error, appellant claims that he was not properly served with the summons, notice of hearing, and ex parte DVCPO.

{¶ 32} Once a court issues an ex parte DVCPO, it must schedule a "full hearing" within seven or ten days, depending on the restrictions contained in the order, and it must give the respondent "notice of, and an opportunity to be heard at, the full hearing." R.C. 3113.31(D)(2)(a).

{¶ 33} Civ.R. 65.1, entitled "Civil protection orders," provides for service of such orders as follows:

> (C) Service.
>
> (1) Service by clerk. The clerk shall cause service to be made of a copy of the petition, and all other documents required by the applicable protection order statute to be served on the Respondent * * *.
>
> (2) Initial service. Initial service, and service of any ex parte protection order that is entered, shall be made in accordance with the provisions for personal service of process within the state under Civ.R. 4.1(B) or outside the state under Civ.R. 4.3(B)(2). Upon failure of such personal service, or in addition to such personal service, service may be

made in accordance with any applicable provision of Civ.R. 4 through Civ.R. 4.6.

{¶ 34} "A [rebuttable] presumption of proper service arises when the record reflects that a party has followed the Civil Rules pertaining to service of process." *Beaver v. Beaver*, 4th Dist. Pickaway No. 18CA5, 2018-Ohio-4460, ¶ 9. To rebut the presumption of proper service, the other party must produce evidentiary-quality information demonstrating that he did not receive service. *Id.*

{¶ 35} A reviewing court will not disturb a trial court's finding regarding whether service was proper unless the trial court abused its discretion. *Id.* at ¶ 29. *See also Huntington Natl. Bank v. Payson*, 2d Dist. Montgomery No. 26396, 2015-Ohio-1976, ¶ 32. An abuse of discretion means more than an error of judgment; it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 36} In this case, once the court issued the ex parte order on January 14, 2021, it scheduled a full hearing for January 21, 2021 at 10:30 a.m.—i.e., within seven days of the ex parte order. After efforts to serve appellant in his home state of Michigan failed, the clerk of courts initiated in-state service under Civ.R. 4.1(B).[2] The rule provides, in part,

[2] According to the docket, the unserved summons was returned by the Monroe County, Michigan Sheriff's Department with the note that appellant could not be served at his home because he "works in Toledo, OH during our times of service."

(B) **Personal Service**. * * * When process issued from * * * a county court is to be served personally under this division, the clerk of the court shall deliver the process and sufficient copies of the process and complaint or other document to be served, to the sheriff of the county in which the party to be served resides or may be found.

{¶ 37} The trial court made the following findings with regard to the service of process:

> The Court finds the court's docket reflects a return receipt as evidence that [appellant] had been properly served as service was completed upon the [appellant] by the Deputy [Lucas County] Sheriff in the Return filed January 21, 2021 at 8:36 a.m. [Appellant] was personally served with the Domestic Violence Civil Protection Ex Parte Order stating on its last page, the notice of a "**FULL HEARING"** to be held before **"Magistrate Pettee** on the **21st** day of **January, 2021** at **10:30 a.m.** at the following location: **Family Court Center, 429 N. Michigan St. 5th Floor."** DOMESTIC VIOLENCE CIVIL PROTECTIVE ORDER (CPO) EX PARTE (R.C. 3113.31), filed Jan. 14, 2021. (Emphasis in original.)

{¶ 38} On appeal, appellant claims that the docket "does not show a time he was served" and "does not detail * * * what was served and by whom and upon whom."

{¶ 39} Upon review, we find that the record includes a certified copy of the summons, file stamped at 8:36 a.m., indicating that appellant was served by sheriff's deputy with "the summons, complaint & accompanying documents." Appellant's unsubstantiated claims to the contrary are insufficient to rebut the presumption that service here was proper.

{¶ 40} Moreover, appellant undercuts his claim of ineffective service by admitting that that "[h]e was * * * 'served'" and that he "was given the papers." Essentially, appellant claims that service was immaterial because he did not actually *open* the package until later in the day, at his attorney's office. Contrary to appellant's arguments, his own failure to open the properly-served envelope does not defeat service. *Accord Great Am. Ins. Companies v. Howse*, 8th Dist. Cuyahoga No. 55617, 1989 WL 90506, *2 (Aug. 3, 1989) (Failure of defendants to open envelopes containing the summons and complaint cannot be considered excusable neglect under Civ.R. 60(B) "by any stretch of the imagination.").

{¶ 41} In sum, we see no abuse of discretion by the trial court in finding that appellant was properly served. Accordingly, we find the appellant's third assignment of error not well-taken.

Appellant received reasonable notice of the full hearing.

{¶ 42} In appellant's fifth and sixth assignments of error, he argues that even if service was proper, his right to due process was violated because he did not receive reasonable notice of the full hearing.

{¶ 43} Once a trial court issues an ex parte order and sets the matter for trial, "[t]he court shall give the respondent notice of, and an opportunity to be heard at, the full hearing." R.C. 3113.31(D)(2)(a). "This statutory mandate is consistent with the core due process requirements of notice and a hearing." *Evan v. Evans,* 10th Dist. Franklin No. 08AP-398, 2008-Ohio-5695, ¶ 7, *see also State v. Hayden,* 96 Ohio St.3d 211, 2002-Ohio-4169, 773 N.E.2d 502, ¶ 6 (Holding that "the basic requirements under [the due process] clause are notice and an opportunity to be heard"). Given the expedited basis within which a full hearing must take place—seven or ten days—"it must be remembered that the process for obtaining a domestic violence civil protection order pursuant to R.C. 3113.31(D) provides a very limited time for respondents to receive notice of the proceedings." *Beachler v. Beachler,* 12th Dist. Preble No. CA2006-03-07, 2007-Ohio-1220, ¶ 27.

{¶ 44} In its decision, the trial court found that appellant "received notice prior to the commencement of the full hearing," specifically two hours before, with service of the petition and ex parte order. But, it also found that appellant "had knowledge" of the "pending proceeding" the day before the hearing. The court predicated that finding on

the fact that a notice of hearing—separate and apart from the service-of-process—was sent by the clerk's office on January 15, 2021, and "was not returned as undeliverable." The court also cited appellant's "actions," specifically, the fact that appellant "contact[ed] [his lawyer] for legal representation in the matter on January 20, 2021, the day *before* the full hearing." (J.E. at 6; emphasis added). The trial court concluded that "reasonable notice was afforded to [appellant] under the circumstances of this case."

{¶ 45} Appellant does not challenge the trial court's findings of fact that he had actual knowledge of the proceeding before being served. Instead, in his fifth assignment of error, appellant seeks a "bright line" rule that two hours "is not enough for one to have notice and a proper opportunity to be heard." In his sixth assignment of error, appellant repeats his request for a "specific guideline," that "2 hours is inadequate."

{¶ 46} We decline the request, especially in light of the trial court's finding, unchallenged by appellant, that he knew of the pending proceeding against him the *day* before the full hearing. "Based upon a plain reading of [R.C. 3113.31(D)(2)(a)], one day's notice appears to be sufficient." *Butcher v. Stevens,* 182 Ohio App.3d 77, 2009-Ohio-1754, 911 N.E.2d 928, ¶ 10 (4th Dist.) (Respondent "receive[d] actual notice of the hearing * * * one day in advance" of the hearing). Moreover, we note, as did the trial court, that as little as "about one hour" of notice before a full hearing has been deemed sufficient. *Oddo v. Spencer,* 5th Dist. Stark No. 2008CA0215, 2009-Ohio-4320, ¶ 10 (Interpreting a similarly-worded provision under R.C. 2903.214(D)(2)(a)).

{¶ 47} Appellant also argues that the court was required to "sua sponte continue the [full] hearing and re-notice the parties of the date, time and place."

{¶ 48} Under R.C. 3113.31(D)(2)(a)(i)-(iv), the trial court "may" grant a continuance of the full hearing if the respondent has not been served with notice prior to the date of hearing; the parties consent to a continuance; the continuance is needed to allow a party to obtain counsel; or the continuance is needed for other good cause. The grant or denial of a motion for a continuance is reviewed for an abuse of discretion. *R.H. v. J.H.,* 9th Dist. Medina No. 18CA0115-M, 2020-Ohio-3402, ¶ 6 citing *State v. Unger*, 67 Ohio St.2d 65, 67, 423 Ohio St.2d 1078 (1981).

{¶ 49} Upon review, none of the circumstances described in R.C. 3113.31(D)(2)(a)(i)-(iv) apply. That is, appellant *was* properly served; the parties did *not* consent to a continuance; appellant *was* already represented by counsel, and there are no facts to suggest that "other good cause" existed to warrant a continuance, especially in light of our finding that appellant received adequate notice.

{¶ 50} Further, we must reject appellant's argument that the magistrate was under any obligation to continue the hearing, sua sponte. Indeed, R.C. 3113.31(D)(2)(a) "does not require the trial court to affirmatively take any action. Necessarily then, the respondent bears the burden of asserting the lack of notice and seeking a continuance." *Evans v. Evans,* 10th Dist. Franklin No. 08AP-398, 2008-Ohio-5695, ¶ 2 (Finding that respondent's failure to object to the lack of notice or to ask for a continuance to remedy

the situation, "foreclosed any potential appeal based upon the lack of notice."); *accord Clementz-BcBeth v. Craft,* 3d Dist. Auglaize No.2-11-16, 2012-Ohio-985, ¶ 20 ("Courts are not required to *sua sponte* issue a continuance.").

{¶ 51} Upon review, we find reasonable notice and opportunity to be heard were afforded to appellant under the facts and circumstances in this case. We further find that the trial court did not abuse its discretion when it failed to sua sponte continue the full hearing to a later date.

{¶ 52} Accordingly, appellant's fifth and sixth assignments of error are not well-taken.

Appellant failed to demonstrate any error contained in the record.

{¶ 53} In his fourth assignment of error, appellant challenges the trial court's finding that, on the day of the full hearing, "[t]he case was called at 10:30AM. [Appellant's] name was called twice and [Appellant] failed to respond. The Court proceeded to trial at 11:21 AM." (J.E. at 3).

{¶ 54} Appellant argues that there is "nothing in the record to indicate that this event occurred other than a statement by the magistrate." Of course, the magistrate's statement—alone—is sufficient to demonstrate that the case was called at 10:30 a.m., appellant's name was called twice, appellant failed to respond, and the court proceeded to trial at 11:21 am.

{¶ 55} If, as appellant alleges, there were any errors in the magistrate's statement, then it was incumbent upon the appellant to put forth evidence in support of his claim. Civ.R. 65.1(F)(3)(d)(iv) provides that objections to a trial court's adoption of a magistrate's granting of a protection order "shall be supported by a transcript of all the evidence submitted to the magistrate or an affidavit of that evidence if a transcript is not available."

{¶ 56} Here, the transcript was available and filed. Therefore, if appellant believed that the information contained therein was somehow incorrect, he should have submitted an affidavit under Civ.R. 65.1(F)(3)(d)(iv) identifying the error and correcting the record, as he understood it be. Not only did appellant fail to provide an affidavit, he also fails to articulate what, exactly, the magistrate said that was supposedly incorrect, or make any attempt to explain how he was prejudiced by any such misstatement. Accordingly, appellant's fourth assignment of error is found not well-taken.

The trial court did not err by including the parties' son as a protected person.

{¶ 57} Finally, in appellant's first and seventh assignments of error, he challenges the trial court's decision to include the parties' son, C.A., as a person protected by the DVCPO.

{¶ 58} When the challenge to the CPO involves the scope of the order—including the decision to add minor children as protected parties—we review the order for an abuse of discretion. *Martindale v. Martindale*, 4th Dist. Athens No. 17CA5, 2017-Ohio-9266, ¶

51, citing *Reynolds v. White*, 8th Dist. Cuyahoga No. 74506, 1999 WL 754496 (Sept. 23, 1999) ("R.C. 3113.31 expressly authorizes trial courts to 'craft protection orders that are tailored to the particular circumstances,' and therefore, challenges to the scope of a protection order are reviewed for an abuse of discretion."). "[T]his review is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court." *Id.* at ¶ 52.

{¶ 59} In his first assignment of error, appellant argues—as a point of fact—that A.A. did not include their son *or* A.A.'s daughter "from a prior relationship" in the DVCPO petition as a person in need of protection. Therefore, appellant concludes that "any protection accorded [to] the 'child' is without any factual basis and is void."

{¶ 60} Appellant raised this patently-erroneous claim before the trial court and repeats it on appeal.

{¶ 61} In its decision, the trial court found, "[c]ontrary to [appellant's] contention, * * * [A.A.] specifically requested that the couple's minor child, [C.A.] be included as a protected party under the civil protection order." (J.E. at 4). Upon review, we concur that A.A. included the parties' son, C.A., in the petition. We add that A.A. did not seek protection for her daughter, and the DVCPO makes no mention of her.

{¶ 62} In his seventh assignment of error, appellant argues that the trial court erred in extending its order of protection to C.A. because there is "nothing in the record to show that [C.A.] is in danger."

{¶ 63} In its decision, the trial court made the following findings of fact and conclusions of law:

> The Court finds [appellant's] actions when he became angry either kicked or threw objects at the Petitioner who testified that [appellant] * * * "threw my son at me" and "then tried to throw my son's car seat at me, striking [C.A.] in the back of his head," were attempts to cause substantial risk of serious bodily injury, or physical harm and, thus, constituted acts of domestic violence to the Petitioner and their son. In light of Petitioner's testimony, the Court finds that there is some competent evidence in the record to support the Magistrate's finding that [appellant] has placed Petitioner and their son in fear of imminent physical harm and consequently that [appellant] presents a risk of domestic violence to Petitioner and their son. (J.E. at 16-17).

{¶ 64} Based upon these explicit findings, we are simply at a loss to explain appellant's insistence that there is "no statement in the Finding of Fact or the Conclusion of Law that respondent did anything with respect to the child, and therefore there is no factual basis" to have included C.A. in the DVCPO.

{¶ 65} We find that the trial court did not abuse its discretion in adding C.A. to the DVCPO. Accordingly, we find appellant's first and seventh assignments of error are not well-taken.

Conclusion

{¶ 66} For the reasons set forth above, we find appellant's assignments of error not well-taken. The trial court did not err in adopting the magistrate's decision to order a domestic violence civil protection order in this case. Accordingly, the March 17, 2021 judgment of the Lucas County Court of Common Pleas, Domestic Relations Division is affirmed. Pursuant to App.R. 24, costs are assessed to appellant. It is so ordered.

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.

Thomas J. Osowik, J. _____
JUDGE

Christine E. Mayle, J. _____
JUDGE

Myron C. Duhart, P.J. _____
CONCUR.
JUDGE