

[Cite as *Campbell v. Underwood*, 2010-Ohio-2909.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Sarah Campbell,	:	
	:	
Petitioner-Appellant,	:	
	:	
v.	:	No. 09AP-1125
	:	(C.P.C. No. 09DV-07-1135)
David D. Underwood,	:	(REGULAR CALENDAR)
	:	
Respondent-Appellee.	:	

D E C I S I O N

Rendered on June 24, 2010

Suzanne K. Sabol & Associates, and Donald W. Roberts, for appellant.

Mark Fisher, for appellee.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations.

FRENCH, J.

{¶1} Petitioner-appellant, Sarah Campbell ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, which granted her a civil protection order ("CPO" or "order") against her former husband, respondent-appellee, David D. Underwood ("appellee"). Having concluded that the trial court did not abuse its discretion by issuing the order, we affirm that judgment.

{¶2} In July 2009, appellant filed a petition for a domestic violence CPO on behalf of herself, her husband, and her children. After an ex parte hearing, the trial court issued a temporary CPO, which, among other things, prevented appellee from exercising the parenting time granted to him under the court's prior divorce decree.

{¶3} In October 2009, the court held an evidentiary hearing with all parties present. Following the hearing, the court issued a CPO that protected appellant, her husband, and her children. The court also issued detailed findings of fact and conclusions of law in support of the CPO. The findings of fact detail appellee's history of domestic violence. Appellee assaulted appellant before and throughout their marriage, and he threatened to kill her and their children. He sent her a text message threatening to physically harm her, and he had a gun during one incident of domestic violence. Appellant had obtained a CPO against him in the county where they lived previously, but she allowed the order to lapse when she left him and moved to Franklin County. One of their children was present when appellee had a fight with his current wife, and appellee accidentally hit the child when she intervened. The child also saw appellee assault his current wife in another incident.

{¶4} The court concluded that appellee's problem with alcohol and anger required the CPO. Particularly, his domestic violence often occurred after he drank alcohol, and this concerned the court because he admitted to being an alcoholic. He has five convictions for driving under the influence of alcohol, and he started court-ordered counseling for his drinking problem. He also has previous domestic violence and assault convictions.

{¶5} The court stated that appellee's history of domestic violence provided "a reasonable basis with which to fear that imminent physical harm will occur against the parties' daughters or [appellee's] actions will result in the children" being abused. And the court summarized that a CPO "is fair and necessary" "[g]iven the long history of animosity between the parties and [appellee's] struggles with alcohol and anger management."

{¶6} The CPO bars appellee from abusing the protected parties, having deadly weapons, and consuming alcohol or illegal drugs. It also requires appellee to complete his court-ordered alcohol abuse counseling. Although appellant requested that appellee have supervised parenting time, the order allows unsupervised parenting time pursuant to the court's prior divorce decree. Appellant had unilaterally stopped appellee's parenting time before she applied for a CPO, and the court's ex parte order had suspended his parenting time. Upon reinstating parenting time, the court recognized that appellee has not intentionally assaulted any of his children and that the child accidentally hit by appellee is not afraid to be with him. The court also noted that he finished court-ordered domestic violence counseling, which improved his ability to control his anger. The court said, however, that "[o]verall modification of [appellee's] parenting time should be determined" in appellant's motion to re-allocate parental rights.

{¶7} The order designated a restaurant located between appellant's and appellee's homes as the place to exchange the children for parenting time, if the parties could not agree on a restaurant for the exchange. The divorce decree had not designated any neutral exchange point, but the parties initially alternated exchanges either at a restaurant near appellee's home outside of Franklin County or at a police

station near appellant's home. When appellant was too ill to take her turn to pick up the children, appellee would drive them to her home. Afterward, the parties agreed to exchange the children at a public place, which would sometimes be a restaurant, located halfway between their homes.

{¶8} Lastly, the order allowed appellee to contact appellant by e-mail or telephone for emergencies or to discuss parenting time, and it allowed him to contact his children by telephone or e-mail. It did not prohibit him from entering the children's school or child care facility, but it barred him from entering the protected parties' residences, businesses or workplaces. It did not specify that he was barred from causing or encouraging any person to do one of the order's prohibited acts, and it did not require law enforcement to assist appellant in gaining physical custody of the children, if necessary.

{¶9} Appellant appeals, raising the following assignment of error:

The trial court exceeded the limits of its discretion in failing to grant the protections that correlate with the court's findings of fact and as requested by Petitioner and protected parties of a civil protection order for domestic violence.

{¶10} In her single assignment of error, appellant argues that the trial court abused its discretion when it established the scope of the CPO. We disagree.

{¶11} A CPO is available to those in danger of domestic violence. *Felton v. Felton*, 79 Ohio St.3d 34, 1997-Ohio-302, paragraph two of the syllabus. A trial court exercises its discretion in establishing the scope of a CPO, and its judgment will not be disturbed absent an abuse of discretion. *Downs v. Strouse*, 10th Dist. No. 05AP-312, 2006-Ohio-505, ¶14. An abuse of discretion connotes more than an error of law or

judgment; it entails a decision that is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶12} Appellant argues that the trial court's decision to allow appellee unsupervised parenting time is inconsistent with it previously suspending the visitation. The court only issued the suspension as temporary relief, however, until it could hold an evidentiary hearing with all parties present. The court had discretion to change its prior order.

{¶13} Appellant also contends that the court abused its discretion by allowing appellee unsupervised parenting time, given his history of domestic violence, alcohol abuse, and the "reasonable basis" to fear that their children will suffer "imminent physical harm" or abuse from him. In allowing appellee's parenting time to resume, however, the court carefully considered appellee's history. While not condoning appellee's past behavior, which is unquestionably reprehensible, the court acknowledged appellee's steps toward recovery. For example, appellee had finished counseling that improved his ability to control his anger, and he had started counseling for his alcohol abuse. And, while not diminishing appellee's conduct toward his wives, the court also recognized that appellee had never intentionally assaulted his children and that the child who had been injured was not afraid to be with appellee.

{¶14} For these same reasons, we also conclude that the court need not have discontinued the unsupervised parenting time until, as appellant suggests, it considered the motion to re-allocate parental rights. The CPO expressly allows either party to modify, extend or terminate the CPO to correspond with any orders subsequently issued in the divorce matter.

{¶15} Appellant challenges the order designating a restaurant located between the parties' homes as the place to exchange the children for parenting time. She contends that the order unreasonably altered their previous agreement to exchange the children at a police station. But the police station was one of different places the parties met to exchange their children; appellee had even dropped the children off at appellant's home when she was ill. In any event, before the CPO, the parties had agreed upon a public exchange point located halfway between their residences, and the order did not deviate from this objective.

{¶16} Appellant also argues that the order's designation of an exchange point impermissibly creates a demand on her, the petitioner. This part of the order actually facilitates the protections it provides her, however. The order keeps the exchange point at a public, neutral location and dispels an opportunity for appellee to drive to appellant's house to exchange the children, as he previously did. Moreover, the court had authority to include the provision in the CPO because it also issued the divorce decree establishing parental rights and responsibilities. See *Wardeh v. Altabchi*, 158 Ohio App.3d 325, 2004-Ohio-4423, ¶14-18.

{¶17} Next, appellant says that the CPO should have allowed law enforcement to assist her in gaining physical custody of the children, if necessary. There is no evidence of appellee interfering with appellant's parental rights. Therefore, it was within the court's discretion not to include this term.

{¶18} Lastly, appellant asserts that the CPO is ineffective without a specification that appellee is prohibited from causing or encouraging any person to do one of its prohibited acts or a requirement that appellee not contact the protected parties. The

protection order is not ineffective without these provisions, however. The order placed necessary restrictions on appellee for the benefit of the protected parties: it barred him from abusing them, from having deadly weapons, and from consuming alcohol or illegal drugs, and it required him to complete court-ordered counseling for his alcohol abuse. To further safeguard the protected parties, and to deter appellee from committing domestic violence, he is subject to punishment for contempt of court and criminal prosecution if he violates the order. R.C. 3113.31(L). The order's protections apply even when appellee exercises the limited contact he is permitted with the protected parties.

{¶19} In conclusion, the trial court issued a CPO supported by detailed findings of fact and conclusions of law that carefully weighed and balanced the concerns and interests of all parties. The end product grants to appellee his parenting time, but also grants to appellant and her family the protections necessitated by appellee's violent history. We discern no abuse of the trial court's discretion. Accordingly, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

TYACK, P.J., and SADLER, J., concur.
