

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY**

VICKEY BRUBAKER, ET AL.

CASE NUMBER 13-05-32

PETITIONERS-APPELLEES

v.

OPINION

RONALD FARR

RESPONDENT-APPELLANT

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Domestic Relations Division.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: April 24, 2006

ATTORNEYS:

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Rogers, J.

{¶1} Respondent-Appellant, Ronald Farr, appeals the judgment of the Seneca County Court of Common Pleas, Domestic Relations Division, which granted a domestic violence civil protection order (“CPO”) on the behalf of Petitioners-Respondents, Vickey Brubaker, her and Farr’s two minor children, T.F. and K.F., as well as on the behalf of Brubaker’s step-child, T.B. On appeal, Farr asserts that the trial court erred in issuing a CPO on the behalf of T.F. and K.F. when there was no substantial credible evidence supporting the same. Finding that there was substantial credible evidence, we affirm the judgment of the trial court.

{¶2} On August 15, 2005, Brubaker filed a petition for a CPO under R.C. 3113.31, which noted that Brubaker and Farr are married. Brubaker sought relief on her own behalf and on the behalf of her step-child, T.B. Additionally, Brubaker sought relief on behalf of her and Farr’s two minor children, T.F. and K.F. Further, Brubaker requested that the court issue an *ex parte* protection order under R.C. 3113.31(D) and (E). On the same day, the trial court granted Brubaker’s *ex parte* CPO and ordered a full hearing to occur on August 24, 2005.

{¶3} On August 16, 2005, the Seneca County Sheriff’s Department served Farr with the *ex parte* CPO.

{¶4} At the full hearing, the following testimony was heard. Detective David Pauley of the Tiffin Police Department was called to testify on behalf of Brubaker. Detective Pauley testified that T.B. had alleged that on several occasions in the early hours of the morning, Farr would go into the TV room where T.B. would be sleeping on the couch, sit down next to her, and rub her bare bottom and bare vagina. Additionally, T.B. alleged that Farr had also inserted his finger into her vagina.

{¶5} Detective Pauley testified that he had made multiple attempts to contact Farr to inquire about these allegations, but was unsuccessful. However, Detective Pauley noted that Farr voluntarily came to the Tiffin Police Department on August 11, 2005.

{¶6} Detective Pauley testified that Farr admitted to rubbing T.B.'s bare bottom and to pinching and patting T.F. and K.F.'s clothed bottoms. Detective Pauley also testified that Farr admitted that he on occasion would slip and rub her vaginal area, but when he did he would immediately pull his hand away when he felt her vaginal lips. Detective Pauley also noted that Farr stated that he touched his children because it relaxed him.

{¶7} Next, Brubaker called Erica Cleveland, a social worker with the Seneca County Department of Job and Family Services, to testify on her behalf. Ms. Cleveland testified that she had been helping Brubaker find emergency shelter

and had provided Brubaker with other services, because Brubaker and the three minor children were unable to return to their family home.

{¶8} Next, Farr was called to testify as if on cross examination. Farr admitted that he was the father of T.F. and K.F., but invoked his Fifth Amendment right on the other questions asked of him.

{¶9} Finally, Brubaker testified on her own behalf. Brubaker testified that she was seeking a CPO because of the allegations of sexual abuse of T.B. by Farr. Brubaker also testified that she feared for her safety and the safety of T.B., T.F., and K.F. Brubaker also stated that a CPO was necessary for her and the three children because she “[did]n’t know what [Farr’s] capable of.” (Hearing Tr. p. 23). Brubaker continued that in the past, Farr had struck her.

{¶10} On cross examination, Brubaker testified that within the four months prior to the hearing, she remained in the household and had had sexual relations with Farr multiple times.

{¶11} On redirect examination, Brubaker noted that she did not know what Farr was capable of and feared that he might hit someone in the household. Additionally, Brubaker testified that she left the marital residence because of the alleged sexual abuse of T.B. and the violence Farr had exerted on her and T.B. Finally, Brubaker testified that she witnessed Farr shove T.F. at a restaurant,

which caused T.F. to trip over his feet, because T.F. refused to do what Farr had asked him to do.

{¶12} At the conclusion of the hearing, the trial court granted the CPO with respect to T.B. for five years and took the other matters under advisement.

{¶13} In its journal entry dated August 25, 2005, the trial court granted the CPO with respect to Brubaker and the three minor children. The trial court also found by a preponderance of the evidence:

(1) that the petitioner or petitioner's family or household member(s) are in danger of or have been a victim of domestic violence, as defined in Ohio Revised Code 3113.31(A), committed by respondent; and (2) the following orders are equitable, fair, and necessary to bring about a cessation or prevention of domestic violence against the family or household member(s) named in the petition.

(Aug. 25, 2005, Journal Entry).

{¶14} Farr appeals this judgment, presenting the following assignment of error for our review:

THE TRIAL COURT ERRED IN ISSUING A PROTECTION ORDER FOR AND AS TO THE MINOR CHILDREN [T.F.] AND [K.F.] WHEN THERE WAS NO SUBSTANTIAL CREDIBLE EVIDENCE SUPPORTING SAME.

{¶15} On appeal, Farr asserts that the trial court erred in issuing the CPO for the benefit of his two minor children, T.F. and K.F. Specifically, Farr asserts that there was no substantial credible evidence to support the CPO for the benefit of T.F. and K.F. We disagree.

R.C. 3113.31 provides in pertinent part:

(A) As used in this section:

(1) “Domestic violence” means the occurrence of one or more of the following acts against a family or household member:

*** * ***

(b) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of [R.C. 2903.211 or 2911.211].

(c) Committing any act with respect to a child that would result in the child being an abused child, as defined in [R.C. 2151.031].

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(3) “Family or household member” means any of the following:

(a) Any of the following who is residing with or had resided with the respondent.

(i) A spouse, a person living as a spouse, or a former spouse of the respondent;

(ii) A parent or a child of the respondent, or another person related by consanguinity or affinity to the respondent;

(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the respondent, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the respondent.

(b) The natural parent of any child of whom the respondent is the other natural parent or is the putative other natural parent.

*** * ***

(C) A person may seek relief under this section on the person's own behalf, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state:

(1) An allegation that the respondent engaged in domestic violence against a family or household member of the respondent, including a description of the nature and extent of the domestic violence;

(2) The relationship of the respondent to the petitioner, and to the victim if other than the petitioner;

(3) A request for relief under this section.

{¶16} The decision of whether to grant a CPO is within the sound discretion of the trial court, and an appellate court will not reverse the trial court's decision absent an abuse of discretion. *Parrish v. Parrish*, 95 Ohio St.3d 1201, 2002-Ohio-1623. To find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Because the trial court is in the best position to observe the witnesses and to assess the credibility of their testimony, we must presume the accuracy of the trial court's findings. *Seasons Coal Co., Inc. v. City of Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶17} To grant a CPO, the trial court must find by a preponderance of the evidence that he/she or his/her family or household members are in danger of domestic violence. *Felton v. Felton*, 79 Ohio St.3d 34, 41-42, 1997-Ohio-302. This requires that the jurisdictional allegations made in the petition be proven by the petitioner. *Id.* at 42.

{¶18} In this case, Brubaker alleged in her petition that she was the mother and Farr was the father of T.F. and K.F. and that T.F. and K.F. had resided with Brubaker and Farr as required by R.C. 3113.31(A)(3). This allegation of prior residence was sufficient for the trial court to have jurisdiction to grant the *ex parte* CPO. Additionally, there was evidence presented at the hearing, which supported

this allegation. Further, there was testimony presented at the hearing which supported that Brubaker is the mother and Farr is the father of T.F. and K.F., which satisfies the traditional familial relationship.

{¶19} The trial court is also required to find that Farr committed any act with respect to T.F. and K.F. that would result in the children being considered an abused child under R.C. 2151.031. R.C. 3113.31(A)(1)(c). R.C. 2151.031(B) defines an abused child as any child who “[i]s endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child[.]” R.C. 2919.22 defines endangering a child as “creat[ing] a substantial risk to the health or safety of the child * * * by violating a duty of care, protection, or support.”

{¶20} Here, Detective Pauley testified that Farr admitted to rubbing T.B.’s bare bottom and to pinching and patting T.F. and K.F.’s clothed bottoms. Detective Pauley also testified that Farr admitted that he on occasion would slip and rub T.B.’s vaginal area, but when he did he would immediately pull his hand away when he felt her vaginal lips. Detective Pauley also noted that Farr stated that he touched his children because it would relax him.

{¶21} After considering the testimony, the court had competent, credible evidence on which to base its decision. The testimony demonstrated that T.F. and

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K.F. are in danger of domestic violence. Thus, the trial court did not abuse its discretion.

{¶22} Accordingly, Farr's assignment of error is overruled.

{¶23} Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed.

BRYANT, P.J., and SHAW, J., concur.

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