

[Cite as *J.J. v. A.W.*, 2018-Ohio-5037.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106782

J.J.

PETITIONER-APPELLEE

vs.

A.W.

RESPONDENT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DV-17-369981

BEFORE: McCormack, P.J., S. Gallagher, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: December 13, 2018

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TIM McCORMACK, P.J.:

{¶1} Respondent-appellant A.W. (“Father”) appeals from the trial court’s journal entry granting petitioner-appellee J.J.’s (“Mother”) request for a domestic violence protection order. For the reasons that follow, we affirm.

Procedural and Factual History

{¶2} On December 19, 2017, Mother filed a request for a domestic violence protection order against Father. The court granted the request and issued an *ex parte* protection order that day. The protection order applied to Mother, J.W. (“Daughter,” J.J.’s daughter with Father), and A.R. (J.J.’s son with another man).

{¶3} On January 4, 2018, the court held a full hearing on the matter. During the hearing, Mother and Father represented themselves. The magistrate informed the parties that the issue to be determined at this hearing was whether Mother could establish by a preponderance of the evidence that Father committed an act of domestic violence, pursuant to R.C. 3113.31. The magistrate further informed the parties that she, the magistrate, would not hear evidence related to incidents occurring before May 25, 2017, because the parties had already

had the opportunity to litigate these matters in earlier proceedings. Both parties testified, and each party cross-examined the other. Following voir dire in which the court determined that Daughter, then seven years old, was competent to testify, Daughter also testified. Daughter testified that Father had covered her face with a pillow, and that she had seen Father abuse his then-girlfriend. Mother testified that Father had repeatedly threatened her and her daughter, and that on one occasion, he came into her house and attempted to attack her husband. Father denied the substance of Mother's and Daughter's testimony.

{¶4} On January 11, 2018, the magistrate granted Mother's request and the trial court issued a corresponding opinion and order adopting the magistrate's decision. The court made several findings of fact, including that Father committed domestic violence as defined in R.C. 3113.31 and that Mother and her children are in danger of domestic violence. The court also explicitly stated that it found Mother's testimony to be basically credible, that Father testified with minimal credibility. The court found that Daughter's testimony signaled several different realities in that it offered "virtually nothing of value," because she ultimately claimed to have forgotten a particular incident in question, and yet the court found that, based on Daughter's demeanor, including her obvious discomfort and inability to speak above a whisper, she was clearly frightened of Father.

{¶5} It is from this order Father appeals, presenting three assignments of error for our review.

Law and Analysis

{¶6} Father's first assignment of error argues that his case was handled improperly. Specifically, he refers to hearsay statements allowed by the court and clerical errors made by the court. In his second assignment of error, he asserts that the court abused its discretion by including Daughter in the protection order, and Daughter's testimony was inadmissible. In his third assignment of error, Father argues that the court did not acknowledge Mother's contradictory testimony, and that Mother made fraudulent statements that prevented him from fairly preparing and arguing his case. In his fourth assignment of error, he generally reiterates the arguments made in his third assignment of error.

{¶7} In Father's first assignment of error, he argues that when the magistrate informed him at the end of the hearing that the court's decision would be mailed to him, this violated Ohio Civ.R. 60(B). This argument is without merit. He appears to be arguing that the timing of the court's decision violated his right to due process. There is nothing in the record indicating when and how Father was served with the domestic violence protection order in this case; in his brief, he states that he received the order by mail on January 19, 2018. Nothing prevented Father from filing objections to the trial court's adoption of the magistrate's granting of the protection order within 14 days, pursuant to Civ.R. 65.1(F)(3)(d)(i). Further, nothing prevented Father from ultimately filing this timely appeal. For these reasons, the first assignment of error is overruled.

{¶8} In Father's second assignment of error, he asserts that the trial court abused its discretion by including Daughter in the protection order.

{¶9} We review challenges to the scope of a protection order for abuse of discretion. *M.D. v. M.D.*, 8th Dist. Cuyahoga Nos. 106581 and 106758, 2018-Ohio-4218, ¶ 45. "The term

‘abuse of discretion’ connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶10} Father supports this assignment of error with two assertions. First, he argues that Daughter’s testimony was inadmissible, because she indicated at one point that she did not remember a particular incident. Second, he argues that he was denied due process because he was unable to introduce evidence of a child abuse investigation that took place after the full hearing. Father’s first argument is unpersuasive. The court stated in the protection order that Daughter’s testimony was “extremely limited by the parties’ inability to ask her proper questions and by her obvious discomfort.” Ultimately, the court found that her testimony “offered virtually nothing of value.” Therefore, even if her testimony was in some way inadmissible, Father has not shown how this error amounted to an abuse of discretion in light of Mother’s credible testimony.

{¶11} Father’s second argument is equally unpersuasive. The only issue considered by the court at the January 4 hearing was whether Mother had established, by a preponderance of the evidence, that Father had committed domestic violence as defined in R.C. 3113.31. The subsequent results of a child abuse investigation have no bearing on whether Mother met her burden at the hearing.

{¶12} Here, the court included Daughter as a protected person in the protection order after hearing testimony from Mother that Father had repeatedly threatened the lives of her, her daughter, and her husband. The court deemed Mother’s testimony credible. The court also found that Daughter was “frightened” of Father. In light of these findings by the court, we cannot conclude that the court abused its discretion in including Daughter in the protection order.

{¶13} Because Father's third and fourth assignments of error are substantially similar to each other, we will address them together. In his third assignment of error, Father appears to be challenging the effect of the magistrate's instruction to the parties that she, the magistrate, would not hear testimony relating to events that occurred prior to May 2017. Father argues that this amounted to a violation of his right to a fair hearing where Mother, according to Father, made misleading statements and presented evidence to the magistrate from outside this time frame. In his fourth assignment of error, Father reiterates his assertions that Mother made misleading statements and her testimony lacked credibility.

{¶14} Magistrates are empowered to regulate court proceedings and to exercise their discretion in ensuring the efficient performance of their responsibilities. *Regalbuto v. Regalbuto*, 8th Dist. Cuyahoga No. 99604, 2013-Ohio-5031, ¶ 13. This discretion is shaped and constrained by the court's duty to promote the accuracy and fairness of its proceedings. A review of the record in this case reflects that the proceedings were balanced and fair. The magistrate held both parties to the same standards regarding the scope of their testimony and their cross-examination. We find that the standards themselves did not hinder the fairness of the proceedings.

{¶15} The core of Father's argument relies on his allegations that Mother made misleading statements to the magistrate regarding the timing of events. Appellate courts defer to the factfinder for credibility determinations, because the trier of fact is best positioned to observe the demeanor of the witnesses. *State v. Williams*, 8th Dist. Cuyahoga No. 88991, 2007-Ohio-5841, ¶ 22, citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The court here found Mother's testimony basically credible. This finding was made after a full hearing in which Father asserted largely the same arguments

he is making now on appeal. In light of the foregoing, the third and fourth assignments of error are overruled.

{¶16} For these reasons, we affirm the judgment of the trial court.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, domestic relations division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

TIM McCORMACK, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., CONCURS;
SEAN C. GALLAGHER, J., CONCURS (WITH SEPARATE CONCURRING OPINION ATTACHED)

SEAN C. GALLAGHER, J., CONCURRING:

{¶17} I concur in the judgment and analysis of the majority, but write separately to address a concern regarding the scope of the protection order encompassing A.W.'s relationship to his daughter. As the lead opinion points out, the trial court found the daughter's testimony to offer "virtually nothing of value." Thus, the decision to grant the order was predicated largely on the testimony of the mother, a party estranged from A.W. Nevertheless, the determination to grant the protection order came down to a question of credibility between the parties. The trial court made that determination and there is not sufficient evidence to the contrary to overturn that determination.

{¶18} I am concerned that part of the estrangement between A.W. and his daughter may be based in part on A.W.'s relationship to J.J. The father has certainly shown a strong desire to be involved in his daughter's life. Assuming that goal is sincere, the father may take steps in the future under the auspices of the domestic relations court to reestablish a relationship with his daughter.