

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

R.J.L., :
 :
 Petitioner-Appellee, :
 : No. 108228
 v. :
 :
 K.R., :
 :
 Respondent-Appellant. :
 :

JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED; REMANDED FOR CORRECTION
RELEASED AND JOURNALIZED: September 12, 2019**

Civil Appeal from the Cuyahoga County Common Pleas Court
Case No. DV-18-373810

Appearances:

Ellen S. Mandell, *for appellee.*

Wendy S. Rosett, *for appellant.*

SEAN C. GALLAGHER, J.:

{¶ 1} Respondent-appellant K.R. (“appellant”) appeals from the issuance of a domestic-violence civil protection order. Upon review, we affirm but remand for correction of the record to reflect the expiration date of October 29, 2019.

{¶ 2} On October 2, 2018, petitioner-appellee R.J.L. (“R.L.”) filed a petition for a domestic-violence civil protection order on behalf of her minor child, Z.R. (“the

child”), against appellant, who is the ex-husband of R.L. and father of Z.R. The trial court issued an ex parte domestic-violence civil protection order the same date. A full hearing was held before a court magistrate on October 17 and 30, 2018.

{¶ 3} At the time of the incident, which occurred on September 28, 2018, the child was 13 years old. She testified that appellant, who is her father, was about to whip his five-year-old step-grandson and that she stood to block the door to the five-year-old child’s room and told appellant she was not going to let him. According to the child, appellant picked her up, threw her on the bed in her room across the hall, and then threw her on the floor. She testified that appellant then put his knee on her stomach and his hands on her wrist, held her down, and slapped her four or five times. She testified that appellant, who admittedly weighs 300 pounds, did not put his full weight on her stomach. She testified that he screamed at her to stand up and then grabbed her by the neck and pushed her against the wall. She stated he yelled and screamed at her, again slapped her four or five times, and eventually dropped her. After appellant left the room, the child closed the door to her room, jumped out the window, ran across the street, hid in a ditch, and called her mother to pick her up. The child testified that she believed appellant was trying to hurt her. She also testified that appellant has physically disciplined her and the five-year-old in the past and that she sometimes is afraid of appellant.

{¶ 4} The child denied plotting with her mother, R.L., to say bad things about appellant. R.L. testified that when she picked her up, her daughter was hysterical, her clothes were disheveled, and she had a red mark on her face.

{¶ 5} Appellant denied the child's version of events. He claimed the child intervened when he was about to discipline the five-year-old with a belt because of his behavior at school. He testified that he grabbed the child "in a bear hug" and took her to her room. He did not recall the amount of force he used to put her on her bed. He denied throwing her on the bed and denied slapping her. He testified the child made several attempts to get up again and to approach him, but each time he restrained her and issued a verbal warning. He claimed that on her third or fourth attempt, she fell to the floor and he restrained her on the floor by putting his knee near her waist and his hand near her shoulder or upper chest area. He testified the child was flailing and he left the room once she calmed down. He conceded hitting her with a belt in the past. He further claimed that R.L. has made false allegations against him in the past.

{¶ 6} Appellant's current spouse testified as an eyewitness to the incident. She testified to an "altercation which led [the child] to fall to the floor." She stated that appellant did not body slam or choke the child, nor did he hold her up against the wall by her neck.

{¶ 7} The child provided a statement at the Orange Village Police Department that was consistent with her testimony. The officer who made the incident report testified that the child's demeanor was upset. He did not observe any physical injuries. The police sergeant, who was at the station and observed the child in passing, also testified that she did not appear injured. The child did not seek medical care. Other testimony and evidence also was introduced in the matter.

{¶ 8} On November 6, 2018, the magistrate issued a domestic-violence civil protection order against appellant that included findings of fact. In the findings, the magistrate assessed the credibility of the witnesses and found the child’s account of the incident to be credible. The magistrate further determined that appellant’s own testimony served to satisfy the petitioner’s burden of proof. The magistrate found the force used by appellant placed the child in extreme danger and constituted domestic violence as defined in R.C. 3113.31. The magistrate also found that appellant “committed an act with respect to a child that would result in a child being an abused child as defined in R.C. 2151.03” and “[h]e created a substantial risk to the health or safety of the child by violating a duty of care, protection or support[.]”

{¶ 9} The trial court judge adopted the magistrate’s order. The terms of the order are effective until October 29, 2019. Appellant filed objections and supplemental objections to the magistrate’s decision that were overruled by the trial court judge on February 5, 2019. This appeal followed.

{¶ 10} Appellant raises three assignments of error for review. Under the first assignment of error, appellant claims the trial court’s decision is against the manifest weight of the evidence.

{¶ 11} Before a trial court may issue a domestic-violence civil protection order pursuant to R.C. 3113.31, the trial court must find that the petitioner has shown by a preponderance of the evidence that petitioner or petitioner’s family or household members are in danger of domestic violence. *Felton v. Felton*, 79 Ohio St.3d 34, 42, 1997-Ohio-302, 679 N.E.2d 672. A reviewing court must determine

whether the record shows sufficient competent, credible evidence to support the trial court's determination. *See id.* at 43.

{¶ 12} R.C. 3113.31(A)(1) defines “domestic violence” as follows:

(a) The occurrence of one or more of the following acts against a family or household member:

(i) Attempting to cause or recklessly causing bodily injury;

(ii) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 or 2911.211 of the Revised Code;

(iii) Committing 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;

(iv) Committing a sexually oriented offense.

R.C. 3113.31(A)(1). However, “‘proper and reasonable parental discipline’ is an affirmative defense to domestic violence under both R.C. 3113.31(A)(1)(a)(i) and R.C. 3113.31(A)(1)(a)(iii).” *K.A. v. A.V.*, 2d Dist. Champaign No. 2018-CA-12, 2018-Ohio-4144, ¶ 20, citing *State v. Hause*, 2d Dist. Montgomery No. 17614, 1999 Ohio App. LEXIS 3627 (Aug. 6, 1999). As recognized by the Supreme Court of Ohio, “[a] child does not have any legally protected interest which is invaded by proper and reasonable parental discipline.” *State v. Suchomski*, 58 Ohio St.3d 74, 75, 567 N.E.2d 1304 (1991).

{¶ 13} Here, the trial court found that the petitioner proved by a preponderance of the evidence that appellant's actions constituted domestic violence as defined in R.C. 3113.31. The child testified that she was thrown on the bed and onto the floor, held down by appellant with his knee on her chest, grabbed

by her neck and held against the wall, and slapped numerous times. The child testified she believed her father was trying to hurt her. She left the room through a window and hid in a ditch across the street. Although appellant offered a different account, he conceded holding the child on the floor with a knee to her abdomen and a hand near her shoulder or upper chest. The trial court heard testimony regarding the contentious history between R.L. and appellant, assessed the credibility of the witnesses, and found the daughter's testimony to be credible. The court recognized the danger posed by appellant's actions, particularly in light of the disparity in size, and found that appellant committed an act of domestic violence.

{¶ 14} Appellant argues that the physical punishment he carried out was lawful parental discipline. Under the circumstances involved, the trial court determined that the discipline imposed was excessive physical discipline and constituted domestic violence as defined in R.C. 3113.31. Upon our review, we conclude that the record shows sufficient competent, credible evidence to support the trial court's issuance of the domestic-violence civil protection order. Appellant's first assignment of error is overruled.

{¶ 15} Under the second assignment of error, appellant challenges the terms of the protection order. Because a trial court is to be afforded discretion in establishing the scope of a protection order, appellate review is for an abuse of discretion. *Abuhamda-Sliman v. Sliman*, 161 Ohio App.3d 541, 2005-Ohio-2836, 831 N.E.2d 453, ¶ 9 (8th Dist.).

{¶ 16} Initially, it is agreed that the trial court inconsistently stated in overruling the objections to the magistrate’s decision that the protective order remains in effect until further order of the court. The actual order that was “adopted in its entirety” was for a term of one year and will expire on October 29, 2019. Under R.C. 3113.31(E)(3)(a), a protection order must be valid “until a date certain[.]” We shall remand for a correction of the record to clearly reflect the expiration date of October 29, 2019.

{¶ 17} Appellant argues that the issuance of a one-year or beyond protection order is disproportionate to the single incident in question and that it prevents him from exercising parenting time with his daughter. He claims that the singular incident did not result in any injuries and that there is no evidence that the child is at risk of future harm. He further claims that the trial court did not consider imposing alternative relief, such as supervised parenting time, anger management counseling, or other safeguards.

{¶ 18} R.C. 3113.31(E)(1)(h) affords a trial court discretion to “[g]rant other relief that the court considers equitable and fair” when issuing a protection order. Under R.C. 3113.31(E)(3)(a), a protection order may not exceed five years from the date of issuance. Here, the protection order precluded appellant from having contact with the child for a duration of one year. In considering objections to the magistrate’s decision, the trial court found “[b]ased upon the Respondent’s actions and [the child’s] testimony regarding her fear of Respondent, * * * that the Magistrate did not issue an order disproportionate to Respondent’s offense.” Upon

our review, we find no abuse of discretion by the trial court. The second assignment of error is overruled.

{¶ 19} Under the third assignment of error, appellant argues that the trial court abused its discretion by continuing and extending the hearing by two weeks. Pursuant to R.C. 3113.31(D)(2)(a), the court may grant a continuance of the full hearing to a reasonable time upon determining any of the specified circumstances thereunder exist. The record reflects that the full hearing commenced on October 17, 2018, and was continued to October 30, 2018. Regardless of whether appellant consented to the continuance, the trial court has authority under R.C. 3113.31(D)(2)(a)(iv) to grant a continuance of the full hearing to a reasonable time if it determines that the continuance is “needed for other good cause.” Further, a court has supervisory control over its own docket and has the inherent authority to manage its own proceedings and grant continuances. *See State ex rel. Buck v. McCabe*, 140 Ohio St. 535, 537, 45 N.E.2d 763 (1942). The decision to grant or deny a continuance is a matter entrusted to the broad discretion of the trial court. *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981).

{¶ 20} Here, appellant did not object at the time the court continued the hearing. In overruling the objections to the magistrate’s decision, the trial court recognized its inherent power to control its own docket and indicated that “the full hearing had to be continued because the Court was unable to conclude the full hearing [on October 17, 2018] given that there were still witnesses to call. The full hearing was continued for only two weeks due to the Court’s congested trial

schedule.” Under the circumstances, good cause existed for the continuance and the length of the continuance was reasonable. Additionally, no prejudice resulted because an ex parte domestic-violence civil protection order had already issued and the proceedings resulted in the issuance of the protection order that is effective for one year. We find no abuse of discretion occurred. Appellant’s third assignment of error is overruled.

{¶ 21} Judgment affirmed. Case remanded for a correction of the record to clearly reflect the domestic-violence civil protection order expiration date is October 29, 2019.

It is ordered that appellee recover from 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 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.

SEAN C. GALLAGHER, JUDGE

MARY EILEEN KILBANE, A.J., and
PATRICIA ANN BLACKMON, J., CONCUR