[Cite as *Slepsky v. Slepsky*, 2016-Ohio-8429.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

BARB SLEPSKY,	:	**O P I N I O N**
Petitioner-Appellee,	:	**CASE NO. 2016-L-032**
- vs -	:	
GARY SLEPSKY,	:	
Respondent-Appellant.	:	

Appeal from the Lake County Court of Common Pleas, Domestic Relations Division, Case No. 2016 DV 000016.

Judgment: Affirmed.

Barb Slepsky, pro se, 7155 Hart Street, Apt. F44, Mentor, OH 44060 (Petitioner-Appellee).

Brian M. Taubman, 1826 West 25th Street, Cleveland, OH 44113 (For Respondent-Appellant).

CYNTHIA WESTCOTT RICE, P.J.

{¶1} Appellant, Gary Slepsky, appeals the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, granting his wife, appellee, Barb Slepsky, who is appearing pro se, a domestic violence civil protection order. Barb has not filed an appellate brief. At issue is whether Barb presented sufficient, credible evidence to support the civil protection order. For the reasons that follow, we affirm.

{¶2} On January 20, 2016, Barb, acting pro se, filed a petition for domestic violence civil protection order. In her petition, Barb alleged:

> **{¶3}** [Gary Slepsky is] "always drinking – mean, yelling throwing stuff around the house. Always making a mess yelling at me to clean it but telling me to stay away from him. Turning my phone off (in his name). Taking car keys or dismantling car. Texting me psycho messages on phone while I'm at work or while I am locked in spare room. Breaking dishes and throwing food and breaking personal items. I am not allowed any friends or to go anywhere other than work. He gets mad – Never know when he will be home – comes and goes as he pleases, spending money we don't have – drinking."

{¶4} Following an ex parte hearing, the court's magistrate issued an ex parte domestic violence civil protection order.

{¶5} The case proceeded to full hearing before the magistrate on January 29, 2016. The parties have been married for 30 years and have one daughter who is 23 years old. Barb testified Gary engages in a repeating pattern of abuse. She said she does not want to live her life anymore where she has to be afraid. She said she has to hide from Gary because he comes home drunk and destructive so she locks herself in the upstairs bedroom.

{¶6} Barb testified she fled to the apartment in which she is now residing five years ago to get away from Gary. He followed her there and has been living there with Barb and their daughter since. The landlord has threatened that if Barb makes any more 911 calls or if there are any more altercations, they would have to leave.

{¶7} Barb testified she has called 911 on numerous occasions. She said that, recently, Gary yelled at her telling her, "Get out of my sight * * * you don't know what I'll do." She testified that Gary recently dismantled her car and told her she will have to walk.

{¶8} Barb testified that during the marriage, she has filed several civil protection orders, which were ultimately either dismissed or withdrawn.

{¶9} When Barb was asked by Gary's attorney on cross-examination if she ever physically assaulted Gary, she testified that she has raised her hands/arms to block his blows and that once when she did this and Gary was drunk, he fell down some stairs.

{¶10} Barb said that she has been sober for nearly a year, since March 2015, and that she does not want to live the way they have been living.

{¶11} Barb testified that in 2000, during an altercation, Gary broke her ribs. She called the police and the police arrested Gary and charged him with domestic violence. Barb said she is afraid of Gary "because I don't know what he's going to do when he's drunk. He's broke my ribs in the past."

{¶12} Gary testified that Barb drinks and has mental health issues. He said that she was in Laurelwood for three days 16 years ago in 1999 due to a high blood/alcohol level.

{¶13} Gary testified that the allegations in Barb's petition that he throws things, takes Barb's car keys, dismantles her car, keeps her from having friends, and drinks to excess are all false. Later he admitted he has dismantled her car and that she has friends at the apartment he does not care for. He testified he has never physically hurt his wife.

{¶14} The magistrate issued her decision on January 29, 2016. The magistrate found that Barb's testimony was credible, while much of Gary's was not. The magistrate also found that Gary has been physically abusive to Barb in the past and that

she has reason to believe he may be physically abusive in the future. Applying the applicable law, the magistrate concluded that the evidence was sufficient to prove that Gary has physically harmed Barb and that Gary has placed her in fear of imminent physical harm.

{¶15} Gary did not file any objections to the magistrate's decision. Instead, on February 8, 2016, he filed a motion to set aside the magistrate's decision. On March 1, 2016, the court entered judgment, stating that it would treat Gary's motion to set aside the magistrate's decision as timely-filed objections. However, the court noted that Gary's deemed objections related to the facts as found by the magistrate; that any objection to findings of fact must be supported by a transcript of the magistrate's hearing; that Gary never filed a transcript of the hearing as required by Civ.R. 53(D)(3)(b)(iii); and that Gary's objections could not be considered and were dismissed. Consequently, the court adopted the magistrate's decision.

{¶16} Gary appeals the trial court's judgment, asserting the following for his sole assignment of error:

{¶17} "The Trial Court committed prejudicial error when it granted Petitioner-Appellee CPO [sic] against Respondent-Appellant, Gary Slepsky, finding there was sufficient, credible evidence to support a finding that respondent engaged in acts or threats of domestic violence."

{¶18} An appellate court reviews a trial court's adoption of a magistrate's decision for an abuse of discretion. *In re Simkins*, 11th Dist. Trumbull No. 2002-T-0173, 2003-Ohio-1884, ¶10. This court is therefore limited to determining whether or not the trial court abused its discretion in adopting the magistrate's decision. *Ackroyd v.*

Ackroyd, 11th Dist. Lake No. 99-L-018, 2000 Ohio App. LEXIS 2983, *4 (June 30, 2000). Further, the decision to issue a civil protection order lies within the sound discretion of the trial court. *Maglionico v. Maglionico*, 11th Dist. Portage No. 2000-P-0115, 2001 Ohio App. LEXIS 5053, *4 (Nov. 9, 2001). Absent an abuse of that discretion, a reviewing court will not disturb the trial court's judgment. *Id*.

{¶19} As a preliminary matter, appellant does not challenge the trial court's finding in its judgment that he failed to file in the trial court a transcript of the hearing before the magistrate in support of his deemed objections to the magistrate's decision.

{¶20} Civ.R. 53(D)(3)(b)(iii) provides in pertinent part: "An objection to a factual finding * * * shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding * * *. * * * The objecting party shall file the transcript * * * with the court within thirty days after filing objections * * *." (Emphasis added.) This court has repeatedly held that an appellant is prohibited from challenging the factual findings of the magistrate unless he files a transcript of the magistrate's hearing with the trial court with his objections. *Savage v. Savage*, 11th Dist. Lake Nos. 2004-L-024 and 2004-L-040, 2004-Ohio-6341, ¶31; *Yancey v. Haehn*, 11th Dist. Geauga No. 99-G-2210, 2000 Ohio App. LEXIS 788, *7 (Mar. 3, 2000). The failure to file a transcript waives all factual challenges on appeal. *Estate of Stepien v. Robinson*, 11th Dist. Lake No. 2013-L-001, 2013-Ohio-4306, ¶28. The duty to provide a transcript to the trial court rests with the person objecting to the magistrate's decision. *In re O'Neal*, 11th Dist. Ashtabula No. 99-A-0022, 2000 Ohio App. LEXIS 5460, *7 (Nov. 24, 2000). "Where the failure to provide the * * * transcript * * * is clear on the face of the submissions, the trial court cannot then address the merits of the factual objection because the objecting

party, whether through inadvertence or bad faith, has not provided all of the materials needed for the review of that objection." (Emphasis omitted.) *Wade v. Wade*, 113 Ohio App.3d 414, 418 (11th Dist.1996). When a party fails to file a transcript of the evidence presented at the magistrate's hearing, the trial court, when ruling on the objections, is required to accept the magistrate's findings of fact and to review only the magistrate's conclusions of law based on those factual findings. *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730 (1995); *Saipin v. Coy*, 9th Dist. Summit No. 21800, 2004-Ohio-2670, ¶9. If the objecting party fails to provide the court with a transcript of the magistrate's hearing to support the objections, the trial court may properly adopt a magistrate's factual findings without any further consideration. *Estate of Stepien, supra.*

{¶21} However, even though appellant failed to provide the trial court with a transcript, the lower court was required to review the magistrate's decision to determine whether there was an error of law or other defect on the face of the decision. Civ.R. 53(D)(4)(c). In the instant matter, the trial court reviewed the magistrate's decision independently and implicitly found no error of law or other defect on the face of the decision. Our review of the magistrate's decision reveals the same, i.e., the decision was legally sufficient, was adequately detailed, and contained no obvious errors on its face.

{¶22} Gary argues the trial court erred in granting a domestic violence civil protection order in favor of Barb because, he contends, Barb failed to present sufficient, credible evidence in support of her petition.

{¶23} Before granting a civil protection order, "the trial court must find that 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 (1997), paragraph two of the syllabus.

{¶24} "Domestic violence" is defined in R.C. 3113.31(A)(1), in pertinent part, as "the occurrence of one or more of the following acts against a family * * * member: (a) [a]ttempting to cause or recklessly causing bodily injury; (b) [p]lacing another person by the threat of force in fear of imminent serious physical harm * * *.

{¶25} R.C. 3113.31(C) provides that "[a] person may seek relief under this section on the person's own behalf."

{¶26} Further, "'[t]hreats of violence constitute domestic violence for the purpose of R.C. 3113.31 if the fear resulting from those threats is reasonable.'" *Dowhan v. Dowhan,* 11th Dist. Lake No. 2012-L-037, 2012-Ohio-5830, ¶48, quoting *Lavery v. Lavery*, 9th Dist. Summit No. 20616, 2001 Ohio App. LEXIS 5360, *4 (Dec. 5, 2001). Moreover, "'[t]he reasonableness of the fear should be determined *with reference to the history between the petitioner and the defendant*.'" (Emphasis added.) *Dowhan, supra,* quoting *Gatt v. Gatt*, 9th Dist. Medina No. 3217-M, 2002-Ohio-1749, ¶7.

{¶27} Gary argues that nowhere in the record does Ms. Slepsky testify to being physically assaulted by her husband or being placed in imminent fear. However, to the contrary, Barb said Gary recently yelled at her, telling her, "Get out of my sight * * * you don't know what I'll do." Whether this threat constitutes domestic violence should be determined with reference to Gary's history of assaulting Barb. She testified she has raised her arms and hands to block his blows. And, during an altercation in 2000, Gary

broke her ribs. She called the police and Gary was arrested and charged with domestic violence.

{¶28} Barb testified she is afraid of Gary because she does not know what he is going to do when he is drunk. She hides herself in the upstairs bedroom and locks herself in because Gary comes home drunk and destructive. He yells and screams. He breaks their property. He throws things around the house and "trashes" the place.

{¶29} Gary argues that he caught Barb "lying" because she testified Gary had not physically harmed her. However, Barb explained that she answered that way because she was under the impression her testimony was limited to the present incident. However, when asked questions by the magistrate and counsel concerning past incidents of domestic violence, she testified that Gary has previously subjected her to physical abuse on multiple occasions.

{¶30} Based on our review of the record, we hold the magistrate's decision complied with the requirements of Civ.R. 53 and, as a result, the trial court did not abuse its discretion in adopting the magistrate's decision.

{¶31} For the reasons stated in this opinion, the assignment of error lacks merit and is overruled. It is the order and judgment of this court that the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, is affirmed.

DIANE V. GRENDELL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.