

[Cite as *Oddo v. Spencer*, 2009-Ohio-4320.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DONNA ODDO, et al.

Petitioners-Appellees

-vs-

RICHARD SPENCER

Respondent-Appellant

JUDGES:

Hon. W. Scott Gwin P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2008 CA 00215

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Case No. 2008 MI 00287

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 24, 2009

APPEARANCES:

For Petitioners-Appellees

For Respondent-Appellant

JOHN S. MCCALL, JR.
606 Belden-Whipple Building
4150 Belden Village Street, NW
Canton, Ohio 44718

Wise, J.

{¶1} Appellant Richard Spencer appeals the decision of the Stark County Court of Common Pleas, which granted a civil protection order against him in favor of Appellee Donna Oddo. The relevant facts leading to this appeal are as follows.

{¶2} On July 17, 2008, appellee filed a petition against appellant, on behalf of herself and several household members, for an anti-stalking civil protection order (“CPO”) under R.C. 2903.214. On that date, following a hearing, an ex parte CPO was granted, with a full hearing set for July 24, 2008 at 10:00 AM, at the Stark County Courthouse.

{¶3} On July 24, 2008, at about 9:00 AM, at the request of the Stark County Sheriff’s Department, appellant appeared at the Stark County Courthouse and was served with the petition, ex parte order, and notice of the full hearing.

{¶4} Appellant and appellee, both pro se, then appeared before the magistrate for the 10:00 hearing. Appellant did not ask for a continuance or the opportunity to obtain counsel. After hearing evidence, the magistrate issued a decision, signed by the judge and file-stamped the same day, granting the CPO.

{¶5} On August 7, 2008, appellant filed a motion for new trial, which the trial court treated as an objection to the decision of the magistrate. On August 22, 2008, the trial court issued a decision adopting the magistrate’s decision.

{¶6} On September 18, 2008, appellant filed a notice of appeal. He herein raises the following two Assignments of Error:

{¶7} “I. THE TRIAL COURT ERRED WHEN IT GRANTED APPELLEE’S PETITION FOR A CIVIL PROTECTION ORDER, WHERE APPELLANT DID NOT

RECEIVE TIMELY NOTICE, AND WAS THEREFORE UNABLE TO PROPERLY DEFEND HIMSELF AT THE REQUIRED 'FULL HEARING.'

{¶8} "II. THE TRIAL COURT ERRED WHEN IT OVERRULED THE APPELLANT'S MOTION FOR A NEW TRIAL, WHICH THE TRIAL COURT CONVERTED TO AN 'OBJECTIONS TO THE MAGISTRATE'S DECISION PURSUANT TO CIVIL RULE 53(D)(3)(G).'

I.

{¶9} In his First Assignment of Error, appellant challenges the trial court's grant of the CPO, claiming that he was not duly notified concerning the full hearing on appellee's petition.

{¶10} In Ohio, a person may petition their common pleas court for an anti-stalking or sexually-oriented offense civil protection order ("CPO") under R.C. 2903.214. See, e.g., *State v. Davis*, Hamilton App.Nos. C-070838, C-070845, 2008-Ohio-5281, ¶5. The pertinent "full hearing" aspects of such a CPO are addressed in R.C. 2903.14(D)(2)(a) as follows:

{¶11} "If the court, after an ex parte hearing, issues a protection order described in division (E) of this section, the court shall schedule a full hearing for a date that is within ten court days after the ex parte hearing. The court shall give the respondent notice of, and an opportunity to be heard at, the full hearing. The court shall hold the full hearing on the date scheduled under this division unless the court grants a continuance of the hearing in accordance with this division. Under any of the following circumstances or for any of the following reasons, the court *may grant a continuance* of the full hearing to a reasonable time determined by the court:

{¶12} “(i) Prior to the date scheduled for the full hearing under this division, the respondent has not been served with the petition filed pursuant to this section and notice of the full hearing.

{¶13} “***”

{¶14} (Emphasis added).

{¶15} The grant or denial of a continuance is a matter entrusted to the broad, sound discretion of the trial court. *Polaris Ventures IV, Ltd. v. Silverman*, Delaware App.No.2005 CAE 11 0080, 2006-Ohio-4138, ¶ 14, citing *State v. Unger* (1981), 67 Ohio St.2d 65, 423 N.E.2d 1078. We nonetheless recognize that “[b]oth the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution guarantee due process of law, and thus guarantee ‘a reasonable opportunity to be heard after a reasonable notice of such hearing.’” *Ohio Valley Radiology Associates, Inc. v. Ohio Valley Hosp. Ass’n.* (1986), 28 Ohio St.3d 118, 125, 502 N.E.2d 599 (additional citations omitted).

{¶16} Appellant herein maintains that the notice of the full hearing, served upon him about one hour before the magistrate’s proceedings started, did not comply with the “[p]rior to the date scheduled” language of R.C. 2903.14(D(2)(a)(i), supra. Appellant further maintains that the magistrate should have at least inquired about his readiness to proceed and his interest in obtaining an attorney to represent him in the CPO action. However, the statute maintains the court’s discretion regarding continuances, and we are aware of no authority for the apparent proposition that full colloquy requirements, such as those in a Crim.R. 11 plea proceeding, would apply to a civil protection proceeding.

{¶17} Upon review, we find reasonable notice and opportunity to be heard were afforded to appellant under the facts and circumstances presented, and that the trial court did not err or abuse its discretion in declining to continue or reset the CPO hearing to a later date.

{¶18} Accordingly, appellant's First Assignment of Error is overruled.

II.

{¶19} In his Second Assignment of Error, appellant argues the trial court erred in converting his motion for a new trial to an objection to the magistrate's decision and overruling same. We disagree.

{¶20} Civ.R. 53(D)(4)(e)(i) states as follows: "The court may enter a judgment either during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered."

{¶21} We have recognized that a trial court has the inherent authority to manage its own proceedings and control its own docket. *Love Properties, Inc. v. Kyles*, Stark App.No. 2006CA00101, 2007-Ohio-1966, ¶ 37, citing *State ex rel. Nat. City Bank v. Maloney*, Mahoning App.No. 03 MA 139, 2003-Ohio-7010, ¶ 5. In the case sub judice, appellant's "motion for new trial" was filed on the fourteenth day following the magistrate's decision, which decision had been immediately approved by the trial court.

Under these circumstances, we find no reversible error in the trial court's treatment of appellant's said motion as a Civ.R. 53 objection.

{¶22} Appellant's Second Assignment of Error is therefore overruled.

{¶23} For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Stark County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Delaney, J., concur.

JUDGES

JWW/d 85

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DONNA ODDO, et al.	:	
	:	
Petitioners-Appellees	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
RICHARD SPENCER	:	
	:	
Respondent-Appellant	:	Case No. 2008 CA 00215

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

Costs assessed to Appellant.

JUDGES