

[Cite as *Dorsey v. Dorsey*, 2009-Ohio-4894.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

AMY L. DORSEY

Respondent-Appellant

-vs-

GREGORY DORSEY

Petitioner-Appellee

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. 09-CA-0065

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court of
Common Pleas, Domestic Relations
Division, Case No. 2009-CPO-0391

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 10, 2009

APPEARANCES:

For Respondent-Appellant

For Petitioner-Appellee

RAYMOND G. FESMIER
28 Park Ave. W., Suite #501
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JERRY W. THOMPSON
21 N. Walnut St.
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Hoffman, P.J.

{¶1} Respondent-appellant Amy L. Dorsey (“Wife”) appeals the April 14, 2009 Order of Protection entered by the Richland County Court of Common Pleas, Domestic Relations Division, which granted petitioner-appellee Gary C. Dorsey (“Husband”) a domestic violence civil protection order.

STATEMENT OF THE CASE AND FACTS

{¶2} On March 30 , 2009, Husband filed a petition for domestic violence civil protection order in the Richland County Court of Common Pleas, Domestic Relations Division. Husband filed the petition the day after he and Wife had an argument which ended in Wife’s punching, pushing, and shoving him. The trial court granted an ex parte order the same day.

{¶3} The matter came on for hearing before the magistrate on April 7, 2009. At the hearing, Husband testified, on the evening of March 29, 2009, the parties had a heated argument, during which Wife became physically abusive. Husband stated Wife had punched, pushed, and shoved him. Husband added Wife’s physical abuse caused him to feel concerned or alarmed. After the incident, Husband felt mentally drained and disappointed.

{¶4} Following the hearing, the magistrate issued an Order of Protection on April 14, 2009, which order had been approved and adopted by the trial court. Wife moved for written findings of fact and conclusions of law on April 16, 2009. In apparent response, the magistrate issued an amended order of protection on April 24, 2009,

which order had been approved and adopted by the trial court. Wife did not file objections to either of the magistrate's Orders of Protection.

{¶15} It is from this order Wife appeals raising the following assignment of error:

{¶16} "I. THE TRIAL COURT ERRED IN GRANTING PETITIONER-HUSBAND A CIVIL PROTECTION ORDER UNDER R.C. SECTION 3113.31, AS PETITIONER-HUSBAND FAILED TO PRESENT SUFFICIENT EVIDENCE TO SUPPORT A FINDING, BY A PREPONDERANCE OF THE EVIDENCE, THAT RESPONDENT-WIFE COMMITTED ACTS OF DOMESTIC VIOLENCE UNDER THE STATUTE."

{¶17} This case comes to us on the accelerated calendar governed by App.R. 11.1, which states the following in pertinent part:

{¶18} **"(E) Determination and judgment on appeal**

{¶19} "The appeal will be determined as provided by App. R. 11.1. It shall be sufficient compliance with App. R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.

{¶10} The decision may be by judgment entry in which case it will not be published in any form."

I

{¶11} In her sole assignment of error, Wife contends the trial court erred in granting Husband a domestic violence civil protection order as Husband failed to present sufficient evidence to support a finding, by a preponderance of the evidence, Wife committed domestic violence against him.

{¶12} R.C. 3113.31, which governs the issuance of domestic violence civil protection orders, provides, in relevant part:

{¶13} “(A) As used in this section:

{¶14} “(1) ‘Domestic violence’ means the occurrence of one or more of the following acts against a family or household member:

{¶15} “(a) Attempting to cause or recklessly causing bodily injury;

{¶16} “(b) 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; * * *.” Id.

{¶17} "The statutory criterion to determine whether or not to grant a civil protection order pursuant to R.C. 3113.31 is the existence or threatened existence of domestic violence." *Thomas v. Thomas* (1988), 44 Ohio App.3d 6, 8. As a result, when granting a civil protection under R.C. 3113.31, the trial court must find the petitioner has shown, by a preponderance of the evidence, he is in danger of domestic violence. *Felton v. Felton* (1997), 79 Ohio St.3d 34, paragraph two of the syllabus. The decision whether to grant a civil protection order lies within the sound discretion of the trial court. *Olenik v. Huff*, Ashland App. No. 02-COA-058, 2003-Ohio4621, at ¶ 21. Therefore, an appellate court should not reverse the decision of the trial court absent an abuse of discretion. In order to find an abuse of discretion, this Court 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.

{¶18} At the outset, we note the limits of our review are circumscribed. Pursuant to Civ.R. 53(D)(3)(b)(i), “[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted

the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” In failing to timely object to the magistrate's decision, Wife has waived all but plain error.

{¶19} Civ.R. 53(D)(3)(b)(iv) provides: “Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).”

{¶20} The plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099, 1997-Ohio-401, at syllabus.

{¶21} Upon review of the record, we find the trial court did not abuse its discretion in granting a domestic violence civil protection order to Husband. We find the fact Wife committed the acts of punching, pushing, and shoving husband is sufficient to support the trial court's finding she attempted to cause bodily injury to Husband, regardless of whether or not Husband sustained any bodily injury. We further find no plain error in the trial court's granting of the order. There is no affirmative record demonstration to show the trial court's decision seriously affected the basic fairness, integrity, or public reputation of the judicial process.

{¶22} Wife's sole assignment of error is overruled.

{¶23} The judgment of the Richland County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

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

AMY L. DORSEY

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-vs-

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JUDGMENT ENTRY

Case No. 09-CA-0065

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Richland County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS