[Cite as *K.A. v. A.V.*, 2018-Ohio-4144.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

K.A.	:	
	:	
Petitioner-Appellee	:	Appellate Case No. 2018-CA-12
	:	
v.	:	Trial Court Case No. 2018-DR-18
	:	
A.V.	:	(Domestic Relations Appeal from
	:	Common Pleas Court)
Respondent-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the 12th day of October, 2018.

. . . . . .

K.A.
Petitioner-Appellee, Pro Se

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Attorney for Respondent-Appellant

. . . . . .

FROELICH, J.

{¶ 1} A.V. ("Father") appeals from a domestic violence civil protection order ("CPO") issued by the Champaign County Common Pleas Court, Domestic Relations-Juvenile-Probate Division, that bars Father from any contact with his minor child through March 14, 2023. For the reasons that follow, the trial court's judgment will be affirmed.

Factual Background and Procedural History

{¶ 2} Father and his former girlfriend, K.A. ("Mother"), are the parents of an eight-year-old son ("Son"). After the relationship between Father and Mother ended, they reached an agreement that established their respective parental rights and responsibilities with respect to Son, including a shared parenting schedule. That agreement was filed with the Champaign County Common Pleas Court, Domestic Relations-Juvenile-Probate Division, on January 30, 2013.

{¶ 3} On February 2, 2018, while Son was with Father, Mother received a text message from Father that read:

> Had to tap that ass with the belt tonight and he jumped but I told him a smart mouth with his parents telling you to shut up and having an attitude will never work.

{¶ 4} According to Mother, the text message referenced an incident that had occurred approximately three weeks earlier, outside Father's presence, when she had Son at a haircut appointment and Son told her to "shut up." Because she agreed that Son "did need some discipline," she was not immediately concerned about Father's claim "that he had 'tapped' [Son's] behind with the belt."

{¶ 5} When Mother returned Son to her home on February 4, 2018,[1] however, she noticed that he seemed to be sitting down "softly." She asked to see where Father had "tapped" him and witnessed "significant bruising, not consistent with a 'tap' of the belt." That evening, Mother took Son to the Urbana Police Division to report the bruising caused by Father. Officer Tyler Reasor met with Mother and took photographs of Son's injuries. He advised Mother to take Son to a hospital to have his injuries evaluated by a physician, which she did.

{¶ 6} Officer Reasor then interviewed Father. Father admitted that he had hit Son with a belt for being "mouthy and disrespectful," but said that he used physical punishment as "the last resort." He denied that the punishment was excessive in this instance; "I think he just moved and got the worst end of the deal." Shown photographs of Son's bruises, Father termed them "lightweight." Father said that he had been "whipped" as a child, and "this right here ain't nothing from what I got when I was little." Officer Reasor charged Father with misdemeanor offenses of domestic violence and endangering children.

{¶ 7} On February 5, 2018, Mother filed a petition for a domestic violence CPO against Father on behalf of Son. In conjunction with that petition, Mother produced copies of photographs of Son's injuries, a screen shot of Father's February 2 text message, a statement signed by Officer Reasor, the two misdemeanor complaints filed against Father, the police report prepared by Officer Reasor, and records from Son's February 4, 2018 hospital visit. She also presented a screen shot of an additional text message received from Father after she went to the police, indicating that Father had "heard about

[1] Mother's testimony at the March 14, 2018 CPO full hearing indicates that she picked Son up from Father's home on "February 5th," but that date is inconsistent with the police report prepared on February 4, 2018 and the date stated in her February 5, 2018 petition.

[what Mother was] trying to pull" and stating, "Best believe you want a war I'll bring out everything."

{¶ 8} Following an ex parte hearing held on February 6, 2018, the trial court issued an ex parte domestic violence CPO protecting both Mother and Son from Father. Based on Father's request for a continuance of the full hearing to allow him to obtain counsel, the ex parte CPO was extended through March 14, 2018.

{¶ 9} At the full hearing held on March 14, 2018, Mother appeared pro se and Father appeared with counsel. Mother testified that Son still had bruises from Father's use of the belt more than a month prior. She presented photographs that she said were "taken yesterday," purporting to depict the then-current state of Son's bruising. She also testified that shortly after the incident with Son, Father was arrested at the state prison where he works for having a gun and "several dozen rounds of ammunition" in his vehicle on prison property. She presented copies of the criminal indictment related to that arrest and of the police report, which referred to Father as "[a] suicidal employee."

{¶ 10} Mother expressed concern that Father was acting irrationally and had reached "a breaking point." She said that although she believed Father loves Son, she felt Father "needs some serious help before he is allowed to be around" Son. Mother admitted, however, that the only threat Father recently had directed toward her was that which she perceived in his text message about "a war." All exhibits she presented were admitted into evidence without objection from Father's attorney.

{¶ 11} Father testified that he, not Mother, acts as Son's disciplinarian. He confirmed that he believes in using corporal punishment, but only as a "last resort." He said that Son recently had been "very disrespectful," saying things "that aren't acceptable

for a young child" and "using his middle finger." He attributed Son's "behavioral issues" to the "inconsistency" of Mother's relationships and the negative influence of Mother's current boyfriend. Father said that when he learned about an earlier incident in which a barber intervened after Son told Mother to shut up, Father made Son "Facetime" Mother to apologize. Father said he wanted to teach Son to respect authority and to respect women. He denied ever threatening Son or Mother with physical harm. On cross-examination by Mother, Father admitted that he struck Son and caused the bruises at issue in the incident giving rise to this matter.

{¶ 12} On March 15, 2018, the trial judge issued an order that contained the following findings:

> Based upon the testimony and evidence presented, the Court finds by a preponderance of the evidence that [Son] is an abused child because [Father] administered corporal punishment excessive under the circumstances and created a substantial risk of serious physical harm to the child. Specifically, the Court finds that [Father] struck [Son] with a belt with such force that it left severe bruises to his buttocks and thigh that have lasted 5-1/2 weeks, and [Father] provided **no** reason for the discipline except disrespect.
>
> Furthermore, [Father] committed Domestic Violence against [Son] * * * because [Father] recklessly caused [Son] bodily injury.
>
> The Court finds insufficient evidence to grant a Civil Protection Order for [Mother].
>
> The Domestic Violence Civil Protection Order will be issued by

separate entry for [Son].

(Emphasis sic.)

{¶ 13} By separate judgment entered on the same date, the trial court issued a domestic violence civil protection order that barred Father from any contact with Son through March 14, 2023.

{¶ 14} Father appeals from that judgment, setting forth two assignments of error:

I. It was an abuse of discretion and against the manifest weight of the evidence when the trial court granted an order of protection to [Mother] for her minor child.

II. It was an abuse of discretion when the trial court modified [Father's] parental rights and visitation by granting an order of protection as the trial court lacked jurisdiction.

Standard of Review

{¶ 15} To assess whether a protection order should have been issued, "the reviewing court must determine whether there was sufficient credible evidence to prove by a preponderance of the evidence that the petitioner was entitled to relief." *Insa v. Insa*, 2016-Ohio-7425, 72 N.E.3d 1170, ¶ 45 (2d Dist.), quoting *Weismuller v. Polston*, 12th Dist. Brown No. CA2011-06-014, 2012-Ohio-1476, ¶ 19. "Under the civil manifest-weight standard, '[i]f competent, credible evidence exists to support the trial court's decision, it must be affirmed.' " *Id.*, quoting *Wise v. Wise*, 2d Dist. Montgomery No. 23424, 2010-Ohio-1116, ¶ 9. To perform a civil manifest-weight analysis, the appellate court reviews the trial court's rationale and the evidence cited in support of its decision, remaining mindful of the trial court's primary role in evaluating evidence and assessing witness

credibility. *Id.*

Law Concerning Domestic Violence Civil Protection Orders

{¶ 16} R.C. 3113.31(E)(1) authorizes a trial court to issue a CPO "to bring about the cessation of domestic violence against [ ] family or household members." To obtain a CPO, a petitioner must demonstrate by a preponderance of the evidence that the person for whom protection is sought is in danger of domestic violence. *Tyler v. Tyler*, 2d Dist. Montgomery No. 26875, 2016-Ohio-7419, ¶ 18, citing *Felton v. Felton,* 79 Ohio St.3d 34, 679 N.E.2d 672 (1997), paragraph two of the syllabus.

{¶ 17} Among the types of conduct defined as domestic violence are "[a]ttempting to cause or recklessly causing bodily injury," R.C. 3113.31(A)(1)(a)(i), or "[c]ommitting any act against a child that would result in the child being an abused child" as defined at R.C. 2151.031. R.C. 3113.31(A)(1)(a)(iii). Under R.C. 2151.031(C), an abused child includes any child who "[e]xhibits evidence of any physical or mental injury or death, inflicted other than by accidental means."

{¶ 18} The statutory definition of "abused child" includes an exception, however, for "corporal punishment or other physical disciplinary measure" imposed by a parent, so long as such punishment "is not prohibited under" R.C. 2919.22. R.C. 2151.031(C). R.C. 2919.22(B)(3) prohibits administering to a child under the age of 18 corporal punishment or any other physical disciplinary measure that "is excessive under the circumstances and creates a substantial risk of serious physical harm to the child."

{¶ 19} Beyond that statutory exception, case law also recognizes that "the domestic violence statute does not prohibit a parent from properly disciplining his or her child." *State v. Thompson*, 2d Dist. Miami No. 04CA30, 2006-Ohio-582, ¶ 28, citing *State*

v. Suchomski, 58 Ohio St.3d 74, 567 N.E.2d 1304 (1991). "A parent may use physical punishment as a method of discipline without violating the domestic violence statute as long as the discipline is proper and reasonable under the circumstances." *State v. Woodruff*, 2d Dist. Montgomery No. 25610, 2013-Ohio-4251, ¶ 19, quoting *State v. Phillips*, 10th Dist. Franklin No. 12AP-57, 2012-Ohio-6023, ¶ 18. Moreover, "conduct which constitutes proper and reasonable parental discipline cannot form the basis of a violation of R.C. 2919.25(A), *the resulting bodily injury notwithstanding*." (Emphasis added.) *State v. Hause*, 2d Dist. Montgomery No. 17614, 1999 WL 959184, at *2 (Aug. 6, 1999).

{¶ 20} Accordingly, "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). *Hause* at *2; *see also Thompson* at ¶ 33. A domestic violence defendant must prove that affirmative defense by a preponderance of the evidence. *Thompson* at ¶ 27, ¶ 33.

{¶ 21} Determining whether particular conduct constitutes proper and reasonable parental discipline requires consideration of "the totality of all of the relevant facts and circumstances." *Woodruff* at ¶ 19, quoting *Phillips* at ¶ 18. "In analyzing the totality of the circumstances, a court should consider: (1) the child's age; (2) the child's behavior leading up to the discipline; (3) the child's response to prior non-corporal punishment; (4) the location and severity of the punishment; and (5) the parent's state of mind while administering the punishment." *Id.*

{¶ 22} "[T]he nature of any physical injury inflicted * * * may be evidence demonstrating that the actor's conduct was not proper and reasonable parental

discipline." *Thompson* at ¶ 29, citing *Hause*. Although bruising alone may be insufficient to show that a particular form of discipline created a substantial risk of physical harm, *see State v. Neal*, 4th Dist. Lawrence Nos. 14CA31, 14CA32, 2015-Ohio-5452, ¶ 45, citing *In re Schuerman*, 74 Ohio App.3d 528, 532, 599 N.E.2d 728 (3d Dist.1991), "[d]iscipline methods on a child which leave recognizable bruising and cause pain which lasts beyond the time immediately following an altercation between parent and the child may establish a finding of substantial risk of serious harm." *Id.*, quoting *In re Kristen*, 6th Dist. Ottawa No. OT-07-031, 2008-Ohio-2994, ¶ 69.

{¶ 23} Under the relevant statute, a trial court issuing a CPO also may "temporarily allocate parental rights and responsibilities for the care of, or establish temporary parenting time rights with regard to, minor children," but only "if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights." R.C. 3113.31(E)(1)(d).

First Assignment of Error

{¶ 24} In his first assignment of error, Father contends that the trial court both abused its discretion and ruled against the manifest weight of the evidence by granting Mother a domestic violence CPO on behalf of Son. However, because Father challenges the very grant of a CPO, not the scope of that order, the abuse of discretion standard does not apply. *See Weber v. Weber*, 2d Dist. Greene No. 2010-CA-40, 2011-Ohio-2980, ¶ 31. Rather, the relevant inquiries are: 1) whether sufficient credible evidence was presented to prove by a preponderance of the evidence that Father "attempt[ed] to cause or recklessly caus[ed] bodily injury" to Son or engaged in abuse of a child, *see Insa*, 2016-Ohio-7425, 72 N.E.3d 1170, at ¶ 45; R.C. 3113.31(A)(1)(a)(i), (iii), and 2) if so, whether

Father proved by a preponderance of the evidence that his actions constituted proper and reasonable parental discipline. *See Thompson*, 2d Dist. Miami No. 04CA30, 2006-Ohio-582 at ¶ 28; *Woodruff*, 2d Dist. Montgomery No. 25610, 2013-Ohio-4251, at ¶ 19. If the trial court's decision is not against the weight of the evidence, we must affirm. *See Insa* at ¶ 45.

{¶ 25} We conclude that the trial court did not err in finding that a preponderance of competent, credible evidence supported the issuance of a CPO. The trial court found that Father recklessly caused bodily injury to Son, in violation of R.C. 3113.31(A)(1)(a)(i), *and* that Father's conduct resulted in Son being an abused child, in violation of R.C. 3113.31(A)(1)(a)(iii). Although Father argues that the physical punishment he carried out "was lawful discipline and not domestic violence as defined in R.C. 3113.31," a reasonable trier of fact could determine from the evidence presented that the discipline Father imposed was excessive under the circumstances and posed a substantial risk of serious physical harm to Son. *See* R.C. 2919.22(B)(3).

{¶ 26} Significantly, Father admitted striking Son with a belt and leaving the bruises depicted in the police photographs. Considering the factors enumerated in *Woodruff* at ¶ 19, a reasonable trier of fact could conclude that Father's actions toward Son did not constitute "proper and reasonable parental discipline." The trial court implicitly determined that Son's age did not justify the degree of physical punishment inflicted. Despite Father's observation that Son "is not an infant," neither was he nearing adulthood at the age of eight. A rational finder of fact could find a violation of R.C. 2919.22(B)(3) to be proven beyond a reasonable doubt where evidence indicated that the defendant struck an eight-year-old child with a belt, leaving welts on the child's legs and buttocks. *See State v.*

Royster, 2d Dist. Montgomery No. 25870, 2015-Ohio-3608, ¶ 30-31. Nothing in the record before us dissuades us from a similar conclusion in this case, where the standard is less than reasonable doubt, based on the bruises left on Son. Other courts have upheld findings of child abuse under comparable circumstances. *See, e.g., In re Mercer*, 10th Dist. Franklin No. 04AP-422, 2005-Ohio-1845 (where father "whipped" 11-year-old son with belt, leaving bruising and marks depicted in photographs); *In re Horton*, 10th Dist. Franklin No. 03AP-1181, 2004-Ohio-6249 (hitting 11-year-old boy with belt over homework dispute, leaving bruises, was excessive).

{¶ 27} Father's description of Son's behavior that led to the discipline in question also does not overcome the trial court's conclusion that such discipline was not proper and reasonable. *See Woodruff* at ¶ 19. Father testified that the discipline was provoked when he learned that Son had been "disrespectful" to Mother some three weeks prior, as well as by instances of Son's being "mouthy and disrespectful," "using his middle finger," or saying things "that aren't acceptable for a young child." Father identified no drastic circumstances, such as Son displaying physical aggression, engaging in illegal conduct, or endangering himself or others, as warranting resort to what Father himself characterized as a "last resort" form of parental control. *Compare Hause*, 2d Dist. Montgomery No. 17614, 1999 WL 959184 (where father struck 17-year-old son who previously threatened father with hedge trimmers and threatened to kill father for disciplining him). Moreover, although he alluded to preferring to discipline his children by "talk[ing] to" and "guiding" them, Father did not indicate what lesser means of discipline he had tried with Son before resorting to the physical punishment applied in this instance.

{¶ 28} Father's additional arguments as to this assignment of error offer nothing to

discredit the trial court's conclusions. His suggestion that Mother herself testified that Father only "light tapped [Son] on the behind" is belied by the record. In fact, Mother testified that although Father *claimed* to have "tapped" Son, the injuries she observed were inconsistent with a mere "tap." While Father also attempts to inject doubt about the authenticity of the photographs presented at the March 14, 2018 hearing, he effectively waived any challenge to those photographs when his attorney stated that he had no objection to their admission. *See Dart v. Combs*, 2d Dist. Darke No. 2017-CA-3, 2018-Ohio-420, ¶ 81 ("Failure to object to evidence at trial constitutes a waiver of any challenge * * *"). Moreover, Mother testified that the latest photographs of Son's bruises were taken the day before the full hearing, and the photographs themselves include an image of a calendar with the date "March 13, 2018" highlighted, alongside images of what purport to be Son's bruises on that date. We defer to the trial court's apparent assessment of those photographs as accurately depicting bruising on Son's hip and thigh that remained more than five weeks after Father struck him with a belt. *See Insa*, 2016-Ohio-7425, 72 N.E.3d 1170, at ¶ 45.

{¶ 29} Because the trial court's reference to "severe bruises * * * that have lasted 5-1/2 weeks" is supported by a preponderance of competent, credible evidence in the record, as are the court's other findings, and because Father failed to show that such bruises were the product of proper and reasonable parental discipline, Father's first assignment of error is overruled.

Second Assignment of Error

{¶ 30} Father's second assignment of error contends that the *Domestic Relations* Division of the Champaign County Common Pleas Court lacked jurisdiction to issue a

CPO modifying his parental rights and visitation because the *Juvenile* Division of that Court previously had adjudicated those issues. He points to R.C. 3113.31(E)(1)(d), which provides that a trial court may issue a CPO that affects parental rights and responsibilities or parenting time as to minor children only "if no other court has determined, or is determining, the allocation of parental rights and responsibilities for the minor children or parenting time rights."

{¶ 31} Father advances decisions from other Ohio appellate courts as support for the proposition that under R.C. 3113.31, "a domestic relations court * * * cannot issue orders regarding parental rights or visitation" if a juvenile court already has determined custody. *See, e.g., Couch v. Harrison*, 12th Dist. Clermont No. CA2000-080063, 2001 WL 121108, *4 (Feb. 12, 2001) ("A county domestic relations court is without jurisdiction under R.C. 3113.31(E)(1)(d) when the county juvenile court has made a custody determination"); *McCue v. Martin*, 187 Ohio App.3d 1, 2010-Ohio-1298, 930 N.E.2d 855, ¶ 27 (7th Dist.) (same); *Stella v. Platz*, 4th Dist. Washington No. 98CA18, 1999 WL 427672, *2 (June 17, 1999) (common pleas court lacks jurisdiction to modify by CPO a juvenile court's prior allocation of parental rights). Some authority from this Court tends to support the same argument. *See Stanton v. Guerrero*, 2d Dist. Montgomery No. 14407, 1994 WL 472104, *3 (Aug. 31, 1994) (Grady, J.. concurring) (agreeing that domestic relations court did not err by denying petition for supervised visitation, not for reason stated by majority but because that court could not modify visitation rights previously determined by juvenile division of same court).[2]

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[2] A different decision of this Court that Father cites is inapposite, as no jurisdictional issue under R.C. 3113.31(E)(1)(d) was discussed. *See Bowers v. Bowers*, 2d Dist. Darke No. 1655, 2005-Ohio-3327.

{¶ 32} We conclude that the proposition for which Father advocates does not apply in this case, however, and we find it unnecessary to consider the merits of the proffered decisions. In Champaign County, the Common Pleas Court's "Domestic Relations-Juvenile-Probate Division" functions as a single "Family Court," with the same two judges presiding over all domestic relations, juvenile, and probate matters. These are not two different courts; rather, they are one and the same court, although it is referred to by different names (Family Court and Domestic Relations-Juvenile-Probate Court) in various contexts for reasons that are unclear to us. Indeed, the record from the trial court includes a February 6, 2018 journal entry transferring this matter from one judge to the other, "[i]n keeping with [that] Court's philosophy of one Judge one family." Moreover, the record further reflects that the name of the judge who issued the CPO also appears on the court's addendum to Mother and Father's parenting agreement.

{¶ 33} Given that the trial court that entered the CPO at issue was the same court that presided over Father's 2013 parenting agreement with Mother, Father's assignment of error based on the trial court's purported lack of jurisdiction is overruled.

Conclusion

{¶ 34} The judgment of the trial court will be affirmed.

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HALL, J. and TUCKER, J., concur.

Copies mailed to:

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