[Cite as *D.G. v. M.G.G.*, 2019-Ohio-1190.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

D.G.,

Petitioner-Appellant,

v.

M.G.G.,

Respondent-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 17 MA 0165

Motion for Reconsideration

BEFORE:
Gene Donofrio, Cheryl L. Waite, David D'Apolito, Judges.

JUDGMENT:
Denied

D.G., Pro-se, for Petitioner-Appellant, and

Atty. David Betras, Atty. Jennifer Reghetti, Betras, Kopp & Harshman, LLC, 6630 Seville Drive, Canfield, Ohio 44406, for Respondent-Appellee.

Dated:
February 20, 2019

PER CURIAM.

{¶1} Petitioner-appellant, D.G., has filed an application for reconsideration asking this court to reconsider our decision and judgment entry in which we affirmed the judgment of the Mahoning County Common Pleas Court, Domestic Relations Division, denying her motion for contempt and motion to modify or renew a protective order. *D.G. v. M.G.G.*, 7th Dist. No. 17 MA 165, 2018-Ohio-5394.

{¶2} App.R. 26, which provides for the filing of an application for reconsideration in this court, includes no guidelines to be used in the determination of whether a decision is to be reconsidered and changed. *Matthews v. Matthews*, 5 Ohio App.3d 140, 143, 450 N.E.2d 278 (10th Dist.1981). The test generally applied is whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not at all or was not fully considered by us when it should have been. *Id.* An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court. *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). Rather, App.R. 26 provides a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law. *Id.*

{¶3} Appellant takes issue with our determination that the trial court did not err in denying her motion for contempt against respondent-appellee, M.G.G. In appellant's first assignment of error, she argued that her motion for contempt against appellee for violating the protection order should have been granted because appellee was at the funeral for their aunt at the same time appellant was at the funeral. We affirmed the trial court's judgment that a technical violation of a protection order is not automatically grounds for contempt when mitigating factors are present. *D.G.*, 2018-Ohio-5394 at ¶ 20-23.

{¶4} Appellant now contends that our ruling is contrary to *State v. Lucas*, 100 Ohio St.3d 1, 2003-Ohio-4778, 795 N.E.2d 642. *Lucas*, however, is inapplicable here.

{¶5} In *Lucas*, Lucas was convicted of, among other things, complicity to violate a protection order. *Id.* at ¶ 1. Lucas had a protection order against her ex-husband but

invited her ex-husband to her house to celebrate the birthday of one of their children. *Id.* After a physical altercation between Lucas and her ex-husband, Lucas was charged with complicity to violate a protection order. *Id.* Lucas filed a motion to dismiss the complicity charge, which was denied. *Id.* at ¶ 2. Lucas then pled no contest to the complicity charge. *Id.* Lucas appealed the denial of her motion to dismiss to the Fifth District arguing that because she was the petitioner of the protection order, it was improper to charge her with complicity to violate the order. *Id.* at ¶ 3. The court of appeals affirmed the trial court's ruling and certified a conflict for the Ohio Supreme Court. *Id.* at ¶ 3-5. The Ohio Supreme Court reversed the Fifth District and held that "[p]rotection orders are about the behavior of the respondent and nothing else." *Id.* at ¶ 39.

{¶6} Appellant argues that *Lucas* bars the trial court from considering the actions of the petitioner of a protection order. But *Lucas* is distinguishable. *Lucas* was a criminal case brought against the petitioner of a protection order for complicity to violate that order. In this case, appellant was never charged with such a crime. Instead, she brought a civil motion for contempt against appellee.

{¶7} Next, appellant argues that we did not correctly apply R.C. 3113.31(E)(4) and R.C. 3113.31(E)(7)(a) in our opinion. R.C. 3113.31(E)(4) prevents courts from issuing protection orders that restrict a petitioner from doing an act except in certain circumstances. R.C. 3113.31(E)(7)(a) states that a protection order cannot be waived or nullified by invitation to the respondent from the petitioner. But neither the trial court nor this court held that appellant was restricted from doing any act. Likewise, neither the trial court nor this court held that the protection order was waived or nullified. We held that the trial court's judgment denying the motion for contempt was not an abuse of discretion when a technical violation of a protection order was committed but mitigating factors were present. *D.G.* at ¶ 22.

{¶8} Next, appellant argues that it was error for this court to distinguish *State v. Bombardiere*, 3d Dist. No. 14-06-27, 2007-Ohio-1537, because it was a criminal case and this is a civil case. *D.G.* at ¶ 17-18. *Bombardiere*, however, is inapplicable.

{¶9} *Bombardiere* is not distinguishable just because it is a criminal case. It is distinguishable because the issues addressed were: the sufficiency of the evidence, the

manifest weight of the evidence, and the constitutionality of the relevant statute. None of those issues are applicable in this case.

{¶10} Next, appellant factually challenges the trial court's holding that a provision in the original protection order allowed appellee to be at appellant's house upon 24 hours of notice. Appellant argues that this provision was relied on by the trial court when it denied her motion for contempt. Appellant argues that the provision was not there because she was comfortable being in appellee's presence, but to give her time to leave the house prior to appellee's arrival. However, this argument lacks merit.

{¶11} This provision was only one of the mitigating factors the trial court cited when it denied appellant's motion for contempt. *D.G.* at ¶ 20. Moreover, there is nothing in the record to support appellant's allegation that the trial court's interpretation of the provision was error.

{¶12} Next, appellant argues that we overlooked evidence in support of her motion for contempt that appellee violated the protection order. Specifically, a birthday card appellant received from appellee's girlfriend. Appellant urges us to consider this birthday card.

{¶13} But we did address this birthday card. The birthday card was the subject of appellant's fourth assignment of error. We overruled this assignment of error because appellant failed to comply the local rule that governed its consideration. We did not fail to consider this argument as appellant alleges. *D.G.* at ¶ 43-48.

{¶14} Appellant also takes issue with our determination that the trial court's ruling denying her motion to renew the protection order was proper. In appellant's second assignment of error, she argued that because she was still fearful of appellee, her motion to renew the protection order should have been granted. *D.G.* at ¶ 25. We held that the trial court did not abuse its discretion in denying the motion to renew because there was no new event of domestic violence or a threat of domestic violence. ¶ 32.

{¶15} Appellant, as in her appellate brief, again argues that *Woolum v. Woolum*, 131 Ohio App.3d 818, 723 N.E.2d 1132 (12th Dist.1999), and *Eichenberger v. Eichenberger*, 82 Ohio App.3d 809, 613 N.E.2d 678 (10th Dist.1992) allow protection orders to be renewed due to pre-existing fears of a respondent. *Woolum* and *Eichenberger*, as we stated in our opinion, are inapplicable.

{¶16} In *Woolum* and *Eichenberger*, pre-existing fear was accompanied by a threat of domestic violence that occurred after a protection order was issued. Pre-existing fear coupled with new threats of domestic violence warranted the renewal of those protection orders. In the present case, we held that because there was no new evidence of domestic violence or a threat of domestic violence, *Woolum* and *Eichenberger* were distinguishable. *D.G.* at ¶ 29-32.

{¶17} Based on the above, appellant has not called to our attention an obvious error in our decision nor has appellant raised an issue for our consideration that was either not at all or not fully considered by us when it should have been.

{¶18} For the reasons stated above, appellant's application for reconsideration is hereby denied.

JUDGE GENE DONOFRIO

JUDGE CHERYL L. WAITE

JUDGE DAVID D'APOLITO

NOTICE TO COUNSEL

This document constitutes a final judgment entry.