[Cite as *Holland v. Garner*, 2010-Ohio-2963.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

ERICKA HOLLAND,	:	
Petitioner-Appellee,	:	CASE NO. CA2009-09-226
	:	O P I N I O N
- vs -		6/28/2010
	:	
STEVEN GARNER,	:	
Respondent-Appellant.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DV09070912

Ericka Holland, 11932 Deerhorn Drive, Cincinnati, Ohio 45215, petitioner-appellee, pro se

James J. Whitfield, 2600 Victory Parkway, Cincinnati, Ohio 45206, for respondent-appellant

BRESSLER, P.J.

{¶1} Respondent-appellant, Steven Garner, appeals the decision of the Butler County Court of Common Pleas, Domestic Relations Division, granting a civil protection order in favor of petitioner-appellee, Ericka Holland.

{¶2} On July 7, 2009, appellee filed a petition for a domestic violence civil protection order ("DVCPO"), alleging that appellant has a violent history, recently bit her, and threatened that he could "have her whenever he wants." Appellee further alleged

that appellant, the father of appellee's child, attempted to use the child to obtain the address of appellee's husband's residence and threatened to spank the child if she would not show appellant where appellee lived. On that date, the trial court issued an ex parte civil protection order.

{¶3} After an evidentiary hearing on August 7, 2009, the trial court issued a DVCPO. The trial court held an additional hearing on March 11, 2010 and modified the DVCPO. Appellant appeals the trial court's decision, raising the following assignment of error:

{¶4} "THE TRIAL COURT ERRED IN GRANTING APPELLEE'S PETITION FOR DOMESTIC VIOLENCE CIVIL PROTECTION ORDER AS SUCH WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND AGAINST THE TRIAL COURT'S DISCRETION."

{¶5} In his sole assignment of error, appellant challenges the DVCPO. Appellant argues that appellee provided no credible evidence to the trial court that an incident of violence occurred or that appellee had a reasonable fear of imminent harm. Appellant claims the trial court granted the DVCPO solely on evidence of past acts.

{¶6} In reviewing the issuance of a protection order, the standard employed by an appellate court is contingent upon the nature of the challenge to the order. *Tabor v. Palacio*, Butler App. No. CA2007-01-002, 2008-Ohio-349, ¶17, quoting *Abuhamda-Sliman v. Sliman*, 161 Ohio App.3d 541, 2005-Ohio-2836, ¶9. Because R.C. 3113.31 expressly authorizes courts to fashion protection orders that are suited to the circumstances of a case, a trial court's decision on the scope of a protection order will not be overturned absent an abuse of discretion. *Ferris v. Ferris*, Clermont App. No. CA2005-05-043, 2006-Ohio-878, ¶26.

{¶7} However, a dispute regarding whether a protection order should have been

granted at all requires a different standard of review. *Tabor* at ¶17. This is because the resolution of a challenge to the issuance of a protection order depends upon whether the petitioner has shown by a preponderance of the evidence that the petitioner, or the petitioner's family or household members, are in danger of domestic violence. Id. Therefore, an appellate court addressing such a challenge must determine whether there was sufficient, credible evidence to support a finding that the respondent engaged in acts or threats of domestic violence. Id. at ¶18.

{¶8} "Under this 'highly deferential standard of review,' an appellate court does not decide whether it would have come to the same conclusion as the trial court. * * * Rather, the reviewing court is required to uphold the judgment so long as the record, as a whole, contains some evidence from which the trier of fact could have reached its ultimate factual conclusions. * * * The appellate court must be guided by a presumption that the trial court's factual findings are correct since the trial judge 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.'" *McGuire v. Sprinkle*, Warren App. No. 2006-06-069, 2007-Ohio-2705, ¶19. (Internal citations omitted.)

{¶9} Appellant is correct in arguing that in order to grant a civil protection order, past acts alone are not enough and there must be some evidence of current domestic violence. See *McGuire* at ¶22. "While it is true that past acts may be used to establish a genuine fear of violence in the present situation, there must be an indication that the person was fearful in that present situation. Merely finding that there were past acts of domestic violence, without anything more, is not enough to warrant a present civil protective order." *Solomon v. Solomon*, 157 Ohio App.3d 807, 2004-Ohio-2486, ¶27. See, also, *Lain v. Ververis* (Oct. 18, 1999), Preble App. No. CA99-02-003.

{¶10} According to the record, in granting the DVCPO, the trial court stated, "[o]kay, look, just based on past history alone, sir, I'm going to grant the [DVCPO] as it relates to [appellee]." While it is troublesome the trial court's statement indicates it based its decision on past acts alone, we find sufficient, credible evidence in the record to support a finding that appellant engaged in acts or threats of domestic violence. At the evidentiary hearing, appellee testified she felt threatened by appellant's statements that "he could do what he wants, when he wants with [her]." Appellant explained she felt threatened by this statement because he has hit her in the past, recently bit her, and used the parties' three-year-old child in an attempt to find appellee's residence after appellee took measures to keep her address confidential.

{¶11} Appellant's assignment of error is overruled.

{¶12} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.