

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

TONYA BALTES,	:	O P I N I O N
Petitioner-Appellee,	:	
- VS -	:	CASE NO. 2011-T-0117
ARTHUR BALTES,	:	
Respondent-Appellant.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Domestic Relations Division, Case No. 2011 DV 0099.

Judgment: Affirmed.

Elsa Reale Gottfried, Community Legal Aid Services, Inc., 160 East Market Street, Suite 225, Warren, OH 44481 (For Petitioner-Appellee).

Arthur Baltes, pro se, 497 State Route 534, Newton Falls, OH 44444 (Respondent-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Arthur Baltes, appeals from the decision of the Trumbull County Court of Common Pleas, Domestic Relations Division, granting his estranged wife, Tonya Baltes, a Domestic Violence Civil Protection Order (“DVCPO”) until October 7, 2016. Mr. Baltes argues that the trial court was presented with insufficient competent, credible evidence to support the grant of a DVCPO, and that the trial court erred in adopting the magistrate’s decision to do so.

{¶2} We find that Mrs. Baltes submitted more than sufficient competent, credible evidence to support the grant of a DVCPO, and that the trial court did not err in adopting the magistrate's decision. Because we find Mr. Baltes' appeal without merit, we affirm the decision of the Trumbull County Court of Common Pleas, Domestic Relations Division.

Substantive Facts and Procedural History

{¶3} Mr. and Mrs. Baltes were married in April 1991 and legally separated in April 2010. In September 2011, Mrs. Baltes filed a petition for a DVCPO against Mr. Baltes. She stated in her petition that Mr. Baltes had thrown her up against a wall after an April 2010 argument between them escalated to the point that she was told to move out of the marital home. She further recounted various instances of verbal abuse and intimidation by Mr. Baltes, as well as an incident in 2004 that took a physical turn, resulting in Mrs. Baltes leaving the marital home for an extended period of time, and being covered in bruises. The matter was set for an evidentiary hearing before a magistrate in early October 2011.

Lead Up to the 2004 Incident

{¶4} Mrs. Baltes described how, during the early stages of their marriage, Mr. Baltes would descend into violent rages. She testified that he had punched holes in the wall, awoken her in the middle of the night by throwing ice water on her, and thrown her out of bed, along with the mattress, and jumped up and down on the mattress while it lay atop her. She also recounted an incident where Mr. Baltes became so angry that he punched a glass picture frame, causing it to shatter all over their infant child.

{¶5} Other than the glass picture frame incident, Mr. Baltes either denied engaging in most of the behaviors Mrs. Baltes described, or stated that he could not recall having acted as she testified.

The 2004 Incident

{¶6} Mrs. Baltes testified that the violence culminated in April 2004, when Mr. Baltes became so enraged that he picked her up while she was sitting in a chair, forcibly carried her to the edge of their deck, and began to choke her while she screamed and yelled for him to stop. Mr. Baltes said to her, “You think you are going to leave me, bitch?”

{¶7} Mr. Baltes then proceeded to hang Mrs. Baltes, upside down, over the railing of the deck. Mrs. Baltes testified that she believed she was going to die. She stated that she did not actually remember him letting her up, but did remember running through the house and grabbing her cell phone. She tried to sequester herself in the bedroom, but Mr. Baltes burst in and took her cell phone, threw it against the wall, and told her she was not going to call the cops.

{¶8} Mrs. Baltes tried to exit the bedroom, but he kept throwing her back up against the bed or across the floor. She described how, at one point, Mr. Baltes was sitting on her, shoving her face in the ground, and saying “If I go down, bitch, you are going with me.” At that point, Mr. Baltes grabbed her wrists and made her smack him in the face stating, “We’ll see who the cops take.”

{¶9} Eventually, after continuing to throw her around, Mr. Baltes permitted Mrs. Baltes to leave the bedroom, and she asked if she could call her mother. He allowed

her to make a call to her mother, but no one else, as long as she agreed not to call the police and press charges.

{¶10} After Mrs. Baltes called her mother, she sat on the couch. Mr. Baltes, still revved up, picked up the couch and threw her to the floor. She testified that she then stood up and asked him, “‘what do you want from me?’ * * * And that’s when he hauled off and he punched me in the shoulder * * *.” She then huddled next to the door waiting for her parents to arrive and take her back to their home.

{¶11} Three days later, Becky Peace, a family friend and advocate with the Rape Crisis Center, came to their home and photographed the bruising that had appeared all over Mrs. Baltes’ body. Ms. Peace took the stand to describe her role in assisting Mrs. Baltes and to corroborate the existence of the bruising.

{¶12} Mr. Baltes, when asked about this incident on cross-examination, initially denied it. But, when asked about it by his own attorney, he stated, “Do I deny it? No, I guess, you know, I can’t – I can’t say I didn’t do it. I can’t say I did it. Does that make any sense?” He was unable to provide any coherent alternative narrative for what occurred that day.

Reconciliation and Eventual Separation

{¶13} After a six-month separation, during which Mrs. Baltes remained with her parents, the couple reconciled, and Mrs. Baltes moved back into the marital residence. She stated that the violence and intimidation began again soon thereafter, and included Mr. Baltes punching objects, throwing mattresses, and shutting off utilities. In April 2010, the couple fought so seriously that Mrs. Baltes was told to move out. She stated

that as she was gathering her things to leave, Mr. Baltes threw her up against a wall. Mrs. Baltes left that day and never returned to the marital home.

Continued Intimidation

{¶14} Since separating, Mrs. Baltes testified that Mr. Baltes has continued to place her in fear of physical harm. She stated that he has stalked her and threatened her to the point that she has had his number blocked from her phone. Mrs. Baltes described an incident, which occurred in August 2011, at a high school football game where their daughter was cheering. She stated that Mr. Baltes sought her and her boyfriend out at the top of the bleachers, sat down with them, and engaged in aggressive and intimidating behavior, taunting them. Another incident in August 2011 occurred when Mr. Baltes ran Mrs. Baltes off the road with his truck, scaring her tremendously. Mrs. Baltes also described an incident in a parking lot, just after a divorce pre-trial hearing, during which Mr. Baltes, in his car, approached Mrs. Baltes as she was parked in her car, and stated that he was going to “bury” her, yelling vulgarities. Other acts of intimidation described by Mrs. Baltes include driving by her slowly in September 2011 and giving her what she described as the “death stare,” and honking his car horn excessively and “flipping her off” as he approached and departed from her residence after he had spent time with their daughter.

{¶15} Mr. Baltes was unable to provide any insight into these alleged incidents, at times outright denying them, and at other times merely stating that he had no recollection of whether he committed the acts or not.

{¶16} In his own defense, Mr. Baltes produced a letter written by Mrs. Baltes in 2008, in which she expressed her continued affection for him and that she would not

trade a minute of their marriage, despite some years being “rocky.” He also pointed out that they reconciled after the 2004 incident, and that she never called the police or filed charges against him for any of the alleged violence.

{¶17} After the hearing, the magistrate issued a decision supporting the issuance of a DVCPO. Mr. Baltes filed timely objections to the magistrate’s decision, which were overruled by the trial court. The trial court upheld the issuance of a five-year DVCPO. Mr. Baltes filed a timely notice of appeal, and now brings the following assignment of error:

{¶18} “The trial Court erred in adopting the Magistrate’s Decision granting a ‘domestic violence’ civil protection order to Appellee, Tonya Baltes and against Appellant, Arthur Baltes.”

Standard of Review

{¶19} “On appeal, a trial court’s adoption of a magistrate’s decision will not be overruled unless the trial court abused its discretion in adopting the decision.” *Brown v. Gabram*, 11th Dist. No. 2004-G-2605, 2005-Ohio-6416, ¶11, citing *Lovas v. Mullett*, 11th Dist. No. 2000-G-2289, 2001 Ohio App. LEXIS 2951, *5-6 (July 29, 2001). As this court recently stated, the term “abuse of discretion” is one of art, “connoting judgment exercised by a court, which does not comport with reason or the record.” *State v. Underwood*, 11th Dist. No. 2008-L-113, 2009-Ohio-2089, ¶30, citing *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). The Second Appellate District also recently adopted a similar definition of the abuse-of-discretion standard: an abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black’s Law Dictionary

(8 Ed.Rev.2004) 11. When an appellate court reviews a pure issue of law, “the mere fact that the reviewing court would decide the issue differently is enough to find error (of course, not all errors are reversible. Some are harmless; others are not preserved for appellate review). By contrast, where the issue on review has been confined to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error.” *Id.* at ¶67.

Evidence in Support of Magistrate’s Decision is Abundant

{¶20} “The burden of proof in the trial court upon a petitioner for a civil protection order is by a preponderance of the evidence.” *Cauwenbergh v. Cauwenbergh*, 11th Dist. No. 2006-A-0008, 2007-Ohio-1070, ¶20, citing *Felton v. Felton*, 79 Ohio St.3d 34 (1997), paragraph two of the syllabus. A review of the hearing transcript reveals that Mrs. Baltes’ evidence exceeds a preponderance measure. “The decision to issue a civil protection order lies within the sound discretion of the trial court.” *Hoyt v. Heindell*, 191 Ohio App.3d 373, 2010-Ohio-6058 (11th Dist.), ¶39, citing *Maglionico v. Maglionico*, 11th Dist. No. 2000-P-0115, 2001 Ohio App. LEXIS 5053, *4 (Nov. 9, 2001).

{¶21} The trial court issued a DVCPO pursuant to R.C. 3113.31, which provides, in part: “‘Domestic violence’ means the occurrence of one or more of the following acts against a family or household member:

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

{¶23} “(b) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 [2903.21.1] or 2911.211 [2911.21.1] of the Revised Code;

{¶24} “(c) Committing any act with respect to a child that would result in the child being an abused child, as defined in section 2151.031 [2151.03.1] of the Revised Code;

{¶25} “(d) Committing a sexually oriented offense.”

{¶26} A review of the hearing transcript reveals ample evidence offered by Mrs. Baltes to support the trial court’s decision to grant the DVCPO. The only three witnesses to take the stand were Mrs. Baltes and Ms. Peace, in support of the protection order, and Mr. Baltes, in his own defense.

{¶27} Mrs. Baltes provided substantial evidence of a history of violence, punctuated by disturbing photographs of bruising all over her body, which she attributed to Mr. Baltes’ violence toward her. It is well-established law that a petitioner for a DVCPO may rely on past acts of the respondent to establish a genuine fear of violence in the present situation. *See Solomon v. Solomon*, 157 Ohio App.3d 807, 2004-Ohio-2486 (7th Dist.). *See also Dague v. Dague*, 11th Dist. No. 2011-L-076, 2012-Ohio-1582.

{¶28} Mrs. Baltes then described ongoing instances of intimidation and threats, which produced in her a genuine fear of imminent bodily harm. These events took place throughout the months of August and September 2011, just before Mrs. Baltes filed for the DVCPO on September 28, 2011. When asked on cross-examination how she could feel threatened by acts such as aggressive horn honking, Mrs. Baltes summed up her ongoing experience succinctly, stating “I guess, a normal person that didn’t go through everything I went through, probably wouldn’t be threatened by it. * * * For me, its threatening to me because I feel it’s another form of intimidation.” Combine Mrs. Baltes’ prior experience of physical abuse at the hands of her estranged husband,

with current statements that he is going to “bury” her, attempts to run her off the road, and other taunting and aggressive statements, as well as the 2010 incident in which he threw her against a wall, we cannot say the magistrate abused its discretion in finding that Mrs. Baltes had a genuine fear of imminent harm.

{¶29} In his defense, Mr. Baltes was unable to convincingly refute the evidence offered by Mrs. Baltes. Throughout his testimony, Mr. Baltes either denied having committed the acts alleged, or expressed an inability to remember whether he had or had not so acted. On appeal, Mr. Baltes argues that the magistrate disregarded evidence of the parties’ reconciliation and the 2008 letter by Mrs. Baltes declaring her affection for him and wish not to have changed a thing between them. We cannot say this evidence was outrightly disregarded; instead, it is likely the evidence was simply not persuasive enough to change the outcome of the hearing.

{¶30} Mr. Baltes further argues that Mrs. Baltes failed to provide any corroborating evidence of the most recent allegations of threatening behavior. Corroborating evidence, however, was not required. *See Felton, supra*, at 44, fn. 9 (“R.C. 3113.31 does not set forth the types of evidence to be considered by the court, other than to state that the proceeding should be handled as any other civil action, nor does it require any corroboration of the petitioner’s own testimony. R.C. 3113.31(D)”).

{¶31} The magistrate was free to find Mrs. Baltes a more credible witness than Mr. Baltes, and to find the evidence she presented sufficient to meet the burden of proof by a preponderance of the evidence. “The trial court, or magistrate, is in the best position to view the witnesses and observe their demeanor, gestures, and voice inflection in order to assess their credibility and weigh the testimony.” *Hvamb v.*

Mishne, 11th Dist. No. 2002-G-2418, 2003-Ohio-921, ¶18, citing *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77 (1984). Thus, we defer to the trier of fact matters of witnesses' credibility. *Hvamb* at ¶18, citing *Babka v. Babka*, 83 Ohio App.3d 428 (9th Dist.1992). "In the event that the evidence is susceptible to more than one interpretation, a reviewing court must construe it consistently with the trial court's judgment." *Hvamb* at ¶18, citing *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 226 (1994).

{¶32} The record demonstrates that the magistrate's evidentiary findings, independently reviewed by the trial court, are supported by the record, and we find that the trial court did not abuse its discretion in adopting the magistrate's findings given the evidence presented at trial. The trial judge made specific findings of fact stating: "(1) the parties are married and live in Trumbull County, they have three children, two of which are minors. (2) Throughout the marriage, he has physically attacked her, and in April 2010 he threw her out. (3) He continues to threaten her, and she reasonably fears for her safety." Therefore, the assignment of error is without merit, and the judgment of the Trumbull County Court of Common Pleas, Domestic Relations Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.