

[Cite as *J.R. v. S.R.*, 2003-Ohio-5012.]

STATE OF OHIO, NOBLE COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

J.R.,)	
)	
PLAINTIFF-APPELLEE,)	
)	CASE NO. 02 NO 0307
VS.)	
)	AMENDED OPINION
S.R.,)	
)	
DEFENDANT-APPELLANT.)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Common Pleas Court Case No. 202-0098
---------------------------	---

JUDGMENT:	Affirmed
-----------	----------

APPEARANCES:

For Plaintiff-Appellee:	Attorney Michael D. Buell BUELL & SIPE CO., L.P.A. 322 Third Street Marietta, Ohio 45750
-------------------------	---

For Defendant-Appellant:	Attorney Anita L. Newhart NEWHART & MONTERA 227 Third Street Marietta, Ohio 45750
--------------------------	--

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: September 16, 2003

[Cite as *J.R. v. S.R.*, 2003-Ohio-5012.]
DONOFRIO, J.

{¶1} Defendant-appellant, S.R., appeals from a Noble County Common Pleas Court decision issuing a protection order against him.

{¶2} Appellant and plaintiff-appellee, J.R., are husband and wife. They resided in Michigan with their son until September 11, 2002, when appellee took her son and moved to Ohio. Appellee currently lives with her parents in Ohio. Appellant continues to reside in Michigan.

{¶3} On September 8, 2002, an argument broke out between the parties. Appellee testified that during the argument appellant yelled at her, struck her, and threatened bodily harm. Appellee consulted with a lawyer on September 10, 2002, and moved out of the parties' house on September 11, 2002. On September 13, 2002, appellee filed for a protection order against appellant, pursuant to R.C. 3113.31. On the same day, the trial court, after conducting an ex parte evidentiary hearing, issued a temporary protection order.

{¶4} On September 20, 2002, the trial court held a hearing, without appellant present. On September 27, 2002, the trial court issued a civil protection order. However, the court subsequently vacated the order upon the determination that appellant had not been served. On October 24, 2002, after appellant was served, the trial court conducted a full evidentiary hearing with both parties present. On November 15, 2002, the trial court issued a protection order against appellant. Appellant filed his timely notice of appeal on December 16, 2002.

{¶5} Appellant raises one assignment of error, which states:

{¶6} "THE DECISION OF THE TRIAL COURT FINDING THAT APPELLANT HAD THREATENED TO COMMIT ACTS OF DOMESTIC VIOLENCE AGAINST HIS WIFE, APPELLEE, IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶7} Appellant notes that on the day of the argument, appellee left and returned to the marital home twice. Additionally, he notes, appellee waited three days before moving out of the house. Appellant concludes that these were not the actions of a victim who was fleeing an immediate threat. Rather, appellant continues, appellee's actions were calculated and demonstrated that she was not in fear of imminent, serious physical harm.

{¶8} Appellant also argues that the evidence offered by appellee at trial was not credible and contained many lies thereby calling her credibility into question. Appellant

contends that, in her recounting of the events surrounding the argument, appellee failed to give an example of any threat of physical harm. Further, appellant contends, appellee failed to provide any explanation of why, if she had been threatened with physical harm, she left and returned twice that day, or why she remained in the house for three days before leaving permanently. Appellant also cites to several inconsistencies in appellee's testimony, including her recollection of the cause of the argument and the parties' violent history. (Tr. 5, 23, 33-34, 38, 53).

{¶9} We will not reverse a judgment supported by some competent, credible evidence going to all the material elements of the case as being against the manifest weight of the evidence. *Willett v. Felger* (Mar. 29, 1999), 7th Dist. No. 96-CO-40; *Gerijo, Inc. v. Fairfield* (1994), 70 Ohio St.3d 223, 226. Furthermore, in considering whether the judgment is against the manifest weight of the evidence, it is important that this court be guided by the presumption that the findings of the trier of fact are correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. If the evidence is susceptible to more than one interpretation, we must construe the evidence consistently with the trial court's judgment. *Gerijo*, 70 Ohio St.3d at 226.

{¶10} R.C. 3113.31 governs civil protection orders in domestic violence cases. In order to grant a civil protection order, the trial court must find that 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. *Felton v. Felton* (1997), 79 Ohio St.3d 34, paragraph two of the syllabus, citing R.C. 3113.31(D). "Domestic violence" is the occurrence of one or more of the following acts against a family or household member:

{¶11} "(a) Attempting to cause or recklessly causing bodily injury;

{¶12} "(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;

{¶13} "(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 of the Revised Code." R.C. 3113.31(A)(1).

{¶14} An appellate court will not reverse a trial court's decision to issue a protection order absent an abuse of discretion. *Parrish v. Parrish* (2000), 146 Ohio App.3d 640, 646. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. If there is some competent, credible evidence supporting the trial court's judgment, the trial court will not have abused its discretion. *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, syllabus.

{¶15} Appellee argued all three statutory grounds in support of her petition for a protection order. However, the trial court's ruling found only that appellant "has threatened to commit acts of domestic violence against Petitioner, as defined in ORC Section 3113.31." (November 15, 2002 order).

{¶16} Appellant argues there was no evidence that appellee feared imminent harm, and her testimony concerning the events in question was not credible. At trial, appellant testified that he had never threatened appellee. (Tr. 82). He also testified that he had never struck his wife (Tr. 91-91). Additionally, appellee read a letter she wrote to her father in October 2001, where she noted appellant's compassion and sincerity. (Tr. 38). Finally, appellant referred to an e-mail appellee sent to her sister, wherein she stated that she was blessed to have a nice husband. (Tr. 53).

{¶17} But appellee testified that appellant had hit and threatened her with bodily harm on the day in question. (Tr. 5-6). She also testified that appellant told her, " * * I hate you, I want to kill you, I'll take everything from you and I'll take your son away from you." (Tr. 5). Threats of violence can constitute domestic violence if the fear resulting from those threats is reasonable. *Anderson v. Anderson* (Dec. 19, 2001), 7th Dist. No. 00-CA-89, citing *Eichenberger v. Eichenberger* (1992), 82 Ohio App.3d 809, 815. The petitioner's history with the respondent is relevant in considering the reasonableness of the petitioner's fear. *Id.* In this case, appellee testified that, in the past, appellant had repeatedly physically harmed and threatened her. Appellee cited several instances of appellant's verbal and physical violence at the hearing, including episodes of hitting and shoving, kicking and choking, and threatening her. (Tr. 4,6, 8). Finally, appellee testified that to this day, she is afraid of appellant. (Tr. 19).

{¶18} “It is universally accepted that the jury, or the trial court where there is no jury, is the sole judge of the credibility of witnesses and of what weight is to be given their testimony.” *In re Lieberman* (1955), 163 Ohio St. 35, 38. “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that 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.” *Seasons Coal Co., Inc.*, 10 Ohio St.3d at 80. In this case, the trial court had the opportunity to observe the witnesses as they testified. It was able to study their body language, eye contact, voice inflections, and demeanor. Since competent, credible evidence exists on the record that appellant threatened appellee and she was in fear of imminent serious physical harm, we cannot say the trial court abused its discretion in ordering the protection order. Appellant’s assignment of error is without merit.

{¶19} For these reasons, the trial court’s decision is hereby affirmed.

Waite, J., concurs

DeGenaro, J., concurs