[Cite as *Glancy v. Spradley*, 2012-Ohio-4224.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

JOSHUA A. GLANCY,	:	
Petitioner-Appellant,	:	CASE NO. CA2012-02-024
	:	O P I N I O N
- vs -		9/17/2012
	:	
CHARLES SPRADLEY,	:	
Respondent-Appellee.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DV11-10-1040

Gary A. McGee, 332 South Front Street, Hamilton, Ohio 45011, for petitioner-appellant

Charles Spradley, 620 Forest Avenue, Hamilton, Ohio 45015, respondent-appellee, *pro se*

PIPER, J.

{¶ 1} Petitioner-appellant, Joshua Glancy, appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, finding that respondent-appellee, Charles Spradley, did not commit civil domestic violence and denying Glancy's request for a civil protection order.

{¶ 2} Glancy petitioned the court for a domestic violence civil protection order (CPO) against Spradley on behalf of his minor daughter, Bonnie. Spradley is in a relationship with

Bonnie's mother, Kelly Judd. Glancy's mother, Bonnie's paternal grandmother, noticed during a visit with Bonnie that the child had welts across her legs from the knee down. Bonnie told her grandmother that "Charles switched me," and that Charles and her mother "switch me whenever I'm bad." When Glancy returned Bonnie to Kelly and Charles, he inquired as to the cause of the welts, and Charles admitted that he had "switched" her with a piece of plastic because the child had disobeyed twice in kindergarten that week. Kelly told Glancy that she was present when Charles "switched" Bonnie, and that she condoned it.

{¶ 3} Upon petitioning the court for a protection order, an ex-parte CPO was issued, and a final hearing date was set. A magistrate presided over the final hearing, and dismissed the CPO after hearing from the parties and other witnesses. Glancy filed an objection to the magistrate's decision, and such was overruled by the trial court. Glancy now appeals the decision of the trial court dismissing the CPO, raising the following assignment of error.

{¶ 4} THE TRIAL COURT ERRED IN FAILING TO MAKE A FINDING THAT CHARLES SPRADLEY COMMITTED CIVIL DOMESTIC VIOLENCE PURSUANT TO O.R.C. § 3113.031 [sic] AGAINST BONNIE GLANCY.

{¶ 5} Glancy argues in his assignment of error that the trial court erred by failing to find that Spradley's act of "switching" Bonnie constituted civil domestic violence.

{¶ 6} According to R.C. 3113.31,

> (1) “Domestic violence” means the occurrence of one or more of the following acts against a family or household member:
>
> (a) Attempting to cause or recklessly causing bodily injury;
>
> * * *
>
> (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;

In pertinent part, R.C. 2151.031(C) denies "abused child" as one who,

> exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.

{¶ 7} According to the Ohio Supreme Court, "the term 'in loco parentis' means 'charged, factitiously, with a parent's rights, duties, and responsibilities.' A person in loco parentis has assumed the same duties as a guardian or custodian, only not through a legal proceeding." *State v. Noggle*, 67 Ohio St.3d 31, 33 (1993), quoting Black's Law Dictionary (6 Ed.1990).

{¶ 8} A trial court's decision to deny or grant a CPO will not be reversed where such decision is supported by the manifest weight of the evidence. *McBride v. McBride*, 12th Dist. No. CA2011-03-061, 2012-Ohio-2146. When conducting a manifest weight analysis, "the reviewing court weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *Schneble v. Stark,* 12th Dist. Nos. CA2011-06-063, CA2011-06-064, 2012-Ohio-3130, ¶ 67; *Thompkins* at 387.

{¶ 9} After reviewing the record, the trial court's decision dismissing the CPO was supported by the manifest weight of the evidence. The court heard evidence that Kelly Judd has had a relationship with Spradley for two years, and that the two share a residence along with Bonnie. Judd testified that Spradley "switched" Bonnie with her "authority" because she misbehaved in kindergarten two days in a row. Judd also testified that she had "switched" Bonnie in the past but that she could not on this specific occasion because she was attending to her other daughter, a seven-month-old baby. Judd also testified that Spradley

"switched" Bonnie because "we're both her parents so we both take part punishing her."

{¶ 10} During the hearing before the magistrate, Spradley testified that he and Judd are Bonnie's "primary caregivers" and that he and Judd share the "primary duties" of taking care of Bonnie such as bathing her, making sure she goes to school, feeding her, and raising her to be a "healthy, well-adjusted * * * young lady."

{¶ 11} The trial court found Judd and Spradley's testimony credible that Spradley is charged with a parent's rights, duties, and responsibilities. After reviewing the record, we cannot say that the trial court clearly lost its way or created a manifest miscarriage of justice in finding that Spradley was a person in loco parentis because he assumed the same duties as a guardian or custodian.

{¶ 12} R.C. 2151.031(C) states very specifically that a child who has received corporal punishment or other physical disciplinary measure by a person in loco parentis is not an abused child so long as that corporal punishment is not otherwise prohibited by R.C. 2919.22. That section of the statute forbids parents from abusing, torturing, administering corporal punishment that creates a substantial risk of serious physical harm, or repeatedly administering unwarranted disciplinary measures to the child when such disciplinary measure would seriously impair or retard the child's mental health or development.

{¶ 13} The record indicates that Spradley "switched" Bonnie with a piece of plastic approximately 18 inches long, and about the diameter of a coffee stirrer. Judd and Spradley decided to administer the punishment because Bonnie had misbehaved in kindergarten twice in one week. While the "switching" left welts on Bonnie’s legs, the trial court determined that the "switching" was not prohibited by R.C. 2919.22. The record does not indicate that the child was abused, tortured, or that the "switching" created a substantial risk of serious physical harm or would impair or retard Bonnie's mental health or physical development. Therefore, we cannot say that the trial court clearly lost its way and created such a manifest

miscarriage of justice that the judgment must be reversed and a new trial ordered. As such, Glancy's sole assignment of error is overruled.

{¶ 14} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.