

[Cite as *Schmidt v. Hockenberry*, 2009-Ohio-3387.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

KELLIE M. SCHMIDT	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008-CA-34
LARRY G. HOCKENBERRY	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Guernsey County Court of Common Pleas, Case No. 08-DV474

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: July 8, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Cambridge, OH 43275

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Gwin, P.J.

{¶1} Defendant Larry G. Hockenberry appeals a judgment of the Court of Common Pleas of Guernsey County, Ohio which entered a domestic violence civil protection order against him and in favor of plaintiff Kellie M. Schmidt. Appellant assigns one error to the trial court:

{¶2} “I. THE TRIAL COURT ERRED IN GRANTING THE PETITION FOR THE DOMESTIC VIOLENCE CIVIL PROTECTION ORDER AS SUCH WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶3} The magistrate found appellant had committed domestic violence against appellee during their marriage, and has now begun to act in a manner which has put appellee in fear of physical harm. He has made threats of physical violence against appellee’s boyfriend as well. The magistrate granted the civil protection order, and made orders for the children’s telephone contact and visitation with appellant. The magistrate’s order was filed September 30, 2008. On October 14, 2008, appellant filed a letter requesting the judge to conduct a further evidentiary hearing.

{¶4} A decision to grant a civil protection order lies within the sound discretion of the trial court, *Olenik v. Huff*, Ashland App. No. 02-COA-058, 2003-Ohio-4621.

{¶5} A reviewing court will not disturb the trial court's decision as being against the manifest weight of the evidence if the decision is supported by some competent, credible evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279. The Supreme Court has held an abuse of discretion implies the court's attitude is unreasonable, arbitrary, or unconscionable, *Blakemore v. Blakemore* (1983), 5 Ohio

St.3d 217, 450 N.E.2d 1140. We may not substitute our judgment for that of the trier of fact. *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621, 614 N.E.2d 748.

{¶6} Civ. R. 53 (D) states in pertinent part:

{¶7} “(b) Objections to magistrate's decision.

{¶8} “(i) Time for filing. A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ. R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

{¶9} “(ii) Specificity of objection. An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

{¶10} “(iii) Objection to magistrate's factual finding; transcript or affidavit. An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ. R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If

a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

{¶11} *“(iv) Waiver of right to assign adoption by court as error on appeal. Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ. R. 53(D)(3)(b).”*

{¶12} The record indicates appellant did not file formal objections. His letter of October 14th in which he requested the court to take further evidence made no specific objections to any of the magistrate's findings. Further, appellant did not file a transcript of the evidence submitted to the magistrate, or an affidavit if the transcript was not available.

{¶13} Appellant argues the trial court's decision was against the manifest weight of the evidence. We find appellant has waived this issue. Our review of the record reveals no plain error, and we conclude the trial court did not abuse its discretion or commit an error of law in granting the civil protection order.

{¶14} The assignment of error is overruled.

{¶15} For the foregoing reasons, the judgment of the Court of Common Pleas of Guernsey County, Ohio, is affirmed.

By Gwin, P.J.,

Edwards, J., and

Delaney, J., concur

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

HON. PATRICIA A. DELANEY

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