

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STACEY WYKOFF,	:	APPEAL NO. C-070749
	:	TRIAL NO. DV-0700766
Petitioner-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
	:	
JUSTIN HODSKINS,	:	
	:	
Respondent-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Respondent-appellant, Justin Hodskins, appeals the judgment of the Hamilton County domestic relations court issuing a protection order under R.C. 3113.31. The court issued the order after a hearing before a magistrate.

Hodskins and petitioner-appellee, Stacey Wykoff, are the parents of Gabriel Wykoff, who was born on February 26, 2005. In June 2007, Gabriel spent a week with Hodskins at his home in Kentucky. Wykoff testified that when she had picked Gabriel up from the visit, he ran to her, and after they had gotten into the car, he told her, “Daddy spanked my butt.”

Wykoff stated that two days after Gabriel’s return, bruises had appeared on Gabriel’s body. There were bruises on his torso and thighs and also contusions that appeared to be fingerprint marks on his neck. The next day, she took Gabriel to Cincinnati Children’s Hospital, where the injuries were photographed and documented.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Hodskins testified that he had not administered corporal punishment at any time during Gabriel's visit. Family members who had been with Hodskins and Gabriel during the visit testified that they had not witnessed any abuse.

The court granted Wykoff's petition and issued an order forbidding Hodskins from having any contact with Gabriel.

In his first assignment of error, Hodskins argues that the domestic relations court erred in admitting into evidence Gabriel's statements that Hodskins had spanked him. He first argues that the statements were not admissible as excited utterances.

Under Evid.R. 803(2), an out-of-court statement is not excluded as hearsay if it is "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." The timing of the statement is not determinative of whether the exception applies; rather the inquiry is whether the out-of-court statement was the product of reflective thought.²

In this case, the court did not err in admitting the statement. Leaving aside the question whether a child of Gabriel's years would have been capable of reflective thought, we conclude that the statement in this case was trustworthy. Gabriel had suffered fairly severe injuries and had not had the opportunity to speak to his mother about them until the end of the visit with Hodskins. There was evidence that Gabriel had reported the abuse to Wykoff almost immediately after getting into the car, and there was no indication of improper influence or other circumstances that would have cast doubt on the truth of the statement.

And though Wykoff's witnesses were permitted to testify about other statements that Gabriel had made after the initial contact with Wykoff, those statements were cumulative and did not result in unfair prejudice.

² See *State v. Harris*, 163 Ohio App.3d 286, 2005-Ohio-4696, 837 N.E.2d 830, ¶17.

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Hodskins also argues that the admission of Gabriel's statement violated his constitutional right to confront his accusers. But because the Confrontation Clause applies only to criminal cases,³ we find no merit in Hodskins's argument. Accordingly, we overrule the first assignment of error.

In his second and final assignment of error, Hodskins argues that the judgment of the domestic relations court was based on insufficient evidence and was against the manifest weight of the evidence. Specifically, he argues that the evidence did not support the finding that he had been the perpetrator of the abuse.

Judgments supported by some competent, credible evidence must not be reversed as being against the manifest weight of the evidence.⁴

In this case, the court's order was in accordance with the evidence. The appearance of the bruises shortly after Gabriel's visit with Hodskins, coupled with Gabriel's statement that Hodskins had administered corporal punishment, amply supported the court's finding of abuse. We overrule the second assignment of error and affirm the judgment of the domestic relations court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HILDEBRANDT, P.J., PAINTER and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on August 20, 2008
per order of the Court _____
Presiding Judge

³ See, e.g., *Rayner v. Rayner* (June 29, 1994), 2nd Dist. No. 14011.

⁴ *C.E. Morris v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus.