

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

ELIZABETH R. STRICKLEY,	:	APPEAL NO. C-090132
Petitioner-Appellee,	:	TRIAL NO. DVo801460
vs.	:	
WILLIAM PAUL STRICKLEY,	:	<i>JUDGMENT ENTRY.</i>
Respondent-Appellant,	:	

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

Respondent-appellant William Paul Starkey presents on appeal a single assignment of error challenging the judgment of the Hamilton County domestic relations court overruling his objection and adopting a magistrate’s decision granting petitioner-appellee Elizabeth Starkey’s petition for a domestic-violence civil protection order (DVCPO) under R.C. 3113.31.

The record reveals that a magistrate issued an ex parte order on October 28, 2008, based on Elizabeth’s petition. At a subsequent hearing on November 22, 2008, the magistrate told Elizabeth and William, who were both acting pro se, that the case would be continued for a full hearing on December 3, 2008, at 11:00 a.m. so that the magistrate could hear testimony from an investigator with the Hamilton County Department of Job and Family Services (HCJFS). The magistrate told William, however, that if he and his girlfriend wanted to testify, he would listen to

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

their testimony, or they could wait and testify at the hearing on December 3, 2008, when the magistrate would hear from the investigator. William told the magistrate that they wanted to wait until the next hearing. The magistrate then continued the hearing to December 3, 2008.

At the December 3 hearing, the magistrate stated that William had received a copy of the petition and the ex parte order, and that he had signed and received a copy of the continuance order on November 22, 2008, but that he had, nonetheless, failed to appear. The magistrate then heard testimony from Elizabeth and the HCJFS investigator. The following day, the magistrate journalized a decision issuing the protection order.

William filed a timely objection to the magistrate's decision. He argued that the magistrate had erred in granting the DVCPO because no eyewitness testimony or physical evidence had been presented to substantiate the claims of domestic violence. But he failed to file a copy of the transcript from the magistrate's hearing. As a result, the trial court overruled his objection and adopted the magistrate's decision as its own.

In his brief on appeal, William argues that the magistrate erred in failing to grant a continuance for "good cause" under R.C. 3113.31(D)(2) when he failed to appear at the December 3 hearing. But William never sought such a continuance, and the magistrate was under no statutory obligation sua sponte to grant him one. As a result, we find his first issue meritless.

William next argues that the trial court erred when it summarily denied his objection to the magistrate's decision. He argues that the trial court should have permitted him to present evidence to rebut Elizabeth's and the HCJFS investigator's testimony. But at the hearing on his objection, William did not ask the trial court if

he could present additional evidence. He merely argued that the magistrate lacked sufficient evidence to issue the DVCPO. After hearing his arguments, the trial court took the matter under advisement.

In its entry overruling William's objection, the trial court stated that William had failed to file a transcript of the hearing before the magistrate. In the absence of a properly filed transcript, it was incapable of conducting an independent review of the evidence and was, therefore, required to defer to the magistrate's factual findings.<sup>2</sup> The trial court further stated that it had independently reviewed the magistrate's decision to determine whether there was an error of law or other defect on the face of the decision. Finding no error, the trial court overruled William's objection and adopted the magistrate's decision granting the protection order.<sup>3</sup>

Here, the trial court complied with Civ.R. 53. Because the facts found by the magistrate supported the trial court's conclusions, and because the conclusions were not otherwise contrary to law, we overrule William's sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on January 27, 2010

per order of the Court \_\_\_\_\_  
Presiding Judge

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<sup>2</sup> Civ.R.53(D)(3)(b)(iii); *Helton v. Helton* (1994), 102 Ohio App.3d 733, 658 N.E.2d 1; see, also, *Stricker v. Stricker*, 1st Dist. No. C-060435, 2007-Ohio-3309, at ¶12.

<sup>3</sup> Civ.R.53(D)(4)(d).