

February Case Law Review

M.K. v. J.K., 2015 Ohio 434

Procedural History: The parties were in the process of getting divorced. Wife filed a petition for a civil protection order. Wife testified that husband had threatened to kill her. Wife also testified that husband had been violent in the past and had sent her hostile text messages and voice mail in violation of the court's restraining order in the divorce case.

The trial court granted wife's petition and husband appealed.

Synopsis: On appeal, husband argued that the trial court applied the wrong standard of proof. During the hearing, the magistrate, when discussing the merits of a consent agreement, had stated, "she only has to show by a preponderance of the evidence that she felt threatened". However, the journal entry granting wife's petition for a civil protection order the trial court correctly found that by a preponderance of the evidence wife is in danger of or has been a victim of domestic violence. Because the trial court used the correct standard in the journal entry, the Ninth District found that trial court applied the correct standard and denied husband's first assignment of error.

In his second assignment of error, husband argued that the protection order is not based on sufficient evidence. Specifically, husband argued that the trial court had excluded wife's testimony about prior acts of violence because wife had petitioned the court for a protection order after the alleged acts occurred and the trial court found that wife failed to prove she was in danger of domestic violence. Husband argued that wife's testimony should have been excluded under the theory of *res judicata*. However, husband failed to object to wife's testimony at the time of the hearing, thereby waiving any objection.

Decision: Affirmed.