

[Cite as *Daughtry v. Daughtry*, 2011-Ohio-4210.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Bonita Daughtry, :
 :
 Petitioner-Appellee, :
 :
 v. : No. 11AP-59
 : (C.P.C. No. 11DV-01-0040)
 Herbert [L.] Daughtry, : (REGULAR CALENDAR)
 :
 Respondent-Appellant. :

D E C I S I O N

Rendered on August 23, 2011

Herbert L. Daughtry, pro se.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations.

FRENCH, J.

{¶1} Respondent-appellant, Herbert L. Daughtry ("appellant"), appeals the order of the Franklin County Court of Common Pleas, Division of Domestic Relations, which issued an order of protection to petitioner-appellee, Bonita Daughtry ("appellee"), requiring appellant to have no contact with appellee. Because appellant failed to file a transcript of the proceedings before the trial court, we must presume the validity of the court's findings. Accordingly, we affirm.

{¶2} On January 6, 2011, appellee filed a petition for a civil protection order against appellant. The trial court issued an ex parte order and set the matter for hearing.

{¶3} On January 18, 2011, the court held a hearing at which the parties and witnesses appeared and gave testimony. Following the hearing, the court issued the order of protection against appellant.

{¶4} Appellant filed a timely appeal, and he raises the following assignment of error:

The trial court abused its discretion in issuing a Civil Protection Order against Appellant as Appellee failed to establish by a preponderance of credible evidence that she was in fear of imminent, serious physical harm.

{¶5} The decision whether to grant a civil protection order lies within the sound discretion of the trial court. *Parrish v. Parrish*, 95 Ohio St.3d 1201, 1204, 2002-Ohio-1623. We presume that the trial court's findings of fact are correct because the trial court can view the witnesses and weigh the credibility of their testimony. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. Thus, we will not reverse the trial court's decision for being contrary to the manifest weight of the evidence if there is some competent, credible evidence going to the essential elements of the case. *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶6} A person seeking a civil protection order must prove domestic violence or threat of domestic violence by a preponderance of the evidence. *Felton v. Felton*, 79 Ohio St.3d 34, 1997-Ohio-302, paragraph two of the syllabus. R.C. 3113.31(A)(1) defines "domestic violence," in relevant part, as the occurrence of the following act

against a family or household member: "(b) [p]lacing another person by the threat of force in fear of imminent serious physical harm or committing violations of" specific provisions.

{¶7} Here, appellant contends that the evidence before the trial court did not prove that he placed appellee "by the threat of force in fear of imminent serious physical harm." To review this contention, we must review the evidence before the trial court. Unfortunately, however, our record does not contain a transcript of the evidentiary hearing. The duty to provide a transcript for appellate review falls upon the appellant because the appellant bears the burden of showing error by referring to matters in the record. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. When portions of the transcript necessary for resolution of assigned errors are omitted from the record, we have nothing to pass upon and thus, as to those errors, we have no choice but to presume the validity of the lower court's proceedings and affirm. *Id.* In the absence of a transcript, or any alternative form of the record permitted by App.R. 9, we are unable to meaningfully review a claim that the trial court's judgment was against the manifest weight of the evidence. See *In re Guardianship of Guzay*, 10th Dist. No. 02AP-745, 2003-Ohio-5036; *Collier v. Stubbins*, 10th Dist. No. 03AP-553, 2004-Ohio-2819.

{¶8} Appellee filed an affidavit in support of her petition for the order. In that affidavit, appellee states that appellant threatened to kill her. Appellee specifically states: "I am very scared of him," and "I am scared for my safety." The court's order includes a specific factual finding that appellee called four witnesses, all of whom "corroborate her concerns about [appellant's] behavior." Without a transcript, we must

presume the validity of this finding and may only conclude that the trial court did not abuse its discretion by issuing the civil protection order against appellant.

{¶9} For these reasons, we overrule appellant's sole assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.
