

COURT OF APPEALS  
TUSCARAWAS COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

JEFFREY BARANACK	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
	:	Hon. Sheila G. Farmer, J.
Petitioner-Appellee	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. 2010-AP-010004
MICHAEL ROSE	:	2010-AP-020006
	:	
Respondent-Appellant	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Tuscarawas County Court of Common Pleas, Case No. 2009PO040322

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: June 15, 2010

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee

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*Gwin, P.J.*

{¶1} Respondent-appellant Michael Rose appeals two judgments of the Court of Common Pleas of Tuscarawas County, Ohio: the December 10, 2009 judgment which overruled his objections to the magistrate’s decision, and the January 28, 2010 judgment which overruled appellant’s motion to vacate or in the alternative to reconsider the judgment. We have consolidated the cases.

{¶2} Appellant assigns two errors to the trial court:

{¶3} “I. THE TRIAL COURT JUDGE ERRED IN DENYING APPELLANT’S TIMELY OBJECTIONS TO MAGISTRATE’S DECISION.

{¶4} “II. THE TRIAL COURT JUDGE ERRED IN DENYING APPELLANT’S TIMELY MOTION TO VACATE AND/OR MOTION FOR RECONSIDERATION.”

{¶5} Petitioner-appellee in this case is Jeffrey Baranack. On April 22, 2009, appellee filed a complaint requesting a civil stalking protection order against appellant to protect appellee, his wife, and his three children. The same day, a magistrate issued an ex parte civil protection order and set the matter for a full hearing. On June 19, 2009, the magistrate conducted an evidentiary hearing. Twelve days later, on July 1, 2009, the magistrate issued a civil protection order effective until June 19, 2013. The order was signed the same day by a judge. Appellant filed objections to the magistrate’s decision, and the trial court overruled the objections, finding the protection order was a final appealable order. The court also found various other pending motions moot in light of the above.

{¶6} Appellant filed a motion pursuant to Civ. R. 60 (B) to vacate or reconsider the court’s overruling of the objections. In response, the court reiterated its finding the

civil protection order was a final appealable order. The court acknowledged this is in conflict with Civ. R. 53 (D)(3) and (4) and conceded while R.C.2903.214, provides a civil protection order is a final appealable order, it also provides any proceeding pursuant to this section must be conducted in accord with the Rules of Civil Procedure. The court found public policy requires that protection orders to take effect promptly to protect potential victims.

{¶7} The decision whether to grant a civil protection order lies within the sound discretion of the trial court. *Shockey v. Shockey*, Delaware App. No. 08CAE070043, 2008-Ohio-6797, at paragraph 8, citing *Olenik v. Huff*, Ashland App. No. 02COA058, 2003-Ohio-4621, at paragraph 21. This court cannot reverse a decision of the trial court absent an abuse of discretion, which the Supreme Court has defined as connoting the trial court's attitude is unreasonable, arbitrary, or unconscionable. See, e.g. *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 219, 450 N.E. 2d 1140.

{¶8} Because the court has not yet addressed the merits of the case, we review only the procedural aspects at this time.

{¶9} Civ. R. 53 governs the role of magistrates. It provides in pertinent part:

{¶10} “(D) (3)(b) Objections to magistrate's decision.

{¶11} “(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).

{¶12} \*\*\*.

**{¶13}** “(D) (4) Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by court.

**{¶14}** “(a) Action of court required. A magistrate's decision is not effective unless adopted by the court.

**{¶15}** “(b) Action on magistrate's decision. Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate.

**{¶16}** “(c) If no objections are filed. If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision.

**{¶17}** “(d) Action on objections. If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence, but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

**{¶18}** \*\*\*

**{¶19}** “(i) Judgment. The court may enter a judgment either during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections, the timely

filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.”

{¶20} The Rule clearly anticipates a trial court may sign a magistrate’s decision before the time for objections has run, and the Rule provides for this contingency. The trial court is not required to wait for the time for filing objections has expired. *Duganitz v. Ohio Adult Parole Authority*, 92 Ohio St. 3d 556, 2001-Ohio-1283, 751 N.E. 2d 1058. However, the trial court must comply with the Rules of Civil Procedure as set out by the Ohio Supreme Court unless and until the Court directs us otherwise.

{¶21} We find the court erred in not considering the matter on the merits of appellant’s objections.

{¶22} The first assignment of error is sustained.

## II.

{¶23} In his second assignment of error, appellant argues the trial court should have sustained his motion to vacate or reconsider the decision to issue the civil protection order. Appellant filed his motion to vacate on December 21, 2009. On January 11, 2010, before the trial court ruled on the motion, appellant filed his notice of appeal. This divested the court of jurisdiction to rule on his motion to vacate. *Daolia v. Franciscan Health System*, 79 Ohio St. 3d 98, 1997-Ohio-402, 679 N.E. 2d 1084.

{¶24} The second assignment of error is overruled.

{¶25} For the foregoing reasons, the judgment of the Court of Common Pleas of Tuscarawas County, Ohio, is reversed, and the cause is remanded to the court for further proceedings in accord with law and consistent with this opinion.

By Gwin, P.J.,

Farmer, J., and

Wise, J., concur

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER

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HON. JOHN W. WISE

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