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FELTON v. FELTON: A CASE STUDY

JAMES WILSMAN¹

I. INTRODUCTION	579
II. <i>FELTON v. FELTON</i>	580
III. BURDEN OF PROOF	583
IV. CASES APPLYING "PREPONDERANCE OF THE EVIDENCE"	584
A. <i>Thomas v. Thomas</i>	584
B. <i>Deacon v. Landers</i>	585
C. <i>Snyder v. Snyder</i>	586
V. CASES APPLYING "CLEAR AND CONVINCING EVIDENCE"	587
A. <i>Coughlin v. Lancione</i>	587
B. <i>Tischler v. Vahcic</i>	587
C. <i>O'Hara v. Dials</i>	588
D. <i>Moman v. Smith</i>	589
VI. CONCLUSION	589

I. INTRODUCTION

On June 18, 1997, the Ohio Supreme Court issued a decision in the case of *Felton v. Felton* in response to a growing public concern regarding the problems of domestic violence.² The court took a position supportive of the Ohio General

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The author would like to thank Joseph S. Simms, Esq. for his work and contribution to this manuscript.

²*Felton v. Felton*, 679 N.E.2d 672, 680 (Ohio 1996). For a more thorough understanding of domestic violence, see generally Michelle W. Easterling, *For Better or Worse: The Federalization of Domestic Violence*, 98 W.VA. L. REV. 933 (1996); Stacey L. McKinley, Note, *The Violence Against Women After United States v. Lopez: Will Domestic Violence Jurisdiction Be Returned to the States*, 44 CLEV. ST. L. REV. 345 (1996); Note, *New State and Federal Responses to Domestic Violence*, 106 HARV. L. REV. 1528 (1993).

Assembly's efforts and apparent intent to provide a comprehensive civil remedy for victims of domestic violence.³ The court stated that a "preponderance of the evidence" is the appropriate burden of proof required to sustain a Petition for a Protection Order under Ohio's domestic violence statute, section 3113.31 of the Ohio Revised Code.⁴ The *Felton* decision ends years of conflict among Ohio's Appellate Districts as to whether or not the higher burden of proof of "clear and convincing evidence" is required.

II. FELTON v. FELTON

Candie and Roger Felton's five year marriage was dissolved on April 16, 1993.⁵ The Judgment Entry of Dissolution contained a general clause prohibiting each party from annoying, harassing or interfering with the other.⁶ On September 8, 1994, Mrs. Felton, the Petitioner, filed a Petition for Temporary Protection Order pursuant to Section 3113.31 requesting that Roger Felton, the Respondent, be prohibited from assaulting, harassing, threatening or otherwise intimidating Mrs. Felton or her children.⁷ On September 9, 1994, the Domestic Relations Division of the Carroll County Court of Common Pleas issued a Temporary Protection Order pursuant to Mrs. Felton's request and scheduled a full hearing pursuant to Section 3113.31 on September 15, 1994.⁸

Roger Felton, the Respondent, requested a continuance of the full hearing pending resolution of the criminal domestic violence action. A full hearing occurred on December 20, 1994, in which Petitioner testified regarding Respondent's violent proclivities both during and after the termination of the parties' marriage.⁹ She also presented the testimony of a friend and a family counselor regarding the history of abuse she allegedly suffered.¹⁰

Respondent moved the court to enter a directed verdict at the close of Petitioner's case in chief.¹¹ The trial court, having requested and heard arguments from counsel regarding the appropriate burden of proof to apply, determined the burden to be "preponderance of the evidence".¹² The trial court

³*Id.* at 674.

⁴*Id.* at 680.

⁵*Id.* at 673.

⁶*Id.* at 674.

⁷Petitioner had previously filed a criminal Domestic Violence complaint against Respondent on August 2, 1994, and a Temporary Protection Order had been issued in that action. *Felton*, 679 N.E.2d at 673.

⁸*Id.* at 673.

⁹*Id.* at 673.

¹⁰*Id.* at 673.

¹¹Because the case was tried to the court, rather than a jury, the appropriate motion would have been for a dismissal pursuant to Ohio Civil Rule 41.

¹²*Id.* at 679 N.E.2d at 674.

overruled Respondent's motion for directed verdict, but nevertheless dismissed the action when Respondent rested without presenting any evidence.¹³

On appeal, the court of appeals affirmed the dismissal and determined that the restraining order in the judgment entry of dissolution provided sufficient protection for Petitioner. As a result, the court held that further relief under Section 3113.31 was unnecessary.¹⁴ Discussing two issues in its opinion, the Ohio Supreme Court granted a motion to certify, and thereafter reversed and remanded the case.¹⁵

The first issue was whether the harassment provision of the judgment entry precluded a civil protection order pursuant to Section 3113.31.¹⁶ After reviewing the express language of the statute, the court found that relief under Section 3113.31 was "in addition to, and not in lieu of, any other available civil or criminal remedies."¹⁷ Additionally, the court held the domestic violence statute was enacted and specifically designed to criminalize domestic violence and to authorize trial courts to issue protection orders to ensure the safety of complainants, in contrast to the "no harassment" clause of a judgment entry, which was general in nature and could not be specifically tailored to circumstances in individual cases.¹⁸

The court compared the possible sanctions available under the statute for violating a protection order with the sanctions available for violating a provision of a judgment and further found that the results of violating a protection order are more immediate and consequential than those of violating a court order.¹⁹ The court also addressed the applicable burden of proof to be applied by a trial court in determining whether to issue a protection order under Section 3113.31.²⁰ Noting that the statute was silent regarding

¹³The trial court ruled that Petitioner's case could withstand a motion for directed verdict in that she had established a *prima facie* case that some domestic violence had occurred, but found she had not met her burden of proving by a preponderance of the evidence that she had been the victim of domestic violence, due, in large part, to the fact that Respondent had generally denied Petitioner's allegations in his answer. *Id.* at 674.

¹⁴*Id.* at 674.

¹⁵*Id.* at 674.

¹⁶*Id.* at 674.

¹⁷*Felton*, 679 N.E.2d at 674.

¹⁸*Id.* at 674, 675.

¹⁹OHIO REV. CODE ANN. § 3113.31 (Banks-Baldwin 1997) authorizes and directs law enforcement officials to maintain an index of protection orders for purposes of enforcing them, including a policy for the preferred arrest of violators of a protection order. *Id.* Such relief is not available for a violation of a court order, which by necessity requires court involvement, along with the attendant delay and expense that is associated therewith. *See* OHIO REV. CODE ANN. § 2705.02 (Banks-Baldwin 1997). *See also Felton*, 679 N.E.2d at 676.

²⁰*Felton*, 679 N.E.2d at 677.

appropriate standard, the court recognized that Ohio Courts of Appeals have been divided on the issue.²¹

Courts that apply the "clear and convincing" standard seem to do so because a protection order is analogous to an injunction, and since the relief sought is equitable in nature, rather than in the nature of a money judgment, a higher standard should apply.²²

On the other hand, courts applying the "preponderance of the evidence" standard appear to do so based solely on the language of the statute, which directs the trial court to proceed as in a "normal civil action."²³ The court agreed, and relying on its decision in *Walden v. State*, determined that the General Assembly had, on many occasions specified the "clear and convincing" standard of proof when the higher standard was to apply.²⁴ The court reasoned that the absence of specific language in Section 3113.31 requiring a more stringent standard indicated the General Assembly's intent that the usual civil standard of "preponderance of the evidence" apply.²⁵

Although holding that the lower court had applied the correct standard, the court reversed on other grounds, stating that a general denial in the answer of the Respondent was not sufficient to controvert actual testimony by the Petitioner, because a pleading is not admissible as evidence.²⁶ Therefore, because the Respondent presented no evidence, the Petitioner's evidence was uncontroverted and met the standard of a "preponderance of the evidence."²⁷

In reaching its decision, the court stated that the trial court had improperly required corroborating eye witness testimony and/or medical evidence because domestic violence usually occurs in private and medical treatment is usually not sought. The court held that the requirement of something other than the victim's testimony was, therefore, improper as a matter of law due to the lesser burden of proof.²⁸ Stating that the law gives trial courts decision-making authority, the court concluded that trial courts, therefore, have a duty to carry out the legislative intent to protect victims of domestic violence:

²¹ *Id.*

²² *Moman v. Smith*, No. CA96-05047, 1996 WL 586771, at *1 (Ohio Ct. App. Oct. 14, 1996); *O'Hara v. Dials*, No. 95-044, 1996 WL 38810, at *1 (Ohio Ct. App. Feb. 6, 1996); *Tischler v. Vahcic*, No. 68053, 1995 WL 680928, at *1 (Ohio Ct. App. Nov. 16, 1995); *Coughlin v. Lancione*, No. 91AP-950, 1992 WL 40557, at *1 (Ohio Ct. App. Feb. 25, 1992).

²³ *Deacon v. Landers*, 587 N.E.2d 345 (Ohio 1990); *Thomas v. Thomas*, 540 N.E.2d 745 (Ohio 1988) 44 Ohio; *Snyder v. Snyder*, No. 94-CA 2068, 1995 WL 493998, at *1 (Ohio Ct. App. Aug. 15, 1995).

²⁴ 47 Ohio St.3d 47 (1989).

²⁵ *Felton*, 679 N.E.2d at 678.

²⁶ *Id.* at 678.

²⁷ *Id.* at 679.

²⁸ *Id.* at 679.

[t]he consequences of domestic violence are serious and severe. Protection orders can be an effective tool when used in conjunction with provisions in divorce and dissolution decrees and other separation agreements. Ohio's courts must make themselves aware of the authority they have been granted by the legislation to implement all of the protection orders.²⁹

III. BURDEN OF PROOF

The term "burden of proof" has been described as ambiguous and confusing.³⁰ It has been used in at least two different senses, one being the burden of *producing* evidence, and the other being the burden of *persuading* the trier of fact that enough evidence has been produced to prove an alleged fact by the quantum of evidence demanded by law.³¹ "Burden of proof" has also been defined as the necessity of establishing the existence of a certain fact or set of facts by evidence which preponderates to a legally required extent.³²

A party asserting a claim has the burden of proving it.³³ In civil cases, the burden is usually to persuade the trier of fact by a "preponderance of the evidence," and with respect to certain issues, by "clear and convincing evidence."³⁴

"Preponderance of the evidence" means the greater weight of the evidence.³⁵ A preponderance of the evidence is evidence which is more probable, more persuasive, and of greater probative value.³⁶ A party has not met his burden of proof by a "preponderance of the evidence" if the evidence presented only provides a basis for a guess among different possibilities as to any essential element in the case.³⁷

"Clear and convincing evidence" is a burden of proof greater than that required in civil cases applying a "preponderance of the evidence" standard, but less than that required in criminal cases, which require "proof beyond a reasonable doubt."³⁸ The term "clear and convincing" means the evidence must

²⁹*Id.* at 680.

³⁰*State v. Robinson*, 351 N.E.2d 88 (Ohio 1976).

³¹*Id.* (quoting Thayer, *The Burden of Proof*, 4 HARV. L. REV. 45 (1890)).

³²*Broadway Christian Church v. Williams*, 394 N.E.2d 339 (Ohio 1978) (citing *Martin v. City of Columbus*, 127 N.E. 411 (Ohio 1920)).

³³*Weishaar v. Strimbu*, 601 N.E.2d 587 (Ohio 1991); *McFadden v. Elmer L. Breuer Transp. Co.*, 103 N.E.2d 385 (Ohio 1952).

³⁴*Robinson*, 351 N.E.2d at 88.

³⁵*Weishaar*, 601 N.E.2d at 587 (citing *State v. Stumpf*, 512 N.E.2d 598 (Ohio 1987)).

³⁶*Beerman v. City of Kettering*, 237 N.E.2d 644 (Ohio 1965).

³⁷*Weishaar*, 601 N.E.2d at 592 (citing *Landon v. Lee Motors, Inc.*, 118 N.E.2d 147 (Ohio 1954)).

³⁸*Household Finance Corp. v. Altenberg*, 214 N.E.2d 687 (Ohio 1986).

produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.³⁹

IV. CASES APPLYING "PREPONDERANCE OF THE EVIDENCE"

A. *Thomas v. Thomas*

In *Thomas*, the court of appeals reversed the trial court's denial of petitioner's request for a temporary protection order and remanded the case because a petition cannot be denied solely on the ground that an action for divorce or dissolution is pending.⁴⁰ Although the pendency of a domestic relations matter is a factor to be taken into consideration, it is not, nor can it be, determinative.⁴¹

Clara Thomas, Petitioner and Carl Thomas, Respondent, were married on May 8, 1976, with one child being born as issue of the marriage.⁴² In January, 1987, Carl Thomas filed for divorce. On January 16, 1987, Clara Thomas sought a Temporary Protection Order, which was granted *ex parte*.⁴³ A full hearing was scheduled for January 23, 1987 at which time Clara Thomas' action was dismissed because the domestic relations case was pending.⁴⁴

In reviewing the lower court's decision, the Court of Appeals compared Section 3113.31 with Civil Rule 75.⁴⁵ The Court found that the purpose of Section 3113.31 was to provide protection to household members against domestic violence, and to provide support and shelter incidental thereto.⁴⁶ The statute provides a broader range of relief, available to a broader range of petitioners. There is no residency requirement and a violation of a protection order can be the basis of a criminal action pursuant to Section 2919.27. Civil Rule 75, on the other hand, was designed to provide financial support and address custody issues in relation to domestic relations actions and is only available to the parties.⁴⁷

The court found that the statutory criteria to be applied by the trial court to determine whether to grant a protection order is the existence or threatened existence of domestic violence. The court found that by dismissing Clara

³⁹*In re Adoption of Holcomb*, 481 N.E.2d 613, 620 (Ohio 1985) (citing *Cross v. Ledford* 120 N.E.2d 118 (Ohio 1954)). See also *Schulz v. Sullivan* 634 N.E.2d 680 (Ohio 1993); *In re Hiatt*, 621 N.E.2d 1222 (Ohio 1993) (citing *Cincinnati Bar Ass'n. v. Massengale*, 568 N.E.2d 1222 (Ohio 1991)).

⁴⁰*Thomas*, 540 N.E.2d at 745 para. 1 of the syllabus.

⁴¹*Id.* at 745.

⁴²*Id.* at 745.

⁴³*Id.* at 746.

⁴⁴*Id.* at 746.

⁴⁵*Thomas*, 540 N.E.2d at 746.

⁴⁶*Id.* at 746.

⁴⁷*Id.* at 746.

Thomas' action solely on the ground that a domestic relations action was pending, the Court had abused its discretion.⁴⁸

B. Deacon v. Landers

Ruth Deacon, Petitioner, filed a request for a protection order on March 15, 1989 against Robert Landers, Respondent, which was granted *ex parte* on that same day. A full hearing was scheduled for March 23, 1989 but was continued until April 20, 1989, at which time Robert Landers, *pro se*, consented to a protection order and orally requested that he be granted the same type of protection against Petitioner.⁴⁹ Although Robert Landers presented no evidence, the trial court, over the objection of Ruth Deacon, granted Robert Lander's request. On April 27, 1989, a Protection Order against both parties was filed. On appeal, the court of appeals reversed and vacated (in part) the trial court's judgment, holding the trial court was obligated, both under Section 3113.31 and due process considerations, to afford Ruth Deacon a proper hearing in order to defend herself against the claims of Respondent before judgment could be entered against her.⁵⁰

In particular, the court found that Section 3113.31, enacted in 1978 to provide civil remedies for victims of domestic violence, only authorizes an *ex parte* order upon the filing of a petition, and continuation of a protection order only subsequent to a hearing.⁵¹ Due process includes notice and the opportunity to be heard.⁵² The court further discussed what is meant by the term "full hearing," deciding that, at a minimum, a full hearing requires the right to present evidence and the right to know and defend against claims by an opposing party.⁵³

Citing *Thomas*, the court found insufficient evidence to support the trial court's decision to grant Respondent's oral request for a protection order, noting that the statutory criteria to be used is the existence or threatened existence of domestic violence.⁵⁴ Because there was no evidence to support the

⁴⁸The Supreme Court cites *Thomas* in *Felton* as authority for its decision that the "preponderance of the evidence" standard is the appropriate burden of proof to apply in civil domestic violence proceedings. *Felton*, 679 N.E.2d at 677. A review of the case, however, fails to demonstrate this proposition but merely indicates the Court of Appeals utilized an "abuse of discretion" standard of review. *Thomas*, 540 N.E.2d at 745.

⁴⁹*Deacon*, 587 N.E.2d at 396.

⁵⁰*Id.* at 397.

⁵¹*Id.* at 398.

⁵²*Voeller v. Neilston Warehouse Co.*, 26 N.E.2d 442 (Ohio 1940).

⁵³*Deacon*, 587 N.E.2d at 398.

⁵⁴*Id.* at 399.

trial court's decision, the court of appeals found that decision to have been an abuse of discretion.⁵⁵

C. *Snyder v. Snyder*

Suana Snyder, Petitioner and Wayne Snyder, Respondent were married on December 27, 1993. On September 15, 1994, Petitioner filed her request for a protection order, and a hearing was held on that same day, with both parties and counsel present. A Temporary Protection Order was issued and a full hearing was scheduled for September 19, 1994, to which Wayne Snyder neither objected, nor requested a continuance.⁵⁶ Thereafter, he filed an Answer to the Petition in which he requested a jury trial.⁵⁷

The full hearing commenced on September 19, 1994, despite Wayne Snyder's objections that he had not been afforded the opportunity to pursue discovery or other pretrial procedures authorized pursuant to the civil rules.⁵⁸ Subsequent to the full hearing, the trial court issued a protection order against Respondent on September 30, 1994, finding he had committed domestic violence by placing Suana Snyder, by threat of force, in fear of imminent and serious physical harm.⁵⁹ Respondent Wayne Snyder appealed.⁶⁰

The court of appeals, however, held that it was not authorized to reweigh the evidence relied upon by the trial court, and that judgments supported by some competent credible evidence going to all essential elements of the case would not be reversed by a reviewing court as being against the manifest

⁵⁵ Again, although the supreme court found that this case applied the "preponderance of the evidence" burden of proof, a review of the case indicates no such discussion, but rather merely notes that the "abuse of discretion" standard of review was applied. *Id.* at 345.

⁵⁶ *Snyder*, No. 94-CA 2068, 1995 WL 493998, at *1.

⁵⁷ *Id.*

⁵⁸ The court of appeals noted that the seven or ten day hearing that is required pursuant to Section 3113.31 is for the benefit of respondents, and due to the serious ramifications of a civil temporary protection order, a hearing to determine the validity of an *ex parte* order must be given priority to avoid constitutional due process problems. *Eichenberger v. Eichenberger*, 613 N.E.2d 678 (Ohio Ct. App. 1992). Respondent, however, never requested a continuance or waived his right to the seven or ten day hearing, nor did he object to the constitutionality of proceeding as scheduled in the lower court. *Id.* The court of appeals, therefore, refused to address Respondent's constitutional arguments. *Id.* at 4.

⁵⁹ *Id.* at 3.

⁶⁰ *Id.* at 3.

weight of the evidence.⁶¹ Here, the court found in the record sufficient competent credible evidence to support the trial court's finding of domestic violence.⁶²

V. CASES APPLYING "CLEAR AND CONVINCING EVIDENCE"

A. *Coughlin v. Lancione*

Mary Coughlin, Petitioner, and Robert Lancione, Respondent, were divorced in 1984, whereupon Mary Coughlin was awarded custody of the parties' two minor children. In the Spring of 1991, Robert Lancione commenced communications with Mary Coughlin which lead to her seeking and obtaining a temporary Protection Order on July 10, 1991. After a full hearing, the trial court issued a protection order on July 19, 1991. Robert Lancione appealed, arguing that there was insufficient evidence to warrant a protection order.

The Court of Appeals agreed, finding that the testimony of Petitioner contained in the record was equivocal and that in order to issue a protection order, the evidence must be "clear and unequivocal" that a petitioner was placed in fear of imminent serious physical harm.⁶³

B. *Tischler v. Vahcic*

On August 16, 1994, Scott Tischler, Petitioner, sought and obtained an *ex parte* protection order against Kimberly Vahcic, Respondent, on behalf of his minor child, Jessica Tischler.⁶⁴ In late August, 1994, after a hearing which occurred over several days, the trial court continued the protection order because it found clear and convincing evidence that domestic violence against the minor child had occurred.⁶⁵ Respondent appealed, but the court of appeals, citing *Deacon* and *Thomas*, found that there existed an "abundance of competent credible evidence" supporting the trial court's finding of domestic violence.⁶⁶

⁶¹*Id.* at 5.

⁶²Although the court states the court of appeals utilized the "preponderance of the evidence" standard, no such language exists in the opinion. *Snyder*, No. 94-CA 2068, 1995 WL 493998, at *1. Rather, the reviewing court applied a burden of proof requiring "competent, credible evidence" and reviewed the trial court's decision using a "manifest weight of the evidence" standard. *Snyder*, No. 94-CA 2068, 1995 WL 493998, at *1. In a concurring opinion, Judge Stephenson, noted the proper standard of review was "abuse of discretion" rather than "manifest weight of the evidence." *Deacon*, 587 N.E.2d at 345.

⁶³*Id.* at 1.

⁶⁴*Tischler*, No. 68053, 1995 WL 680928, at *2.

⁶⁵*Id.* at 3.

⁶⁶The court of appeals, however, also found the trial court lacked jurisdiction pursuant to the terms of Section 3113.31 because a custody proceeding was pending at the time in Juvenile Court. *Id.* at *6.

C. O'Hara v. Dials

Charles Dials, Respondent, appealed the trial court's decision to issue a protection order against him in favor of Marilee O'Hara, Petitioner, arguing the finding of the trial court was against the manifest weight of the evidence.⁶⁷ The court of appeals disagreed, however, and affirmed the judgment of the trial court.⁶⁸

In its opinion, the court noted that a proceeding under Section 3113.31 is civil in nature and different standards of review and standards of proof are to be applied than in a criminal prosecution for domestic violence.⁶⁹ Citing *Thomas*, the court noted that the appropriate standards to be applied in an action brought pursuant to Section 3113.31 are unclear, in that relief under this statute differs substantially from other types of relief available in the domestic relations court.⁷⁰

For example, the court cited *Deacon* and *Thomas* for the proposition that the petitioner has the burden of presenting evidence sufficient to show that domestic violence or the threat thereof has occurred, and that a reviewing court must apply an "abuse of discretion" standard of review.⁷¹

On the other hand, *Eichenberger* was cited for the proposition that the burden upon a petitioner is to provide clear and convincing evidence that domestic violence or the threat thereof has occurred, and that reviewing courts must apply a "manifest weight of the evidence" standard of review to determine if competent, credible evidence exists to support the trial court's finding.⁷²

The court of appeals in this case, however, found that the intended purpose of Section 3113.31 was to authorize trial courts to provide injunctive relief and award temporary support, if necessary.⁷³ The court found the "clear and convincing" standard was required and applied in other civil cases in which injunctive relief was sought. Consequently, the trial courts' decisions in those cases would not be reversed absent an "abuse of discretion."⁷⁴ Thus, the court found that the higher burden of proof and standard of review were appropriate in a case brought pursuant to Section 3113.31 and those standards were satisfied by the evidence presented in the trial court.⁷⁵

⁶⁷*O'Hara*, No. 95-044, 1996 WL 38810, at *1.

⁶⁸*Id.*

⁶⁹*Id.*

⁷⁰*Id.* at 2.

⁷¹See also *Snyder*, No. 94 CA 2068, 195 WL 493998, at *1.

⁷²The court of appeals, also noted that some reviewing courts have applied a hybrid standard of review.

⁷³*O'Hara*, No. 95-044, 1996 WL 38810, at *3.

⁷⁴*Id.* at 2.

⁷⁵*Id.* at 3.

D. Moman v. Smith

On January 22, 1996, Bobby Lee Moman, Petitioner, requested and received an *ex parte* temporary protection order on behalf of his minor child against Karen Smith, Respondent.⁷⁶ On January 31, 1996, a full hearing was conducted after which Bobby Lee Moman's action was dismissed by the trial court.⁷⁷ He appealed, arguing the trial court abused its discretion by excluding hearsay testimony regarding statements made by the minor child.⁷⁸

The court of appeals, citing *Deacon*, found that the decision to grant a protection order rests within the trial court's discretion.⁷⁹ Upon review, the court further defined the issue as whether the trial court "abused its discretion" by determining whether a petitioner had presented "clear and convincing evidence" that domestic violence had occurred.⁸⁰ Hence, the court reviewed the record and found that the testimony by a social worker that no evidence of child abuse existed supported the trial court's decision to dismiss the action.⁸¹

VI. CONCLUSION

Domestic violence is a serious concern requiring a serious response by the General Assembly, courts, and law enforcement officials. The enactment of Section 3113.31 was a powerful step in that direction and an unequivocal statement that domestic violence is unacceptable and unlawful. The civil domestic violence statute goes a long way toward providing victims of domestic violence with remedies and protections above and beyond those afforded by divorce actions and other civil and criminal laws.

In fact, Section 3113.31 is so strong that it is "quasi-criminal" in nature. It is a two-stage proceeding, the first stage of which is *ex parte* in nature in order to afford a victim immediate relief.⁸² It allows for a separate and distinct action providing victims of such violence with immediate relief and protection that would otherwise be unavailable due to the expense and delay of the judicial process. In addition, Section 3113.31 allows for "preferred arrest" policies; it can form the basis of criminal prosecutions; and now, according to the Ohio Supreme Court, it can be invoked without any corroborating evidence whatsoever, whether such evidence be in the form of a medical report, or an observant friend or neighbor.⁸³ By reducing the burden of proof required to

⁷⁶*Moman*, No. CA 96-05047, 1996 WL 586771, at *1.

⁷⁷*Id.*

⁷⁸*Id.*

⁷⁹*Id.* at 2.

⁸⁰*Id.*

⁸¹*Moman*, No. CA 96-05047, 1996 WL 586771, at *2.

⁸²OHIO REV. CODE ANN. § 3113.31 (Banks-Baldwin 1997).

⁸³*Felton*, 679 N.92d at 677.

sustain a petition for a civil domestic violence protection order, the court has all but guaranteed victims of domestic violence the relief that is needed and deserved.

The issue, however, that must be addressed is whether the court has inadvertently violated the constitutional rights of those individuals accused of committing acts of domestic violence. It is undeniable that wrongful accusations of domestic violence are sometimes made for purposes of vengeance or retaliation, or in an effort to gain an advantage in a domestic relations case, and the frequency of unwarranted accusations seems to be increasing. By abrogating the need for corroborating evidence, the Court has, in effect, made it difficult for those individuals who are innocent from protecting themselves against false allegations.