

[Cite as *State v Hess*, 2004-Ohio-534.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY**

STATE OF OHIO

CASE NUMBER 13-03-30

PLAINTIFF-APPELLEE

v.

O P I N I O N

JAMES L. HESS

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: February 9, 2004

ATTORNEYS:

SHANE M. LEUTHOLD

Attorney at Law

Reg. #0070115

Charles R. Hall

Attorney at Law

Reg. #0075925

92 South Washington Street

Tiffin, OH 44883

For Appellant.

KEN EGBERT, JR.

Prosecuting Attorney

Reg. #0042321

Matthew J. Townseond

Reg. #0072549

**71 South Washington Street, Suite 1204
Tiffin, OH 44883
For Appellee.**

CUPP, J.

{¶1} Defendant-Appellant, James L. Hess, appeals a judgment of the Seneca County Common Pleas Court, convicting him of domestic violence in violation of R.C. 2919.25. Hess claims that the trial court erred when it failed to grant either of his two motions for judgment of acquittal. Additionally, he asserts that his conviction was against the manifest weight of the evidence. After reviewing the record, we cannot find error in the trial court's judgment; therefore, we overrule both of Hess' assignments of error.

{¶2} On August 25, 1985, Jeremy Bonham was born to Hess and Tracie Gilchrist. Subsequently, in 1994, Gilchrist had a Maine court terminate Hess' parental rights with regards to Jeremy. In May of 2002, Hess assaulted Gilchrist in her home located in Tiffin, Ohio. Police were dispatched to the scene, transported Gilchrist to the hospital, and apprehended Hess. Hess was indicted on charges of domestic violence and disrupting public services, and he entered a plea of not guilty.

{¶3} At trial, after the state had finished presenting its case in chief, Hess moved for a Crim.R. 29 motion for a judgment of acquittal. The trial court granted Hess' motion with regard to the disrupting public services charge, but did not grant his motion with regard to the domestic violence charge. Hess again made a Crim.R. 29 motion for a judgment of acquittal at the end of the entire trial.

The trial court denied this second motion in its entirety. Thereafter, Hess was found guilty of domestic violence in violation of R.C. 2919.25(A) and sentenced to serve eleven months in prison. From this judgment Hess appeals presenting two assignments of error for our review.

Assignment of Error I

The trial court erred failing to grant Appellant's criminal Rule 29 Motion for a judgment of acquittal made at the end of the State's case and renewed at the end of all the evidence.

{¶4} In his first assignment of error, Hess asserts that the trial court erred in overruling his motions for judgment of acquittal. Specifically, he maintains that the state failed to show he was a family or household member of the victim as required under the Revised Code.

{¶5} "Pursuant to Crim.R. 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt."¹ The *Bridgeman* standard, however, "must be viewed in light of the sufficiency of evidence test[.]"² An appellate court's function when reviewing the sufficiency of the evidence is to determine whether, after viewing the evidence in a light most favorable to the prosecution, any

¹ *State v. Bridgeman* (1978), 55 Ohio St.2d 261, syllabus.

² *State v. Foster* (Sept. 17, 1997), 3rd Dist. No. 13-97-09 unreported, citing *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, superseded by state constitutional amendment on other grounds in *State v. Smith* (1997), 80 Ohio St.3d 89.

rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.³

{¶6} R.C. 2919.25(A) states that no person shall “cause physical harm to a family or household member.” The statutory definition of family or household member includes “[t]he natural parent of any child of whom the offender is the other natural parent.”⁴ In this appeal, Hess does not challenge the evidence proving that he caused Gilchrist physical harm. Therefore, a judgment of acquittal would have been proper only if no reasonable minds could have reached the conclusion that Hess was the “natural parent” of Gilchrist’s son.

{¶7} At trial, Gilchrist testified that Hess had impregnated her and that she had given birth to Jeremy as a result. The state also entered into evidence a Seneca County Juvenile Court journal entry finding that DNA evidence established Hess and Gilchrist as Jeremy’s parents. Further, Hess stipulated that DNA evidence established him as Jeremy’s father. Looking at the evidence presented, it appears to be without question that the state presented sufficient evidence to overcome a judgment of acquittal motion. However, Hess maintains that despite evidence proving he was Jeremy’s biological parent, he should no longer be considered Jeremy’s “natural parent” because his parental rights were terminated in 1994.

³ *Jenks*, 61 Ohio St.3d at paragraph two of the syllabus.

⁴ 2919.25(F)(1)(b).

{¶8} Under Maine law, “[a]n order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child.”⁵ Hess claims that this language destroys all the legal status between parents and children, including the status as the natural parent.

{¶9} The Ohio Revised Code does not define the term natural parent. However, Black’s Law Dictionary defines natural father as, “[t]he man who impregnated the child’s natural mother.”⁶ It is clear from this definition, and a common sense understanding of the terms, that a natural parent is a person who biologically causes a child to come into existence. The Maine statute does not attempt to terminate the biological status of a child’s parent. Rather, it terminates a parent’s legal obligations and privileges. If the Ohio legislature had intended the outcome Hess proposes, it could have used the term “legal parent.” But that was not the language chosen. Instead, the legislature used the adjective “natural.” It is clear that the intent of the statute is to prohibit a child’s biological parent from physically harming the child’s other biological parent.

{¶10} The evidence before us shows that Hess impregnated Gilchrist, that a child was born of this impregnation, and that Hess caused Gilchrist physical harm. Furthermore, we reject Hess’ argument that he is no longer the natural parent of

⁵ 22 M.R.S.A. 4056(1).

⁶ Black’s Law Dictionary (7th Ed. 1999) father.

Gilchrist's child. Accordingly, we find that the evidence was sufficient to overcome Hess' judgment of acquittal motion.

{¶11} In his brief, Hess also argues that Gilchrist should not be considered a family or household member of his because the evidence was insufficient to show that he and Gilchrist had been residing together as spouses. However, we have already found that Hess was the natural parent of Gilchrist's child. Because R.C. 2919.25 only requires that one of the several definitions of a family or household member be met, this argument is moot and we decline to address it.

{¶12} Having found that the evidence is sufficient to prove to reasonable minds that Hess is the natural parent of Gilchrist's child, we overrule his first assignment of error.

Assignment of Error II

The finding of guilt in violation of R.C. 2919.25 is against the manifest weight of the evidence.

{¶13} In his second assignment of error, Hess claims that his conviction was against the manifest weight of the evidence. Hess puts forward essentially the same arguments as discussed above. He claims that the manifest weight of the evidence shows he was not Jeremy's "natural parent" and that he and Gilchrist never cohabited.

{¶14} When an appellate court analyzes a conviction under the manifest weight standard it must review the entire record, weigh all of the evidence and all of the reasonable inferences, consider the credibility of the witnesses and determine whether in resolving conflicts in the evidence, the fact finder clearly

lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.⁷ Only in exceptional cases, where the evidence “weighs heavily against the conviction,” should an appellate court overturn the trial court’s judgment.⁸

{¶15} The evidence produced at trial showed that Hess was the biological father of Jeremy. Hess even stipulated to the results of the DNA test showing Jeremy as his and Gilchrist’s son. After reviewing all of the evidence in the record, we can not say that the trial court clearly lost its way in finding Hess guilty of committing domestic violence. Accordingly, we overrule Hess’ second assignment of error.

{¶16} Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment affirmed.

SHAW, P.J., and BRYANT, J., concur.

⁷ *State v. Thompkins* (1997), 78 Ohio St.3d 380, paragraph two of the syllabus, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

⁸ *Id.*