

[Cite as *K.U. v. M.S.*, 2017-Ohio-8029.]

STATE OF OHIO, MAHONING COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

K. U.,	)	
	)	
PETITIONER-APPELLEE,	)	
	)	CASE NO. 16 MA 0165
V.	)	
	)	OPINION
M. S.,	)	
	)	
RESPONDENT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 16 CV 2437
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JUDGMENT:	Dismissed
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APPEARANCES:	
For Petitioner-Appellee	No brief filed

For Respondent-Appellant	Attorney Janet I. Stich 1799 Akron Peninsula Road Akron, Ohio 44313
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JUDGES:

Hon. Gene Donofrio
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: September 25, 2017

[Cite as *K.U. v. M.S.*, 2017-Ohio-8029.]
DONOFRIO, J.

{¶1} Respondent-appellant, M.S., appeals a Mahoning County Court of Common Pleas decision granting petitioner-appellee, K.U., a civil stalking protection order (CSPO) against appellant.

{¶2} The trial court granted a CSPO in favor of appellee after a full hearing was held on October 12, 2016. Appellant and appellee filed reciprocal petitions for a CSPO against each other on the basis of menacing by stalking. The full hearing was to address both of these petitions. After the full hearing, the trial court granted appellee's petition and denied appellant's petition.

{¶3} Prior to the CSPO action being instituted, appellant and appellee had known each other for approximately one year. The two of them had always been platonic friends with no romantic or sexual relationship between the two of them. Beginning in June of 2016, appellee moved into appellant's house. Prior to appellant and appellee living together, there were no problems between the two.

{¶4} Appellant and appellee lived together for approximately two months. The relationship between the two while they lived together appeared to be fine until July 5, 2016. Appellee testified that on that date, the two of them had a verbal altercation that resulted in both parties breaking various items in appellant's house. Appellee also testified that after this argument, appellant began sending multiple messages and phone calls via phone and Facebook to appellee and appellee's friend, W.W.

{¶5} After the July 5, 2016 fight, appellee testified that she left appellant's home for one night and told appellant to stop contacting her. However, exhibits provided by appellee showed that the two continued to have conversations via phone and/or text message. Appellee returned to appellant's home the following day.

{¶6} According to appellee, she and appellant began to fight frequently during the end of July of 2016. Appellee testified that appellant had almost hit her twice during this period. Appellee claimed that these fights were due to appellant suffering from anxiety and depression. Appellant denied attempting to hit appellee and also testified that he was diagnosed with adjustment disorder with anxiety on

July 22, 2016 due to him living with appellee. At the time of the full hearing, appellant was still taking medications for his diagnosed disorders.

{¶7} Appellee testified that on August 8, 2016, appellant told her, with appellee's son also present, that he had purchased a gun. Appellee testified that this caused her to fear for her life and also caused her concern because she is a convicted felon who was living in a house with a firearm. Appellee testified that she then called the Sebring Police Department to inform them about the series of events. Appellee testified that she began to move out of appellant's home the following day with the assistance of her friend W.W. Appellee testified that on this date, she was using appellant's car to move because her car was having mechanical problems. She then testified that appellant told her that if his car was not returned by the time he came home that he was reporting the car stolen. Appellee testified that she finished moving all of her belongings out of appellant's home except the large furniture on August 9, 2016 and then returned on August 10, 2016 with a U-Haul truck to retrieve the rest of her belongings.

{¶8} Appellee provided documentation to show a series of text messages from appellant beginning the afternoon of August 9, 2016 and continuing until the morning of August 10, 2016. Appellee testified that she arrived with W.W. and another friend at appellant's house on August 10, 2016 to retrieve her furniture. According to appellee, once she attempted to enter the house to retrieve her furniture, appellant grabbed her from behind and threw her down the porch stairs. W.W. and appellee's other friend then called the Sebring Police Department who shortly thereafter arrived at appellant's home. Appellee pressed charges against appellant for assault. At the time of the full CSPO hearing, the assault charge against appellant was still pending in Mahoning County Court No. 3. Appellee testified that she had no contact with appellant between August 10, 2016 and the date she filed her petition for a CSPO.

{¶9} Appellee also testified that throughout the course of the relationship, appellant gave her access to his bank account by giving her a credit or debit card

under appellant's account and also paid various bills on appellee's behalf. Appellee testified she used the card to purchase various items. Appellee testified that after the relationship between the two of them started to deteriorate, appellant gave her various receipts he wanted to be reimbursed for.

{¶10} W.W. testified at the hearing as well and corroborated all of appellee's testimony that he was present for. W.W. added that he witnessed at least one argument over the phone between appellant and appellee. W.W. also added that he feared for appellee's safety due to the issue of appellant owning a gun.

{¶11} Appellant also testified at the full hearing. Appellant clarified that he added appellee to two credit cards of his on July 1, 2016 and subsequently removed her from those cards on August 8, 2016. Appellant also testified that the reason appellee originally came to live in appellant's house was to detox herself from prescription pain killer medications.

{¶12} Appellant's testimony corroborates appellee's testimony regarding many of the events with some deviations. Appellant testified numerous times that appellee filed false reports against him with the police which was one of the grounds appellant was seeking his own CSPO against appellee for. Appellant also claimed during the July 5, 2016 argument that appellee broke items and appeared as if she was going to hit him. Appellant also claimed that during the August 10, 2016 incident, appellee forcefully tried to enter appellant's home and he picked her up and put her down outside of the home. Appellant claimed his witness statement to the Sebring Police Department concerning the August 10, 2016 incident is covered in his blood due to scratches he received from appellee prior to moving her outside of his home.

{¶13} With regards to the multiple messages appellant sent appellee, appellant denies sending some of them and clarifies that many are requests to have a conversation after altercations between the two occurred. Appellant also clarifies that some of the messages were him asking appellee if he should pick up any items from any stores or requesting that appellee repay appellant for past expenses appellant paid on her behalf.

{¶14} On October 14, 2016, the trial court granted appellee's petition for a CSPO. Appellant was ordered to remain at least 500 feet away from appellee, her son, her home, her place of business, and her son's school. Additionally, the CSPO ordered appellant to surrender his firearm. The terms of the CSPO were to last for three years.

{¶15} Appellant timely filed this appeal on October 28, 2016. Appellant now raises four assignments of error.

{¶16} On July 1, 2016, the Rules of Civil Procedure were amended with regards to protection orders. Civ.R. 65.1(G) states:

"Notwithstanding the provisions of any other rules, an order entered by the court under division (F)(3)(c) or division (F)(3)(e) of this rule is a final appealable order. However, a party must timely file objections to such an order under division (F)(3)(d) of this rule prior to filing an appeal, and the timely filing of such objections shall stay the running of the time for appeal until the filing of the court's ruling on the objections."

{¶17} CSPO is a protection order as covered by Civ.R. 65.1. See *Schneider v. Razek*, 8th Dist. No. 100939, 101011, 2015-Ohio-410, ¶ 29 ("As an initial matter, we first consider whether Schneider's appeal is premature due to her pending objections to the trial court's adoption of the magistrate's orders terminating the [civil protection order] and denying Schneider's motion to extend the [civil protection order], which were timely filed under Civ.R. 65.1(F)(3)(d)") appeal not allowed 143 Ohio St.3d 1464, 37 2015-Ohio-3733, 37 N.E.3d 1249. In this case, the full hearing was conducted by a magistrate and the trial court adopted the magistrate's decision pursuant to Civ.R. 65.1(F)(3)(c). As such, Civ.R. 65.1(G) requires a party challenging the decision of a magistrate to timely file objections to the magistrate's decision with the trial court prior to filing an appeal. *J.S. v. D.E.*, 7th Dist. No. 17 MA 0032, 2017-Ohio-____ ¶ 21. Timely objections are defined as those filed within fourteen days of the court's filing of the order. Civ.R. 65.1(F)(3)(d)(i).

{¶18} In this case, the record does not indicate that appellant filed any objection, timely or otherwise, to the magistrate's decision granting a CSPO in favor of appellee against appellant. Without any objection filed, pursuant to Civ.R. 65.1(G), this Court lacks jurisdiction to hear this appeal. Consequently, this appeal is dismissed for lack of jurisdiction.

DeGenaro, J., concurs.

Robb, P.J., concurs.