[Cite as *Joy v. Letostak*, 2015-Ohio-2667.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kevin Joy,	:	
Petitioner-Appellee,	:	
v.	:	No. 14AP-1040 (C.P.C. No. 14CV-11601)
Lisa Letostak,	:	(ACCELERATED CALENDAR)
Respondent-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2015

Lisa Letostak, pro se.

APPEAL from the Franklin County Court of Common Pleas

HORTON, J.

{¶ 1} Respondent-appellant, Lisa Letostak ("Letostak"), pro se, appeals from a judgment of the Franklin County Court of Common Pleas granting a civil stalking protection order ("CSPO") in favor of petitioner-appellee, Kevin C. Joy ("Joy"). Joy did not file a brief in this action. For the following reasons, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On November 12, 2014, Joy requested an ex parte civil stalking protection order. The trial court granted his request. The matter came before the court for a final evidentiary hearing on November 18, 2014. Letostak was served with the ex parte civil stalking protection order and the notice of hearing for this matter on November 12, 2014.

{¶ 3} Joy appeared for the hearing pro se. Letostak did not appear for the hearing. Joy submitted Joy's exhibit No. 1 into the record, which consisted of the following: a two-page typed statement, numerous emails, a study from the Journal of Consulting and Clinical Psychology, Facebook messages, hand-written notes, posts on twitter, a letter

from the Columbus City Attorney's Office, and a copy of a concert ticket. Letostak did not submit any exhibits. Following the hearing, the magistrate issued a three-year CSPO against Letostak, which the trial court approved and adopted. (Magistrate's Decision, 6, 9.) Letostak did not file objections to the magistrate's findings of fact, legal conclusions, or decision. Letostak appeals from the trial court's judgment granting the CSPO.

{¶ 4} Joy and Letostak grew up in the same neighborhood. They became friends after Joy graduated from college. Joy testified that he made it clear to Letostak that he only wanted a platonic relationship with her, but Letostak has been unable to accept Joy's decision. (Magistrate's Decision, 2.) On October 13, 2013, Letostak wrote in an email to Joy: "I think it would be better for both of us if I move on. You've already said you just want to be friends & I really thought that either something would change or it would eventually get easier for me to handle, but it's just as hard as it's ever been. * * * I really tried to move on while still hanging out with you, but it just isn't working." (Joy's exhibit No. 1.) The next day, however, Letostak emailed Joy that "I can never shake the feeling, or just accept that you don't want a relationship I guess." (Joy's exhibit No. 1.)

{¶ 5} On January 30, 2014, Letostak sent Joy several long contentious, accusatory, and angry emails. (Joy's exhibit No. 1.) In response, Joy emailed Letostak that he did not want any further contact with her. (Joy's exhibit No. 1.) Letostak responded to Joy by stating "I think you're a terrible person. * * * I'm genuinely sorry I ever met you; you've made my life worse. I don't want to hear from you or see you ever again." (Joy's exhibit No. 1.) Later that day, Letostak emailed to a group of friends that "[Joy] and I are no longer friends. We've been arguing for over a year and we will definitely never be on friendly terms again." (Joy's exhibit No. 1.) Again, later that day, Letostak emailed Joy a study of criminal personality traits that she implied he shared, and for which she almost immediately apologized and promised "I'm done. I won't email you again." (Joy's exhibit No. 1.) However, approximately seven hours later, Letostak sent an email to Joy which contained multiple statements of "fuck you" and suggested that he was a "sociopath[ ]" and had "several borderline psychopathic personality traits" and that "I wanted to marry you at one point." (Joy's exhibit No. 1.)

{¶ 6} Joy testified that he has received more than 50 emails from Letostak since he informed her that he wanted no further contact or communication. Letostak also

appeared at Joy's home and place of employment despite Joy's requests that she not do so. Additionally, Letostak left notes and presents for Joy at Joy's home and at his place of employment. (Joy's exhibit No. 1; Magistrate's Decision, 2.)

{¶ 7} In early February 2014, Letostak emailed Joy several times and asked if they could "try just being adult friends" and "[h]ang out." (Joy's exhibit No. 1.) On May 25, 2014, Letostak left a hand-written note at his house inviting him to meet her at a swimming pool. (Joy's exhibit No. 1.) In addition, Letostak complained about Joy blocking her avenues of communication to him: "Like I told you before, I'm not writing this umpteenth apology out of desperation — although I can see why you might think that considering I'm doing it after you blocked literally every other avenue to talk to you. I'm doing it because despite being even more pissed off at you than I was because my hand hurts now, I like you – platonicly [sic], I mean - more than pretty much everyone else I've ever met." (Joy's exhibit No. 1.) Letostak also added: "So you can ignore me all you want, but like I said, I'm not giving up." (Joy's exhibit No. 1.)

{¶ 8} On May 27, 2014, Letostak sent Joy several emails which displayed an obsession with Joy and a refusal by Letostak to accept Joy's position concerning ending any relationship he had with her. (Joy's exhibit No. 1.) Letostak demanded an apology from Joy writing, "I won't be civil because you've seriously fucked me over. I want a detailed, honest, heartfelt apology by the end of the night. * * * And I don't care what anyone else thinks." (Joy's exhibit No. 1.) Letostak also emailed the following message: "To be civil with you, I need you to tell me three things you like about me. Then I need you to hang out with me sometime soon — possibly Hamlet at Schiller Park this weekend, or something else if you don't want to do that." (Joy's exhibit No. 1.)

{¶ 9} At 8:22 p.m. on the same night, Letostak sent Joy an email demanding that he contact her by 8:45 p.m., or she was coming to his home "again." (Joy's exhibit No. 1.) Letostak followed through on her threat and went to his home and knocked on his door. Joy saw that it was Letostak and did not answer the door. However, 20 minutes later Joy went outside to discover Letostak still sitting on his porch. Joy told Letostak that he was not going to speak to her. (Magistrate's Decision, 3.) Through emails, Letostak continuously demonstrated her inability to respect Joy's request to stop contacting him.

{¶ 10} On May 28, 2014, Joy consulted with the Columbus City Attorney's Office concerning telecommunications harassment. Joy testified that it was his understanding that a letter was sent to Letostak from the city attorney advising Letostak that any further contact may result in criminal charges. However, the letter may not have reached Letostak. (Joy's exhibit No. 1; Magistrate's Decision, 4.) The letter was sent to the correct address but someone wrote "return to sender" on the envelope. (Joy's exhibit No. 1.)

{¶ 11} In early November 2014, Joy relocated to a new residence. Despite having no welcomed contact for over ten months, Letostak sent a note with a concert ticket to an event in Akron, Ohio, to Joy's new residence. In the note, Lestostak wrote "Hope you can make it!" and asked Joy if he would like to "carpool." (Joy's exhibit No. 1.) Shortly before the hearing before the magistrate, Letostak called Joy's business phone and left a message. (Joy's exhibit No. 1; Magistrate's Decision, 4.) Letostak also sent Joy four emails on November 12, 2014, just prior to being served with the order of protection in this matter. In one of the emails, Letostak admits that she was breaking her promise not to contact him any longer and also states, "I was fully intending to keep it, but I always have this sliver of hope * * * even though you've been proving me wrong all year!" (Joy's exhibit No. 1.) Letostak ends the email stating, "I can't be patient anymore." (Joy's exhibit No. 1.) Joy filed his petition for a civil protection order the same day.

{¶ 12} Joy testified at the hearing. The magistrate found that Joy "was credible without any contradictory evidence presented by" Letostak. (Magistrate's Decision, 6.) In a written statement, Joy stated that "[d]uring the past year, I have been the victim of a series of aggressive and unwanted contact from sender Lisa Letostak, a childhood neighbor and former friend whose relentless harassment has caused me emotional distress and, more recently, to question my safety in my own home." (Joy's exhibit No. 1.) Joy testified that he:

> [H]as experienced mental distress over the situation with [Letostak]. [Joy] stated that he is worried about visiting his parents whom live next door to [Letostak's] parents (where [Letostak] currently resides). [Letostak] sent emails and/or Facebook messages to [Joy's] friends and one of his co-workers. [Joy] stated that he did go to therapy in January, 2014 concerning the stress of dealing with [Letostak.] [Joy] participated in counseling for approximately one (1) month.

> [Joy] stated that he keeps his blinds closed and parks his car elsewhere when he visited his parents. [Joy] hoped that the harassment would stop, when he moved, but [Letostak] contacted him at his new residence. [Joy] indicated that he does not believe the contact will stop without an order of protection.

(Magistrate's Decision, 4.)

{¶ 13} The magistrate found that:

> [Letostak] is clearly obsessed with [Joy] and [Letostak] has had several opportunities to stop contacting [Joy] but has failed to do so. Without an order of protection [it] is clear that [Letostak] will continue to contact [Joy]. [Letostak's] repeated emails, visits to [Joy's] home and work and telecommunications with [Joy], after [Joy] repeatedly asked [Letostak] to stop contacting him, constitutes harassment.

(Magistrate's Decision, 4.)

{¶ 14} The magistrate also found "that [Letostak's] numerous emails and other contact constitutes a pattern of conduct closely related in time to the filing of the petition. [Letostak] committed a menacing by stalking pursuant to R.C. 2903.211." (Magistrate's Decision, 4.)

II. ASSIGNMENT OF ERROR

{¶ 15} Letostak appeals, assigning the following error:

> THE TRIAL COURT ERRORED [SIC] IN GRANTING PLAINTIFF-APPELLEE KEVIN C. JOY'S ORDER OF PROTECTION IN FINDING THAT DEFENDANT-APPELLANT LISA LETOSTAK'S INTENTION IN CONTACTING HIM WAS TO INTIMIDATE OR HARASS HIM.

III. STANDARD OF REVIEW

{¶ 16} The decision whether to grant a CSPO lies within the sound discretion of the trial court. *Parrish v. Parrish*, 95 Ohio St.3d 1201, 1204 (2002). The duration of a CSPO is within the sound discretion of the trial court and will not be reversed on appeal absent a showing that the decision was arbitrary, unconscionable or unreasonable. *Mann v. Sumser*, 5th Dist. No. 2001CA00350, 2002-Ohio-5103, ¶ 30-31.

{¶ 17} Both parties proceeded pro se in this action. "Pro se civil litigants are bound by the same rules and procedures as those litigants who retain counsel. They are not to be accorded greater rights and must accept the results of their own mistakes and errors." *Delany v. Cuyahoga Metro. Hous. Auth.*, 8th Dist. No. 65714 (July 7, 1994). We have previously held that, with respect to procedural rules, pro se litigants are to be held to the same standards as members of the bar. *Asset Acceptance LLC v. Evans*, 10th Dist. No. 04AP-36, 2004-Ohio-3382, ¶ 9; *Hudson v. State Dept. of Rehab. & Corr.*, 10th Dist. No. 04AP-562, 2004-Ohio-7203, ¶ 18.

{¶ 18} As such, Letostak was required to file objections pursuant to Civ.R. 53(D) to preserve her right to appeal to this court, which she failed to do. *Buford v. Singleton*, 10th Dist No. 04AP-904, 2005-Ohio-753. Civ.R. 53(D)(3)(b)(i) provides that "[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)." Civ.R. 53(D)(3)(b)(iv) entitled "Waiver of right to assign adoption by court as error on appeal" specifically states that "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Because Letostak did not file objections to the magistrate's decision in this case, we review Letostak's assignment of error under the plain error standard. *Blevins v. Blevins*, 1oth Dist. No. 14AP-175, 2014-Ohio-3933.

{¶ 19} To constitute plain error, the error must be obvious on the record. *See State v. Tichon*, 102 Ohio App.3d 758, 767 (9th Dist.1995). In the context of a civil appeal, "an appellate court only applies the plain-error doctrine if the asserted error 'seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.' " *Claffey v. Natl. City Bank*, 10th Dist. No. 11AP-95, 2011-Ohio-4926, ¶ 15, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 123 (1997). Notice of plain error is to be taken with utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice. *State v.*

Phillips, 74 Ohio St.3d 72, 83 (1995); *State v. Ospina*, 81 Ohio App.3d 644, 647 (10th Dist.1992). *See Kinnisten v. Bingaman*, 10th Dist. No. 12AP-173, 2012-Ohio-4131, ¶ 4.

IV. FIRST ASSIGNMENT OF ERROR – NO PLAIN ERROR

{¶ 20} Letostak argues in her lone assignment of error that the trial court erred in granting Joy a CSPO, and finding that her intention in contacting Joy was to intimidate and harass him.

{¶ 21} R.C. 2903.214 provides for the issuance of protection orders for persons who are victims of menacing by stalking. Pursuant to R.C. 2903.214, a petitioner for a CSPO must establish by a preponderance of the evidence that the respondent engaged in conduct that constitutes menacing by stalking. *Guthrie v. Long*, 10th Dist. No. 04AP-913, 2005-Ohio-1541, ¶ 5.

{¶ 22} Pursuant to R.C. 2903.211, menacing by stalking is defined as "engaging in a pattern of conduct" which will "knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person." A "pattern of conduct" means two or more actions or incidents closely related in time. R.C. 2903.211(D)(1). "A court must take everything into consideration when determining if a respondent's conduct constitutes a pattern of conduct, even if some of the person's actions may not, in isolation, seem particularly threatening." *Miller v. Francisco*, 11th Dist. No. 2002-L-097, 2003-Ohio-1978. The record before us shows that Letostak, between the end of January 2014, and November 12, 2014, engaged in a pattern of conduct as defined in R.C. 2903.211(D)(1).

{¶ 23} Letostak claims that the trial court erred in finding that she intended to intimidate or harass Joy by contacting him. However, to grant a CSPO, the petitioner need not prove that the respondent intended to cause actual harm to the other person. Instead, the evidence must show that the respondent knowingly engaged in a pattern of conduct that caused the other person to believe that the respondent would cause physical harm or mental distress to the other person. *Jenkins v. Jenkins*, 10th Dist. No. o6AP-652, 2007-Ohio-422, ¶ 15, citing *Guthrie*. Purpose or intent to cause physical harm or mental distress is not required. It is enough that the person acted knowingly. *Id*. at ¶ 16.

{¶ 24} Letostak sent angry, accusatory emails and notes, threatened to go to Joy's home uninvited, and in fact did go to his home uninvited several times. In one instance,

Letostak did not immediately leave even after Joy did not answer the door. Joy testified that he questioned his safety in his own home. Therefore, a reasonable trier of fact could conclude that threatening to physically go to Joy's house after an unsatisfied demand, and in fact doing so, amounted to an implied threat of violence. The trial court could reasonably conclude that Letostak's pattern of conduct caused Joy to reasonably believe that he was in danger of physical harm. Letostak's actual intent is not relevant to this analysis.

{¶ 25} Pursuant to R.C. 2903.211(D)(2), "mental distress" means any of the following: "[a]ny mental illness or condition that involves some temporary substantial incapacity," or "[a]ny mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services," whether or not the person requested 0r received such treatment or services. Mental distress need not be incapacitating or debilitating. Additionally, expert testimony is not required to find mental distress. *State v. McCoy*, 9th Dist. No. 06CA-8908, 2006-Ohio-6333. A trial court "may rely on its knowledge and experience in determining whether mental distress has been caused." *State v. Wunsch,* 162 Ohio App.3d 21, 2005-Ohio-3498 (4th Dist.), ¶ 18; *Middletown v. Jones*, 167 Ohio App.3d 679, 2006-Ohio-3465 (12th Dist.), ¶ 7.

{¶ 26} In this case, Letostak's unwanted communication and contact was unpredictable and varied erratically in tone. The record shows that Letostak sent emails and Facebook messages to friends and a co-worker of Joy out of anger and jealousy and found his new home address. Joy testified that he did seek professional help in dealing with issues related to Letostak's conduct. The trial court could reasonably conclude that Letostak's pattern of conduct caused Joy to suffer mental distress.

{¶ 27} The magistrate held that "[it] was proved by a preponderance of the evidence that [Letostak] engaged in a pattern of conduct [ ] that caused [Joy] to believe that [Letostak] would cause him * * * physical harm or mental distress pursuant to R.C. 2903.211." (Magistrate's Decision, 6.) The court adopted the magistrate's granting of the order. (Magistrate's Decision, 9.)

{¶ 28} Upon review, we find that the trial court's decision contains no plain error. The trial court did nothing to seriously affect the basic fairness, integrity, or public

reputation of the judicial process. Based on the foregoing reasons, Letostak's assignment of error is overruled.

V. DISPOSITION

{¶ 29} Having overruled Letostak's assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

DORRIAN and BRUNNER, JJ., concur.
