

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

MICHELE COOPER,	:	O P I N I O N
Petitioner-Appellee,	:	
- VS -	:	CASE NO. 2011-L-035
NICHOLAS MANTA,	:	
Respondent-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 09CS003980.

Judgment: Affirmed.

Matthew C. Bangerter, 38109 Euclid Avenue, Willoughby, OH 44094 (For Plaintiff-Appellee).

Joseph R. Klammer, The Klammer Law Office, LTD., Lindsay II Professional Center, 6990 Lindsay Drive, Suite 7, Mentor, OH 44060 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Nicholas Manta appeals from a judgment of the Lake County Court of Common Pleas which granted a civil stalking protection order sought by his daughter against him. For the following reasons, we affirm the trial court's judgment.

Substantive Facts and Procedural History

{¶2} On December 9, 2009, Michele Cooper, Mr. Manta's daughter, filed a petition for a civil stalking protection order against him, on behalf of herself and her family members. The trial court granted an ex parte order on the same day and referred

the matter to a magistrate for a full hearing. The magistrate heard testimony from Mrs. Cooper and her husband, Gary Cooper, as well as a police officer and Mr. Manta.

The Precipitating Incidents as Related by the Coopers

{¶3} The Coopers described a total of six incidents during a time span from May of 2007 to the fall of 2009 that lead to the filing for a protection order on December 9, 2009. Two of these incidents occurred in 2007, and four in 2009. While the magistrate considered the two 2007 incidents as too remote in time to be part of the “pattern of conduct,” the magistrate did find the prior conduct “relevant to the extent that it provides proper context for understanding later interactions between the parties.”

{¶4} The first incident was a call in May of 2007 from Mr. Manta to Mrs. Cooper at her work. This call was placed despite her previous request that he not contact her. She pleaded with him to stop calling her because his calls were “making her sick,” explaining she had been suffering from psoriasis, stomach problems, and an ulcer. She hung up immediately when he said: “You better get a new husband because I’m going to take yours out at 300 yards.” She filed a report with Willoughby police department regarding the incident.

{¶5} Later, in October of 2007, Mr. Cooper came home from a movie with his son around 11 o’clock p.m. After they went inside, Mr. Manta pulled into their driveway and came to the front porch. Mr. Cooper went to the front door with his gun, which he had a permit to carry. When he opened the front door, Mr. Manta “lunged at” him, with his hands in his pocket, saying “I want to see my daughter right now.” Because of Mr. Manta’s past threats against his life, Mr. Cooper drew his pistol and pointed it at Mr. Manta. Mr. Manta backed up from the door, falling on the porch steps. Mr. Cooper then walked him to his truck and Mr. Manta drove away. Mr. Cooper called the Willoughby

police department, and Officer Michael Fitzgerald came to their home to investigate the incident.

{¶6} Officer Fitzgerald related that Mr. Manta came to the station to report that Mr. Cooper had pointed a weapon in his face and pushed him down on the ground, injuring his back. The officer was familiar with the past threat Mr. Manta had allegedly made against his son-in-law, so he questioned him about it, and Mr. Manta confirmed he had previously said he “could take [Mr. Cooper] out at 300 yards.”

{¶7} The Coopers related four more incidents in 2009. The first of these occurred in the summer of 2009. The Coopers were sitting outside of a downtown Willoughby coffee shop. Mr. Manta drove by, stopped his vehicle, which also stopped traffic behind him, and stared at the Coopers. He then proceeded to the next street, but then made a left-hand turn, and stopped again, while staring down the sidewalk in the Coopers’ direction.

{¶8} The second incident in 2009 occurred several days before Thanksgiving in 2009. After jogging in the neighborhood, Mrs. Cooper returned to her house and was surprised to find that Mr. Manta’s vehicle, which apparently had been following her, had come to a stop and parked directly behind her. He sat in the car and looked at her. As it happened, Mr. Cooper was returning home and came up behind Mr. Manta’s car. When Mr. Cooper pulled into the driveway, Mr. Manta took off.

{¶9} The third incident occurred a few days later, on the day after Thanksgiving. Mrs. Cooper was doing laundry in her house and noticed her father’s truck parked in the street; he was sitting in truck and peering at her house. She called out to her husband, and they both went to the window. At that point, Mr. Manta drove away.

{¶10} The fourth incident occurred a few days later. Mr. Cooper was taking out the garbage in the morning and saw Mr. Manta drive by their house again. He slowed down in front of the house and looked at the house deliberately. The next day, Mr. Manta drove by again and stared at the house.

{¶11} Immediately afterward, Mr. Cooper received a letter from Mr. Manta's attorney demanding the return of miscellaneous household items and a gun collection Mr. Manta had given him in 1991 and 2003, respectively.

{¶12} Describing her fear of her father, Mrs. Cooper stated, "I spent my whole life being afraid of him. I'm done. I'm done being afraid of him;" "I'm very afraid of what he can do. I know what he's capable of ***. I've lived with him my whole life;" "He's trying to intimidate and bully." When asked if she believed she was at risk of physical harm from Mr. Manta, she replied: "Yes, I am probably the only woman that let her dogs out in Willoughby at five in the morning with a gun in her pocket. Absolutely."

{¶13} Mrs. Cooper, who worked at the Lake County Sheriff's Department from 1991 to 1995, admitted that, in 1995, she forged doctors' notes and falsely reported her sick time, resulting in her termination.

Mr. Manta's Account of the Incidents

{¶14} Mr. Manta alleged this civil protection action was triggered by a letter from his attorney to Mr. Cooper, his son-in-law, advising that he intended to file suit alleging the latter had misappropriated personal property, including a gun collection that Mr. Manta had entrusted to his daughter and son-in-law for safekeeping in 2003. At that time, Mr. Manta was going through a divorce, and his wife had broken into his house to take his possessions. According to Mr. Manta, the items were never intended as gifts, and, beginning in 2007, he began to ask for the return of some of the items, to no avail.

At that point, his relationship with his daughter began to deteriorate. He acknowledged he would call his daughter, often losing his temper over the telephone.

{¶15} Mr. Manta explained that he lives very close to the Coopers' residence, and it was necessary for him to travel daily through an intersection not far from their residence in order to get out to the main road.

The Porch, the Coffee Shop, and the Jogging Incidents

{¶16} Mr. Manta explained he appeared on the Coopers' porch after he just had a fight with his girlfriend, who called the police department after the fight. Upset and wanting to talk to his daughter, he went to the Coopers' house, knocked on the door, and told Mr. Cooper he wanted to talk to his daughter. Mr. Cooper returned with a gun, and put it on his head, saying: "so you're going to kill me." He showed Mr. Cooper he only had a cell phone and started to leave, but Mr. Cooper pushed him down the steps.

{¶17} Regarding the coffee shop incident, Mr. Manta explained that he saw his son-in-law with a woman when he drove by the coffee shop. He stopped and looked down the sidewalk intensively because he was trying to identify the woman, wondering if his son-in-law was having an affair.

{¶18} And, as for the jogging incident, Mr. Manta explained that he was on his way from his own house, a few streets away from the Coopers' house, to another destination. When he stopped at an intersection near the Coopers' house, a driver, who turned out to be Mr. Cooper, pulled up right behind his car. Mr. Manta denied following his daughter while she jogged. He called the allegation "ludicrous." He also denied driving slowly passing the Coopers' house and looking deliberately at it.

The Petition and Hearing

{¶19} On December 9, 2009, Mrs. Cooper filed a petition for civil stalking protection order for herself, her husband, and other members of their household. In the petition, she alleged that “Respondent is a violent man, threatened to kill my husband Oct. 07, hid on my porch same year, came after my husband, has been parking in front of my house, and driving up and down my street a lot again. [I] want respondent out of my life forever.”

{¶20} After a hearing, the magistrate determined Mrs. Cooper met the burden for the issuance of a civil protection order, finding, by a preponderance of the evidence, that Mr. Manta knowingly engaged in a pattern of conduct directed toward Mrs. Cooper and her husband. The magistrate found that Mr. Manta followed Mrs. Cooper in his truck at a low speed as she jogged through her neighborhood; parked for extended periods of time along her street to peer inside her home; and drove past her home at a very low rate of speed solely for the purpose of observing her activities and those of her family.

{¶21} Mr. Manta filed an objection to the magistrate’s decision. The trial court affirmed the decision. Mr. Manta now appeals, raising two assignments of error for our review:

{¶22} “[1.] The trial court erred in issuing the civil protection order.

{¶23} “[2.] There is insufficient evidence of ‘physical harm’ or ‘mental distress.’”

{¶24} We address these assignments of error together.

Civil Stalking Protection Order

{¶25} R.C. 2903.214(C) states:

{¶26} “A person may seek relief under this section for the person, or any parent or adult household member may seek relief under this section on behalf of any other

family or household member, by filing a petition with the court. The petition shall contain or state all of the following:

{¶27} (1) An allegation that the respondent is eighteen years of age or older and engaged in a violation of section 2903.211 [2903.21.1] of the Revised Code against the person to be protected by the protection order or committed a sexually oriented offense against the person to be protected by the protection order, including a description of the nature and extent of the violation[.]”

{¶28} R.C. 2903.211, the menacing by stalking statute, states: “No person by engaging in a pattern of conduct shall 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.” R.C. 2903.211(A)(1).

{¶29} Furthermore, a “pattern of conduct” means “two or more actions or incidents closely related in time * * *.” R.C. 2903.211(C)(1).

{¶30} “A Protection Order may be granted if, ‘[a]fter a full hearing at which the [petitioner] presents evidence in support of the request for a protection order and the [respondent] is afforded an opportunity to defend against that evidence, the court determines that the petitioner has committed a violation of section 2903.211 [2903.21.1] of the Revised Code against the person to be protected by the protection order ***.’ R.C. 2903.214(E)(3)(d). The petitioner must demonstrate, by a preponderance of the evidence, that they are entitled to a civil protection order.” *Needhamer v. Carlozzi*, 11th Dist. No. 2010-L-015, 2010-Ohio-4562, ¶20 (footnote omitted), citing *Tuuri v. Snyder*, 11th Dist. No. 2000-G-2325, 2002 Ohio App. LEXIS 2060 (Apr. 30, 2002), *5, citing *Felton v. Felton*, 79 Ohio St.3d 34 (1997), paragraph two of the syllabus.

{¶31} “The ‘standard of review for whether the protection order should have been granted and thus whether the elements of menacing by stalking were established by the preponderance of the evidence entails a manifest weight of the evidence review.’” *Id.* at ¶22, citing *Caban v. Ransome*, 7th Dist. No. 08 MA 36, 2009-Ohio-1034, ¶7, citing *Abuhamda-Sliman v. Sliman*, 161 Ohio App.3d 541, 2005-Ohio-2836, ¶9-10. “In a civil context, ‘judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.’” *Id.*, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

The Petitioner Met Her Burden of Proof

{¶32} In the instant case, the trial court concluded the record contained a preponderance of evidence supporting a determination that Mr. Manta knowingly caused Mrs. Cooper to believe he would cause her and her husband physical harm.

{¶33} On appeal, Mr. Manta maintains that he had not made any actual threat of harm in the incidents underlying the required pattern of conduct. However, in civil stalking protection order matters, a showing of actual threat is not required. *Tuuri* at *12, citing *Dayton v. Davis*, 136 Ohio App.3d 26, 32 (2d Dist.1999). “[A]ll that has to be shown is that [respondent] knowingly caused [petitioner] to believe he would cause her mental distress or physical harm.” *Id.* “[I]n determining whether or not to grant a stalking civil protection order, the trial court needs to view the actions with respect to their effect on the petitioner.” *Id.* at ¶19. A petitioner “only had to show that [the respondent] knowingly committed certain acts, and that from his actions, she *believed* [the respondent] was going to cause her physical harm or mental distress.” (Emphasis Original.) *Id.* See also *McKinley v. Kuhn*, 4th Dist. No. 10CA5, 2011-Ohio-134, ¶17 (to

establish the physical harm element, the petitioner need not show that the respondent made an explicit or direct threat of physical harm).

{¶34} Moreover, as this court has noted before, “[s]talkers engage in psychological warfare, which by its nature is devious, insidious, and subtle.” *State v. Werfel*, 11th Dist. No. 2006-L-163, 2007-Ohio-5198, ¶34, quoting *Paulus v. Rucker*, 11th Dist. No. 2002-P-0080, 2003-Ohio-2816, ¶35, (Christley, J., concurring).

{¶35} Mrs. Cooper provided significant amount of testimony regarding her fear of potential harm from her father, which, if believed by the trier of fact, would certainly establish the elements required for proving stalking pursuant to R.C. 2903.211. Mr. Manta attacked Mrs. Cooper’s credibility, citing an incident from 1995 where she falsely reported her sick time, leading to her termination from her job.

{¶36} This court has explained our role versus that of the trial court in credibility determinations:

{¶37} “As the trier of fact is in the best position to view the witnesses and their demeanor, in making a determination that a judgment is against the manifest weight of the evidence, this court is mindful that we must indulge every reasonable presumption in favor of the lower court’s judgment and findings of fact.” *Tuuri* at *6, citing *Shemo v. Mayfield Hts.*, 88 Ohio St.3d 7, 10 (2000); *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 226 (1994). In another civil stalking protection case, *Davis v. DiNunzio*, 11th Dist. No. 2004-L-106, 2005-Ohio-2883, we emphasized this principle again. “[W]e may not substitute our judgment for that of the trial court as long as there is some competent credible evidence to support its findings. Thus, if the evidence is reasonably susceptible to more than one interpretation, we shall construe it consistently with the lower court’s judgment.” *Id.* at ¶41, citing *Tuuri* at *6. The trial court specifically found

Mrs. Cooper's testimony, corroborated in part by that of Officer Fitzgerald and her husband, to be more credible than that offered by Mr. Manta. We must defer to it for that assessment.

Pattern of Conduct

{¶38} On appeal, Mr. Manta also questions the reference to the incidents from 2007, two years prior to the instant petition. He claims a petitioner may not use prior incidents to establish a pattern of conduct required by the statute.

{¶39} The element of "pattern of conduct," as defined by the statute, means "two or more actions or incidents closely related in time." R.C. 2903.211(D)(1). R.C. 2903.211 does not define or give further meaning to the notion "closely related in time." Consequently, whether the incidents are "closely related in time" is to be resolved by the trier of fact, "considering the evidence in the context of all the circumstances in the case." *State v. Bone*, 10th Dist. No. 05AP-565, 2006-Ohio-3809, ¶24.

{¶40} Here, the magistrate found the 2007 incidents "not closely related in time" for purposes of establishing the requested "pattern of conduct." Instead, the magistrate considered them as providing a context for understanding how subsequent seemingly innocent incidents could be deemed threatening by Mrs. Cooper.

{¶41} The trial court specifically rested its decision on the series of incidents which occurred in 2009. Shortly before Thanksgiving, Mr. Manta harassed or intimidated Mrs. Cooper by following her in his truck at a low speed while she jogged in the neighborhood; and, on several occasions, he either drove by their house slowly or parking outside their house, watching the activities of her family from his vehicle. In reaching its conclusion, the trial court also pointed to Mrs. Cooper's unequivocal

expression of her fear of Mr. Manta and her perception as to his ability to harm her family, which exacerbated her anxiety whenever he was near.

{¶42} In support of his claim that prior incidents could not be used at all to demonstrate fear of physical harm, Mr. Manta cites *Boals v. Miller*, 5th Dist. No. 10-COA-039, 2011-Ohio-1470, and *Bahr v. Bahr*, 5th Dist. No. 03-COA-011, 2003-Ohio-5024. Both cases are inapposite, as they addressed R.C.3113.31, a statute governing civil protection orders concerning domestic violence, where the notion of “pattern of conduct” is not an element of the statute.

{¶43} In conclusion, although the petitioner has not presented an overwhelming amount of evidence, a civil stalking protection order does not require it. We are satisfied that Mrs. Cooper has presented competent and credible evidence to support, by a preponderance of evidence, the trial court’s finding that Mr. Manta, by his menacing and intimidating conduct, knowingly caused Mrs. Cooper to believe that he would cause her or her family physical harm. The trial court did not err in granting her petition for a civil protection order.

{¶44} The assignments of error are without merit. The judgment of the Lake County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.