[Cite as *Stump v. Hoagland*, 2015-Ohio-2434.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

KAREN STUMP	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2014-CA-26
	:	
v.	:	T.C. NO. 14DV60
	:	
JOHN M. HOAGLAND	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the ___19th___ day of ____June___, 2015.

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FROELICH, P.J.

{¶ 1} John Michael Hoagland appeals from a judgment of the Miami County Court of Common Pleas, which issued a civil stalking protection order (CSPO) to Hoagland's former wife, Karen Stump.

{¶ 2} The parties were divorced in 2013. In April 2014, Stump filed a petition for

a CSPO on behalf of herself and her two children (who are not Hoagland's children). The trial court granted an ex parte CSPO and scheduled the matter for a hearing. The magistrate held the hearing in June 2014 and granted the petition. Hoagland filed objections and a request for findings of fact and conclusions of law. On September 8, 2014, in an entry signed by both the magistrate and the trial court judge, the trial court made findings of fact and conclusions of law, implicitly overruled Hoagland's objections, and stated that the CSPO was adopted and would remain in effect. The CSPO stated that it would remain in effect until April 15, 2019.

{¶ 3} Hoagland appeals, raising one assignment of error, which states:

> The magistrate's decision is contrary to the manifest weight of the evidence in granting Appellee's civil stalking protection order for five years.

{¶ 4} Hoagland contends that the trial court could not have reasonably found, by a preponderance of the evidence, that he had been menacing Stump by stalking, because "[t]here were no direct threats of harm to [Stump] or her children," and "annoyance" does not establish mental distress within the meaning of R.C. 2903.211(D)(2). He also asserts that the level of fear or mental distress described by Stump did "not rise to the level" warranting a five-year protection order.

{¶ 5} We set forth the standard for the issuance of a CSPO in *Walker v. Edgington*, 2d Dist. Clark No. 07-CA-75, 2008-Ohio-3478, as follows:

> R.C. 2903.214, which governs the filing of a petition for a CSPO, provides that a petitioner seeking a CSPO must demonstrate that the respondent engaged in the offense of menacing by stalking, in violation of R.C. 2903.211. The menacing by stalking statute * * * provides that, "[n]o

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).

"Pattern of conduct" is defined as "two or more actions or incidents closely related in time * * *." R.C. 2903.211(D)(1). "Mental distress" means "any mental illness or condition that involves some temporary substantial incapacity * * * or any mental illness or condition that would normally require * * * treatment * * * whether or not" treatment is sought. R.C. 2903.211(D)(2). "Mental distress need not be incapacitating or debilitating * * * [and] expert testimony is not required to find mental distress." *Perry v. Joseph*, Franklin App. Nos. 07AP-359, 07AP-360, 07AP-361, 2008-Ohio-1107, ¶ 8. "A trial court is permitted to rely on its knowledge and experience in determining whether mental distress has been caused." *Id*.

The culpable mental state of menacing by stalking is "knowingly," which is defined in R.C. 2901.22(B) as follows: "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

Thus, in order to merit a civil protection order, 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 will cause physical harm or that caused mental distress to the other person. *Perry v. Joseph*, supra, ¶ 7.

Walker at ¶ 20-23.

{¶ 6} We review a trial court's decision on a petition for a civil protection order for an abuse of discretion. *Ngqakayi v. Ngqakayi*, 2d Dist. Greene No. 2007 CA 85, 2008-Ohio-4745, ¶ 4. An abuse of discretion implies that the trial court's attitude was unreasonable, arbitrary or unconscionable. *Raska v. Raska*, 2d Dist. Clark No. 2014 CA 29 and 14 CA 35, 2014-Ohio-5449, ¶ 6, citing *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 1} "In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Eastley v. Volkman,* 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 21. Because the trier of fact sees and hears the witnesses, we must defer to the factfinder's decisions whether, and to what extent, to credit the testimony of particular witnesses. *Seitz v. Harvey*, 2d Dist. Montgomery No. 25867, 2015-Ohio-122, ¶ 41, citing *State v. Lawson,* 2d Dist. Montgomery No. 16288, 1997 WL 476684 (Aug. 22, 1997). The fact that the evidence is subject to different interpretations does not render a judgment against the manifest weight of the evidence. *Id*., citing *State v. Wilson,* 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 14.

{¶ 2} The maximum allowable term for a CSPO is five years. R.C. 2903.214(E)(2)(a).

{¶ 3} At the hearing, Stump testified that Hoagland had engaged in many

incidents of conduct between 2011, when she filed for divorce, and 2014, when she filed her petition for a CSPO, that had caused her mental distress and to fear for her safety.

{¶ 4} Stump stated that, in January 2012, she received threatening voicemail messages from Hoagland in which he stated that she had "better be careful going into the house" and that someone could be in her house because he had told "crack heads and people that there's money and jewelry in the house." According to Stump, Hoagland also stated that he hoped she would get a boyfriend who beat her and that she would get cancer. She received more than nine phone calls of this nature in one morning. She stated that she feared for herself and her children, who lived with her and were then 14 and 18 years old.

{¶ 5} In March 2012, Stump awoke one morning to find that the top of her Mazda Miata convertible had been slashed from one side to the other and that a cinder block had been thrown through the windshield of her Ford Bronco. Both of the vehicles had been parked in front of her house. She did not see the perpetrator. Later that month, Stump received 18 calls from Hoagland in one day. She did not answer the calls, "but he just kept calling"; on the final call, he left a voicemail message. Stump reported these calls to the police.

{¶ 6} Stump testified that, on 15 occasions, she had found "material in the roadway," namely nails, in the area where she parks her cars, either on the driveway or in the street. On each occasion, she had reported the incident to the police, and on at least one occasion, she had a nail in her tire like the ones found on the pavement.

{¶ 7} From 2011 to 2012, Stump worked at a bar called Zenders. She testified that Hoagland would call her cell phone and, if she did not answer, he would call one of

her friends, who also worked at Zenders, or he would call the business's phone. This conduct created problems with Stump's employer. Stump testified that, on one evening, Hoagland called 203 times.

{¶ 8} In March 2013, Stump drove her son home from school; when she parked in front of her house and exited the vehicle, Hoagland drove by, yelling "get out of my way" and "get out of my house f'n bitch." Stump felt threatened by these actions.

{¶ 9} In November 2013, Stump was driving to Piqua with her friend, Nikki Adkins; the women were in Stump's Miata with the top down. While she was stopped at a traffic light, Hoagland pulled up behind Stump in his Dodge truck, which "sat up real high." He revved his engine and almost touched the bumper of his truck to the trunk of her vehicle. Hoagland honked his horn and shouted obscenities at Stump. Stump testified that she was shaken up by the incident.

{¶ 10} On another occasion, in April 2014, Stump testified that she had been driving to work at the Piqua Country Club, on a road that dead-ended at the country club, when Hoagland pulled up beside her in his truck, honking and yelling at her. She pulled out her phone to take a picture of him, he "took off," and she called the Sheriff's Department to report the incident. After she arrived at work and was told she was not needed that day, she encountered Hoagland again (about 15 minutes after the first encounter) during her departure from the country club on the same dead-end road. This time, Hoagland was driving a Hummer.

{¶ 11} Stump testified that she "works with the public" and cannot afford to be nervous and stressed at work. She also testified that she had gone to counseling to help her deal with the stress caused by Hoagland.

{¶ 12} Stump's friend, Nikki Adkins, also testified at the hearing. Adkins corroborated Stump's testimony that the women had worked at Zenders together and spent time together outside of work. Adkins testified that "numerous, numerous, numerous times * * * [Hoagland] would call [Stump's] phone over and over and over again." Hoagland also called the business phone and Adkins's phone "nonstop for hours." Adkins had seen call logs on Stump's cell phone indicating hundreds of calls from Hoagland's phone number between 2011 and 2013, and she corroborated Stump's testimony that Hoagland had once made more than 200 calls in one night. Adkins also testified about the incident when she was a passenger in Stump's Miata, with the top down, and Hoagland pulled his Dodge truck within inches of their vehicle, revved his engine, and honked his horn. She said that he shouted obscenities at them. Adkins testified that Hoagland had "freaked [Stump] out" on this occasion, and Stump had been "almost in tears."

{¶ 13} Stump's teenage son testified that, in March 2013, he witnessed Hoagland drive by Stump's house as he (the son) and Stump were getting out of a car; Hoagland shouted obscenities and said "get out of my house." The son testified that he had not been scared by Hoagland's behavior on that occasion, but Stump had been "intimidated." The son also testified that Stump parks her cars on the driveway or in the street and that, 10 to 15 times in the previous three years, nails or other sharp objects had been thrown on the ground in the vicinity of where she parks; the first such incident occurred a short time after Hoagland had moved out of the house. The son had also observed and testified about the occasion when the convertible top of Stump's Miata had been slashed and a cinder block thrown through the windshield of her Bronco.

{¶ 14} The defense presented the testimony of Hoagland, Hoagland's son, and two of his friends/co-workers. Hoagland denied all of Stump's claims and, specifically, that he would ever hurt her children or anyone else's. He admitted having made some phone calls to Stump in 2011, while their divorce was pending, in an effort to retrieve some of his belongings, but he denied that any of these calls had been threatening in nature. He stated that, at the time of the hearing, he had not talked with her on the phone for two and one-half years. With respect to the incident about which Stump testified when Hoagland had encountered Stump on the road leading to her job at the Piqua Country Club, Hoagland stated that he had been in the area to see a boat that was for sale when he had, coincidentally, passed Stump on the road. He recalled that Stump had waited for him and had tried to take pictures of him on that occasion.

{¶ 15} Hoagland also recalled being behind Stump's Miata on one occasion when Adkins was in the car with Stump; he stated that his truck was "super loud," but that he had not been revving his engine. He testified that Stump had been "giving him the finger and stuff," and that he had only honked his horn at her when the light changed and she did not move, then he went around her.

{¶ 16} Hoagland's son testified that he had seen Stump drive down a street where his father owned property on one occasion. He also confirmed that his father owned a Dodge truck and a Hummer. Hoagland's friends and coworkers testified that they had seen Stump drive by their work locations or Hoagland's mother's house on a few occasions; she slowed and looked "real hard" in their directions, but she had not stopped and no words had been exchanged. Hoagland had been present on some, but not all, of these occasions, but he had not been bothered when he was told about them.

{¶ 17} In its judgment granting the CSPO, the trial court stated:

> The testimony of [Hoagland] could charitably be characterized as significantly lacking in credibility. Based on his demeanor, the court finds that his testimony was just not believable. Based on [Stump's] demeanor and consistency of her responses she was believable and credible. Further, [Stump's] testimony was corroborated by a witness, Missy [sic] Adkins whom observed [Hoagland's] harassing behavior.

{¶ 18} The trial court further concluded that the various incidents Stump had described had occurred, that she feared for her own safety and that of her children, and that she sought counseling as a result of this harassing behavior. The trial court found that the grounds for a CSPO had been satisfied, that Stump was suffering "mental distress" caused by Hoagland, and that her request for a CSPO was well-taken.

{¶ 19} Because the trier of fact sees and hears the witnesses, we must defer to the factfinder's decisions whether, and to what extent, to credit the testimony of particular witnesses. *Seitz*, 2d Dist. Montgomery No. 25867, 2015-Ohio-122, ¶ 41, citing *Lawson,* 2d Dist. Montgomery No. 16288, 1997 WL 476684 (Aug. 22, 1997). The fact that the evidence is subject to different interpretations does not render a judgment against the manifest weight of the evidence. *Id*., citing *Wilson,* 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 14. The trial court credited the testimony of Stump and her witnesses, and we will not second-guess that conclusion. Based on the evidence, the trial court could have reasonably concluded that Hoagland had engaged in a pattern of conduct knowing that it would cause Stump mental distress or to believe that he intended to harm her. Moreover, considering the extended period of time over which Hoagland had

menaced Stump prior to the hearing, the trial court reasonably concluded that the issuance of a CSPO for five years was appropriate. The trial court's judgment was not against the manifest weight of the evidence.

{¶ 20} The assignment of error is overruled.

{¶ 21} The judgment of the trial court will be affirmed.

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FAIN, J. and DONOVAN, J., concur.

Copies mailed to:

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