[Cite as *Martin v. Popson*, 2013-Ohio-3956.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

Anne-Marie E. Martin

Appellee

v.

Emily J. Popson

Appellant

Court of Appeals No. OT-12-036

Trial Court No. 12-CV-487H

DECISION AND JUDGMENT

Decided: September 13, 2013

* * * * *

Kristopher K. Hill and Thomas J. DeBacco, for appellee.

Ron Nisch, for appellant.

* * * * *

SINGER, P.J.

{¶ 1} Appellant appeals the issuance of a civil stalking protective order against her by the Ottawa County Court of Common Pleas. Because we conclude that appellee presented evidence sufficient to support the order, we affirm.

{¶ 2} Appellee, Anne-Marie E. Martin, is a horse trainer who in 2012 worked out of the same Marblehead stable where appellant, Emily J. Popson, boards her horse. According to appellee's subsequent testimony, during summer she had multiple unpleasant encounters with appellant who is physically the larger of the two. Appellee characterized appellant as confrontational and verbally abusive, at one point directing appellee not to turn out her horses when appellant was riding.

{¶ 3} On August 30, 2012, a physical altercation occurred between the two women. Appellee testified it was at the instigation of appellant and escalated to appellant striking appellee multiple times in the face with a closed fist. According to appellant, she sustained a concussion, a broken nose and numerous abrasions as the result of this attack. Police were called and appellant was charged with assault.

{¶ 4} On September 12, 2012, appellee petitioned the court for a civil stalking protective order, alleging that appellant had been verbally and physically abusive toward her and that as a result appellee feared to go to her workplace. The court issued the order ex parte, then, following a full hearing, confirmed the order for a five year period. From the issuance of this order, appellant now brings this appeal. Appellant sets forth the following two assignments of error:

> I. The Appellee presented insufficient evidence to show that Appellant violated R.C. Sec. 2903.211 and that Appellee was entitled to the issuance of a civil protection order pursuant to R.C. Sec. 2903.214(C).

II. The trial court's October 30, 2012 issuance of a Civil Protection Stalking Order was against the manifest weight of the evidence.

{¶ 5} We shall discuss appellant's assignments of error together.

{¶ 6} The issuance of a civil stalking protection order is governed by R.C. 2903.214. A petitioner may obtain such an order if he or she proves by a preponderance of the evidence that the person against whom the order is directed engaged in behavior that constituted menacing by stalking against the petitioner. R.C. 2903.214(C)(1). *Palmer v. Abraham*, 6th Dist. Ottawa No. OT-12-028, 2013-Ohio-3062, ¶ 11. R.C. 2903.211 defines the offense of menacing by stalking. The statute provides that "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). A "pattern of conduct" is two or more actions or incidents closely related in time. R.C. 2902.211(D)(1); *Palmer, supra,* at ¶ 12. A person acts "knowingly" when he or she is aware that his or her conduct will more likely than not cause a certain result or will more likely than not be of a certain nature. *Id*. at ¶ 13; R.C. 2901.22(B).

{¶ 7} Appellant argues that appellee presented insufficient evidence of the elements of R.C. 2903.211 to establish a violation and that the trial court's determination that the offense had been established was against the manifest weight of the evidence.

{¶ 8} The standard of review for sufficiency of the evidence and manifest weight are the same in a civil case as in a criminal case. *Eastley v. Volkman*, 132 Ohio St.3d

328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17. Weight of the evidence concerns the greater amount of credible evidence offered in trial to support one side or the other of an issue. The party having the burden of proof will be entitled to a verdict if the trier of fact, on weighing the evidence, finds that the greater amount of credible evidence sustains the issue to be determined. *Id.* at ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶ 9} On review, there is a presumption in favor of the decision of the trier of fact. *Eastley* at ¶ 21. The appeals court acts as a "thirteenth juror" to determine whether the trier of fact lost its way and created such a manifest miscarriage of justice that the verdict must be overturned and a new trial ordered. *Thompkins* at 387.

{¶ 10} With respect to sufficiency of the evidence, the court must determine whether the evidence submitted is legally sufficient to support all of the elements of the offense charged. *Id*. at 386-387. Specifically, we must determine whether the petitioner has presented evidence which, if believed, would satisfy all of the elements that must be established. *Id.* at 390 (Cook, J., concurring); *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 11} Appellant insists that appellee failed to prove a pattern of incidents. Conceding that the incident in which appellant broke appellee's nose constitutes one incident wherein appellant knowingly caused appellant to fear for her physical safety, appellant suggests that appellee's testimony of a prior encounter in which appellant

directed appellee not to take her horses out while appellant was present and "to get the fuck away from her" was not sufficiently serious enough to constitute an incident.

{¶ 12} R.C. 2903.211 prohibits a person from knowingly causing another to believe to that the aggressor will cause physical harm to the victim or engaging in behavior that causes mental distress to a victim. It is not unreasonable for someone subjected to a profanity laced order to refrain from an activity to fear physical harm or to be mentally distressed. Neither is it unreasonable to conclude that one who engages in such behavior knows its probable effect. Thus the first incident, coupled with the incident in which appellant inflicted actual physical harm, constitutes a pattern of behavior within the meaning of the law. Appellant's first assignment of error is not well-taken.

{¶ 13} With respect to the weight of the evidence, we have thoroughly reviewed the record of this matter and fail to find any suggestion that the trial court lost its way or that manifest injustice resulted. Accordingly, appellant's second assignment of error is not well-taken.

{¶ 14} On consideration, the judgment of the Ottawa County Court of Common Pleas is affirmed. It is ordered that appellant pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J. _____
JUDGE

James D. Jensen, J.
CONCUR. _____
JUDGE