

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

Kristen Keller

Court of Appeals No. WD-13-066

Appellee

Trial Court No. 2013ST0073

v.

Khalid Knight

DECISION AND JUDGMENT

Appellant

Decided: June 6, 2014

* * * * *

Tim A. Dugan, for appellee.

Khalid Knight, pro se.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Wood County Court of Common Pleas, granting a civil stalking protection order against appellant, Khalid Knight. We affirm.

A. Factual and Procedural Background

{¶ 2} On July 1, 2013, appellee, Kristen Keller, petitioned for a civil protection order against appellant. In her petition, appellee alleged that appellant had been harassing her for the past three years because of a bad breakup between her and appellant's brother, and because of a case appellant attempted to bring against her in Toledo Municipal Court having to do with payment for housing her cat. Appellee accused appellant of following her to school, vandalizing her car, and posting menacing comments on her Facebook and Youtube profiles. As a result, appellee moved to Bowling Green so that it would be harder for appellant to follow her.

{¶ 3} More recently, in December 2012, appellee alleged that appellant came to the Home Depot in Toledo, Ohio, where appellee was employed, and began calling her vulgar names. Appellee asserted that appellant was escorted from the store, but returned two more times within a half-hour of each other and continued the verbal abuse. Each time, appellant was escorted from the store. Appellee further alleged that appellant has appeared at the store looking for her at least ten different times since then.

{¶ 4} The matter proceeded to a full hearing before the magistrate wherein appellee testified to the facts contained in her petition. Appellant then testified on his own behalf, initially focusing on the purported Toledo Municipal Court case regarding the cat. Later in his testimony, appellant denied appellee's allegations regarding following her or vandalizing her car. Appellant did admit, though, that appellee was correct that he went to the Home Depot three times on one night. However, appellant

testified that he did not yell at, or verbally abuse, appellee. Instead, he stated that he had just purchased a new refrigerator and that he needed “some stuff for the refrigerator to work perfectly in the house.” Appellant concluded by testifying that appellee is only seeking the civil protection order to circumvent the fact that she left a cat at appellant’s home without paying for it, and wants to prevent appellant from going to the Home Depot so that she will not be reminded of what she owes someone else.

{¶ 5} Following the hearing, the magistrate granted the civil protection order, which was adopted and signed by the trial court judge.

B. Assignments of Error

{¶ 6} Appellant has timely appealed the granting of the civil protection order, and now raises two assignments of error for our review:

1. The trial court erred by granting Ms. Keller a Civil Stalking Protection Order, against the evidence that Mr. Knight submitted to dispute Ms. Keller’s claim.
2. The trial court erred by not giving notice to Mr. Knight that he needed to file objections to the Magistrate’s decision within 14 days.

II. Analysis

{¶ 7} In his first assignment of error, appellant challenges whether the civil protection order should have been issued. Where the challenge is to the decision to issue the order, as opposed to the terms of the order, we apply a manifest weight of the evidence standard of review. *Gruber v. Hart*, 6th Dist. Ottawa No. OT-06-011, 2007-

Ohio-873, ¶ 17. “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.” *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 8} Appellee sought a civil protection order pursuant to R.C. 2903.214, which permits a person to seek relief if the respondent is engaging in menacing by stalking in violation of R.C. 2903.211. R.C. 2903.211(A)(1) provides, “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.” For the trial court to grant a civil protection order, the petitioner must prove the alleged conduct by a preponderance of the evidence. *Striff v. Striff*, 6th Dist. Wood No. WD-02-031, 2003-Ohio-794, ¶ 10.

{¶ 9} Here, appellant does not make any arguments concerning the elements of menacing by stalking. Instead, he argues that the trial court’s decision is against the manifest weight of the evidence in that he provided evidence disputing appellee’s claim that she won the case in Toledo Municipal Court regarding the cat. We do not find appellant’s argument persuasive. Whether appellee won or lost the Toledo Municipal Court case, or even if there was a case at all, is inconsequential to the trial court’s determination that the elements of menacing by stalking have been proven by a preponderance of the evidence. To that end, based on appellee’s testimony that appellant

followed her, harassed her, and was repeatedly verbally abusive to her at her place of work, we hold that the trial court's decision to grant the civil protection order was not against the manifest weight of the evidence.

{¶ 10} Accordingly, appellant's first assignment of error is not well-taken.

{¶ 11} In his second assignment of error, appellant argues that the magistrate failed to notify him that he had 14 days to file objections to the decision as required by Civ.R. 53(D)(3)(a)(iii), which provides in pertinent part,

A magistrate's decision shall indicate conspicuously that 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 timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).

{¶ 12} However, civil protection orders are governed by Civ.R. 65.1, and Civ.R. 65.1(F)(3)(b) specifically provides, "A magistrate's denial or granting of a protection order after full hearing under this division does not constitute a magistrate's order or a magistrate's decision under Civ.R. 53(D)(2) or (3) and is not subject to the requirements of those rules."

{¶ 13} Accordingly, because the requirements of Civ.R. 53(D)(3)(a)(iii) do not apply, appellant's second assignment of error is without merit and is not well-taken.

III. Conclusion

{¶ 14} For the foregoing reasons, the judgment of the Wood County Court of Common Pleas is affirmed. Appellant is ordered to pay the 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, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
