

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

Sarah Tighe

Court of Appeals No. OT-15-032

Appellee

Trial Court No. 15-CV-161H

v.

Craig Kaiser

**DECISION AND JUDGMENT**

Appellant

Decided: March 31, 2016

\* \* \* \* \*

Amanda A. Krzystan, for appellant.

\* \* \* \* \*

**YARBROUGH, J.**

**I. Introduction**

{¶ 1} This is an accelerated appeal from the judgment of the Ottawa County Court of Common Pleas, issuing a civil stalking protection order upon the request of appellee, Sarah Tighe, against appellant, Craig Kaiser. We affirm.

### **A. Facts and Procedural Background**

{¶ 2} On May 18, 2015, appellee filed a petition for a civil protection order, in which she alleged that appellant, who lives in her neighborhood, was harassing her each time she visited the community room located next to his apartment. In particular, appellee alleged that she was walking her dog earlier in the morning of May 18, 2015, when she met up with a friend, Joan. As they were talking, appellant approached with his dog and, according to appellee, he “marched straight towards me with his big dog. He kept coming until he was right up into my face and his big dog at my side. At this point he was aggressively in my face, and I felt the spit on my face as he said, ‘I don’t have to do anything you tell me to do.’” Appellee told appellant to “get the hell away from [her],” but he allegedly remained in her “personal space” in a manner that she perceived as intimidating.

{¶ 3} In addition to the foregoing, appellee alleged that an incident occurred six months earlier in which appellant put his arm around her without her consent. According to the petition, appellant’s physical contact was “unwarranted and not encouraged.”

{¶ 4} Upon receiving appellee’s petition, the trial court issued an ex parte protection order, and set the matter for a full hearing before a magistrate. The ex parte protection order directed appellant to remain at least 20 feet away from appellee. Two months later, while the ex parte protection order was still in effect, appellee filed a motion with the court, seeking the modification of the ex parte protection order to prohibit appellant from coming within 100 feet of her. In support of her motion, appellee

claimed that appellant was “using the twenty foot restriction in the current order to mock and verbally taunt [her] when she is outside her residence.” In her memorandum attached to the motion, appellee outlined several encounters with appellant during the time period that the ex parte protection order was in effect, one of which resulted in panic attacks severe enough to cause her to go to the emergency room on three separate occasions for treatment.

{¶ 5} On the day after appellee’s motion to modify was filed, the matter came before the court for a full hearing on the petition for a civil protection order. At the hearing, appellee testified to the facts contained in her petition. Appellant then testified on his own behalf, essentially denying appellant’s allegations regarding physical contact or verbal harassment.

{¶ 6} At the conclusion of the hearing, the magistrate granted appellee’s petition and issued a civil protection order, which was subsequently adopted and signed by the trial court judge.

### **B. Assignment of Error**

{¶ 7} Appellant has timely appealed the granting of the civil protection order, and now presents the following assignment of error for our review:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION  
TO THE PREJUDICE OF APPELLANT WHEN IT GRANTED A CIVIL  
PROTECTION ORDER AGAINST CRAIG KAISER WHEN THERE

WERE INSUFFICIENT FACTS INTRODUCED INTO EVIDENCE TO  
JUSTIFY THE GRANTING OF SUCH AN ORDER.

## **II. Analysis**

{¶ 8} In his sole assignment of error, appellant challenges the factual basis for the trial court’s decision to issue the civil protection order.

{¶ 9} When assessing whether the trial court’s decision to grant a civil protection order was supported by sufficient evidence, “we must determine whether, viewing the evidence in the light most favorable to [the petitioner], a reasonable trier of fact could find that the petitioner demonstrated by a preponderance of the evidence that a civil protection order should issue.” *R.C. v. J.G.*, 9th Dist. Medina No. 12CA0081-M, 2013-Ohio-4265, ¶ 7, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 11, and *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. Therefore, the decision “will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier-of-fact.” *State v. Dennis*, 79 Ohio St.3d 421, 430, 683 N.E.2d 1096 (1997), citing *Jenks* at paragraph two of the syllabus.

{¶ 10} Under the manifest weight standard, “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.

{¶ 11} In the case sub judice, 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.

{¶ 12} 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.” “‘Pattern of conduct’ means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents.” R.C. 2903.211(D)(1). “In determining what constitutes a pattern of conduct for purposes of R.C. 2903.211(D)(1), courts must take every action into consideration even if, \* \* \* ‘some of the person's actions may not, in isolation, seem particularly threatening.’” *Ensley v. Glover*, 6th Dist. Lucas No. L-11-1026, 2012-Ohio-4487, ¶ 10, quoting *Middletown v. Jones*, 167 Ohio App.3d 679, 2006-Ohio-3465, 856 N.E.2d 1003, ¶ 10 (12th Dist.).

{¶ 13} “Mental distress” means “[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 any person requested or received psychiatric treatment, psychological treatment, or other mental health services.” R.C. 2903.211(D)(2). “The statute, however, ‘does not require that the victim actually experience mental distress, but only that the victim believes the stalker would cause mental distress or physical harm.’”

*Ensley* at ¶ 13, quoting *Bloom v. Macbeth*, 5th Dist. Ashland No.2007-COA-050, 2008-Ohio-4564, ¶ 11. “Moreover, the testimony of the victim herself as to her fear is sufficient to establish mental distress.” *Id.*, citing *State v. Horsley*, 10th Dist. Franklin No. 05AP-350, 2006-Ohio-1208, ¶ 48.

{¶ 14} In support of his assignment of error, appellant argues that the evidence produced by appellee at the hearing failed to demonstrate that his behaviors were threatening or harassing, and also failed to establish that appellee was in fear of physical danger. We disagree.

{¶ 15} At the hearing on appellee’s petition, appellee testified that appellant was initially friendly towards her. Indeed, she acknowledged that she and appellant walked their dogs together “a few times.” However, on one such occasion, appellee indicated that she became “very uncomfortable because he kept stopping in front of [her] and blocking [her] path.” Over time, appellant’s behavior began to change, prompting her to start ignoring him when the two would see each other as they walked their dogs around their neighborhood or visited the nearby community room. Despite appellee’s attempts to ignore appellant, the two crossed paths at some point prior to the filing of the petition, and appellant put his arm around appellee. According to her testimony, appellee did not invite such physical contact, and considered it to be inappropriate.

{¶ 16} The tension between appellant and appellee finally came to a head on the morning of May 18, 2015. On that day, appellee was walking her dog when she met up with her friend, Joan. As the two were talking, appellant approached with his dog.

Appellee asked appellant to stay away from her, but he continued in her direction until he was so close that appellee could feel spit coming from his mouth as he told her that he did not have to do anything she told him to do. According to appellee's testimony, appellant's behavior scared her and she told him to "get the hell away from me."

{¶ 17} Appellee filed her petition later that day, and the trial court issued an ex parte protection order. While the ex parte order was in effect, appellee testified that she had another encounter with appellant while walking her dog on a path that goes through some woods within the neighborhood. Appellee stopped to rest on a bench just outside the woods when appellant approached her to a distance of less than 20 feet, the distance he was ordered to maintain by the trial court in its ex parte protection order.

{¶ 18} At the conclusion of her testimony, appellee indicated that the foregoing encounters with appellant left her feeling uncomfortable. Ultimately, these encounters resulted in several trips to the emergency room because appellee was experiencing chest pain and breathing problems characteristic of panic attacks.

{¶ 19} In light of the foregoing, the trial court's determination that appellant engaged in menacing by stalking in violation of R.C. 2903.211 was supported by sufficient evidence and was not against the manifest weight of the evidence. Admittedly, appellant disputed appellee's version of the events in his testimony before the trial court, leaving some doubt as to whether his behavior amounted to menacing by stalking under R.C. 2903.211. Indeed, this is a close case. However, the trial court, which was in the best position to ascertain the credibility of the evidence, attributed credibility to

appellee's version of the events. Appellee testified to several incidents occurring in close proximity, all of which caused her mental distress and ultimately forced her to seek medical treatment for panic attacks caused by appellant's behavior. As noted above, "the testimony of the victim herself as to her fear is sufficient to establish mental distress." *Ensley* at ¶ 13, citing *State v. Horsley*, 10th Dist. Franklin No. 05AP-350, 2006-Ohio-1208, ¶ 48. Thus, the trial court did not err in granting appellee's petition for a civil stalking protection order.

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

### III. Conclusion

{¶ 21} In light of the foregoing, the judgment of the Ottawa County Court of Common Pleas is affirmed. Court costs of this appeal are assessed to appellant.

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

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

JUDGE

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