

[Cite as *Rauser v. Ghaster*, 2011-Ohio-609.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94745

LAURIE RAUSER, ET AL.

PLAINTIFFS-APPELLEES

vs.

PAMELA GHASTER

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-655883

BEFORE: Celebrezze, J., Stewart, P.J., and Gallagher, J.

RELEASED AND JOURNALIZED: February 10, 2011

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, Pamela Ghaster, seeks review of the issuance of a civil protective order against her and the denial of her motion for relief from judgment.¹ She argues that the trial court improperly granted a protective order to her neighbors, Richard and Laurie Rauser, without the opportunity to present evidence. After a thorough review of the record and law, we reverse.

{¶ 2} Sometime late in 2006, appellant subpoenaed Laurie Rauser to testify on her behalf in legal proceedings pending against her. Laurie

¹ In another case, appellant was found to be in violation of a condition of her community control for breaching a different protective order. She appealed that determination in *Rocky River v. Ghaster*, Cuyahoga App. No. 94559, but, as the protective orders are different, these two appeals will not impact each other.

informed appellant that she was not available on the date on the subpoena and that her testimony would not be helpful to appellant. Laurie testified at the protection order hearing that, following this conversation, appellant began calling and threatening her. Laurie stated that appellant often followed her around with her camera phone taking pictures and made threatening statements. Charges were filed against appellant on October 1, 2007, and she was convicted of menacing by stalking in the Rocky River municipal court.

{¶ 3} On April 4, 2008, the Rausers filed a petition pursuant to R.C. 2903.214 for a civil stalking protection order against appellant and requested a full hearing. On September 26, 2008, the trial court held a hearing where the Rausers testified. Appellant's counsel held his opening statement until the close of the Rausers' case. However, before getting to that point, appellant filed a motion for a directed verdict.² The trial court adjourned the hearing to consider the motion, and appellant's counsel specifically requested that if the motion was denied, the hearing would be reconvened to give appellant the opportunity to present a defense. The trial court granted appellant's motion on September 29, 2008.

{¶ 4} This court reversed the trial court's grant of appellant's motion to dismiss, improperly styled a motion for directed verdict, in *Rauser v. Ghaster*,

² Because this was not a jury trial, Civ.R. 50 is not applicable. *Jackson v. Gossard* (1989), 48 Ohio App.3d 309, 311-312, 549 N.E.2d 1234. This is properly a Civ.R. 41(B)(2) involuntary dismissal.

Cuyahoga App. No. 92699, 2009-Ohio-5698. We held that the Rausers had presented sufficient evidence to survive appellant's motion. Upon remand, the trial court did not hold a hearing allowing appellant to present her defense, but granted a protective order with a five-year duration. Appellant filed a notice of appeal on February 26, 2010 and a Civ.R. 60(B) motion for relief from judgment on the same day. The motion was denied on March 5, 2010.

{¶ 5} Appellant appeals arguing two errors; however, the second assigned error will not be addressed because appellant failed to appeal from the post-judgment denial of her Civ.R. 60(B) motion, which this assigned error challenges. An assigned error addressed at such a denial coming after the filing of a notice of appeal requires a separate appeal.

Law and Analysis

Failure to Hold a Hearing

{¶ 6} In her first assignment of error, appellant claims that “[t]he trial court erred in granting the protective order without allowing [her] an opportunity to present evidence.” The issuance of a civil stalking protection order is left to the sound discretion of the trial court and will not be reversed on appeal absent an abuse of that discretion. *Dennis v. Paulsen*, Hocking App. No. 08CA15, 2009-Ohio-2916, ¶4, citing *Smith v. Wunsch*, 162 Ohio App.3d 21, 2005-Ohio-3498, 832 N.E.2d 757, ¶10. To constitute an abuse of discretion, the ruling must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

{¶ 7} Due process, which can be divided into substantive and procedural aspects, requires that a party be afforded the right to be heard before a deprivation of a protected liberty interest. *State v. Hayden*, 96 Ohio St.3d 211, 2002-Ohio-4169, 773 N.E.2d 502, ¶6. “The right to procedural due process is required by the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.” *Id.* “[T]he basic requirements under this clause are notice and an opportunity to be heard.” *Id.*, citing *State v. Hochhausler*, 76 Ohio St.3d 455, 459, 1996-Ohio-374, 668 N.E.2d 457. This opportunity “must occur at a meaningful time and in a meaningful manner.” *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437, 855 N.E.2d 35,

¶45, citing *State v. Cowan*, 103 Ohio St.3d 144, 2004-Ohio-4777, 814 N.E.2d 846, ¶8. Further, Civ.R. 41(B)(2) specifically preserves a moving party's right to present evidence.

{¶ 8} While R.C. 2903.214 contemplates an ex parte hearing, that section also requires a full hearing to be scheduled within ten days from the issuance of any ex parte protective order. R.C. 2903.214(D)(2)(a). Further, division (D)(3) provides that “[i]f a person who files a petition pursuant to this section does not request an ex parte order, * * * the court shall proceed as in a normal civil action and grant a full hearing on the matter.”³

{¶ 9} The trial court indicated in the protective order that appellant was given an opportunity to be heard, but no evidence of that fact can be found in the record. After remand, the trial court did not reconvene the hearing to allow the presentation of evidence, nor did appellant affirmatively waive that right. By issuing the protective order without providing appellant with a meaningful opportunity to be heard, the trial court violated her due process rights.

{¶ 10} The Rausers argue that any error was harmless due to the stipulated entry showing appellant's menacing by stalking conviction involving Laurie Rauser and the testimony of the Rausers during the hearing.

However, this argument is contradicted by the fact that the trial court, albeit improvidently, granted appellant's motion for a directed verdict. “An error of

³ The Rausers did not request an ex parte hearing.

constitutional dimension is considered non-prejudicial only if it is harmless beyond a reasonable doubt.” *State v. Dehler* (July 14, 1994), Cuyahoga App. No. 65716, 6. The evidence presented at the hearing was not so strong that this court could deem such an error harmless.

{¶ 11} The trial court abused its discretion in granting the protective order without providing appellant a meaningful opportunity to be heard, as directed by R.C. 2903.214. On remand, the trial court should provide such an opportunity and then decide if the protection order is appropriate.

{¶ 12} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of said appellees costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

MELODY J. STEWART, P.J., and
SEAN C. GALLAGHER, J., CONCUR