[Cite as *Williams v. Flannery*, 2015-Ohio-2040.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101880

IVAN WILLIAMS

PLAINTIFF-APPELLEE

vs.

CAROL FLANNERY

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-827270

BEFORE: McCormack, P.J., Stewart, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: May 28, 2015

ATTORNEY FOR APPELLANT

Richard A. Oviatt
1370 Ontario Street
Suite 2000
Cleveland, OH 44113

FOR APPELLEE

Ivan Williams, pro se
1300 Superior Avenue
Apartment 511
Cleveland, OH 44114

TIM McCORMACK, P.J.:

{¶1} Carol Flannery and Ivan Williams are residents of the same CMHA housing facility. Williams sought a petition for a civil stalking protection order ("CSPO") against Flannery. After a hearing, the trial court granted the CSPO. Having reviewed the record and applicable law, we do not find an abuse of discretion by the trial court in granting the CSPO, and therefore, we affirm the trial court's order.

{¶2} Williams, 64, a disabled veteran with post-traumatic stress disorder, lives in a CMHA housing facility in downtown Cleveland. Flannery, 76, lives on a different floor in the same building.

{¶3} On May 23, 2014, Williams filed a petition for a CSPO against Flannery. The trial court held a hearing on the petition. Both parties were represented by counsel and testified at the hearing. They offered drastically different accounts of their relationship and interactions.

{¶4} The trial court found that Flannery knowingly engaged in a pattern of conduct that caused mental distress to Williams. It granted Williams a CSPO for five years. Flannery appealed from the court's order, raising three assignments of error for our review. Under the first and second assignments of error, she claims the trial court's order is contrary to law and against the manifest weight of the evidence, respectively. Under the third assignment of error, she claims the trial judge was biased.

Civil Stalking Protection Order

{¶5} A civil protection order is a final appealable order. R.C. 2903.214(G). Pursuant to R.C. 2903.214, a person can file a petition for an order for protection from menacing by stalking. R.C. 2903.211. R.C. 2903.211(A)(1) defines the offense of menacing by stalking: "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."

{¶6} The decision to grant a civil protection order is well within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. *Rufener v. Hutson*, 8th Dist. Cuyahoga No. 97635, 2012-Ohio-5061, ¶ 12. An abuse of discretion occurs when the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶7} For a trial court to grant a civil protection order, it must hold a full hearing and proceed as in a normal civil action. R.C. 2903.214(D)(3). The petitioner must show, by a preponderance of the evidence, that the respondent's conduct violates the menacing-by-stalking statute. *Strausser v. White*, 8th Dist. Cuyahoga No. 92091, 2009-Ohio-3597, citing *Felton v. Felton*, 79 Ohio St.3d 34, 42-43, 679 N.E.2d 672 (1997) (since the statute is silent on the standard of proof, a preponderance of evidence is the proper standard). On appeal, we consider whether there is some competent, credible evidence to support each element of menacing by stalking. *Strausser* at ¶ 33.

{¶8} "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." R.C. 2901.22(B). "'Purpose or intent to cause physical harm or mental distress is not required. It is enough that the person acted knowingly.'" *McWilliam v. Dickey*, 8th Dist. Cuyahoga No. 99277, 2013-Ohio-4036, ¶ 25, quoting *Jenkins v. Jenkins*, 10th Dist. Franklin No. 06AP-652, 2007-Ohio- 422, ¶ 16.

{¶9} To be granted a CSPO, therefore, Williams must show Flannery knowingly engaged in a pattern of conduct that caused him mental distress. *Strausser* at ¶ 34. *See also Smith v. Wunsch*, 162 Ohio App.3d 21, 2005-Ohio-3498, 832 N.E.2d 757, ¶ 11 (4th Dist.); *Caban v. Ransome*, 7th Dist. Mahoning No. 08 MA 36, 2009-Ohio-1034, ¶ 23; and *State v. Payne*, 178 Ohio App.3d 617, 2008-Ohio-5447, 899 N.E.2d 1011, ¶ 7 (9th Dist.).

{¶10} R.C. 2903.211(D)(2) defines "mental distress" as either of the following: "(a) [a]ny mental illness or condition that involves some temporary substantial incapacity; (b) [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." "Mental distress need not be incapacitating or debilitating." *Jenkins* at ¶ 19. Furthermore, "[i]t is the duty of the trier of fact to determine whether a victim suffered mental distress as a result of the offender's actions." *Taylor v. Taylor*, 2d Dist. Miami No. 2012-CA-14, 2012-Ohio-6190, ¶ 16. "Expert testimony is not required to

establish mental distress, and the trier of fact 'may rely on its knowledge and experience in determining whether mental distress has been caused.'" *Strausser*, 8th Dist. Cuyahoga No. 92091, 2009-Ohio-3597, at ¶ 32, quoting *Smith at* ¶ 18. Further, the testimony of the victims themselves as to their fear is sufficient to establish mental distress. *Id.* citing *State v. Horsley*, 10th Dist. Franklin No. 05AP-350, 2006-Ohio-1208, ¶ 48.

{¶11} A pattern of conduct is defined as "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). "[T]he temporal period within which the two or more actions or incidents must occur * * * [is a] matter to be determined by the trier of fact on a case-by-case basis." *Ellet v. Falk*, 6th Dist. Lucas No. L-09-1313, 2010-Ohio-6219, ¶ 22.

Williams's Testimony

{¶12} Williams testified he moved to the Bohn Tower in 2003. He was an officer in the tenants' organization. He met Flannery through the tenants' meetings. He considered her as a very antagonistic tenant. He denied Flannery's claim that they had been dating since 2005 or that he had a sexual relationship with her. He testified that for an extended period of time, he was "terrorized" by Flannery. He compared her to the protagonist in the movie "Fatal Attraction." She frequently sent him cards and left items at his door. One card showed the printed words "I like you ... really, REALLY like you!" In another card she wrote "Go to hell." Another card had the words "Good Luck" on the front, but inside was a torn-up five-dollar bill. One of the items left at his door was a bed. He took the bed on the mistaken belief that the bed was from a Catholic charitable organization. When he realized his mistake, Flannery insisted he keep the bed, but harassed him about it.

{¶13} Williams testified that on March 5, 2014, while he, a cosmetologist, was doing the hair of an acquaintance, Robin Jones, Flannery came to his apartment door with a bottle of wine and insisted he come to the door, claiming there was an emergency. When he opened the door, she used her foot to jam the door and tried to force herself in. He went downstairs to ask the front desk to call the CMHA police. She followed him to the front desk. Williams filed a complaint with the CMHA police regarding the incident.

{¶14} On April 4, 2014, Williams sent a letter to the apartment manager, stating "I would like Mrs. Flannery to stay away from my door and to stop monitoring, harassing me and my guest." Williams testified he felt "terrorized."

{¶15} On May 18, 2014, when Williams returned from an out-of-town funeral, he found a card under his door. The card had a handwritten inscription: "Fuck you and Robin Jones." Williams felt "threatened"; he did not know how Flannery knew Jones's name.

{¶16} On May 21, 2014, Flannery came to his apartment and banged on his door, wanting the bed returned to her. Williams called the CMHA police. A few days later, on May 23, 2014, Williams filed a petition for the CSPO.

{¶17} After he filed the petition, another incident occurred. When he and Robin Jones were returning to the apartment building one day, they saw Flannery enter the building with grocery bags. They decided to leave to avoid any interactions. When they returned to the apartment 45 minutes later, Flannery was still in the lobby with the grocery bags. She followed Williams and Jones into the elevator and followed them out when they tried to get off. Williams called the CMHA police about the incident.

{¶18} Williams testified Flannery would follow him to places — she would walk behind him, and when he stopped walking, she would stop too. On occasions when he went to a restaurant and sat down, she would stand there just staring at him. After he filed for the protection order, there was an incident where Flannery followed him to a grocery store and then to a Subway sandwich shop. Williams described Flannery's

conduct as "freaky." He felt he was in a "bad movie." He testified he was afraid of her.

{¶19} Williams also testified that one day in 2010, while she was in his apartment, she took a gun out of her bag and put it on the table. She said her daughter had given her the gun. He immediately asked her to remove the gun from his apartment.

Flannery's Testimony

{¶20} Flannery gave a drastically different account of the parties' relationship. She testified she and Williams were lovers since 2005 and engaged in sexual conduct on multiple occasions, as late as December 2013. She denied ever following him. Regarding the March 5, 2014 incident, Flannery testified that Williams initiated the contact that day. He called to ask her to bring some merlot and rice over. When she knocked on his door, he took a while to come to the door. When he opened the door, she stepped forward, and he pushed her to the hallway. She also testified she had given him thousands of dollars, as well as a bed, which she had intended to share with him in his apartment.

{¶21} "Where evidence is subject to more than one interpretation, a reviewing court must construe the evidence consistently with the judgment of the lower court." *McWilliam*, 8th Dist. Cuyahoga No. 99277, 2013-Ohio-4036, at ¶ 22, citing *Gerijo, Inc. v. Fairfield*, 70 Ohio St.3d 223, 226, 638 N.E.2d 533 (1994). Having reviewed the parties' testimony, we find that Williams presented competent, credible evidence that Flannery knowingly engaged in a pattern of conduct that caused him mental distress. The trial

court did not abuse its discretion in granting his petition for a CSPO. The first and second assignments of error are without merit.

Judicial Bias

{¶22} Under the third assignment of error, Flannery claims the trial judge was biased. Her claim is based on the trial judge's comments that her own (the trial judge's) son also suffered from PTSD and she understood that a person with such a condition may perceive threats even in a benign situation. A trial court "may rely on its knowledge and experience in determining whether mental distress has been caused." *Wunsch*, 162 Ohio App.3d 21, 2005-Ohio-3498, 832 N.E.2d 757, at ¶ 18; *Middletown v. Jones*, 167 Ohio App.3d 679, 2006-Ohio-3465, 856 N.E.2d 1003, ¶ 7 (12th Dist.). Flannery's claim that the trial judge's comments reflected her bias is without merit.

{¶23} Flannery also alleges that after the instant appeal was filed, she learned that Williams's trial counsel was an associate in the trial judge's prior law firm between 2009 and 2012. She claims the prior relationship compromised the trial judge's impartiality. For proof, Flannery attached to her appellate brief an appendix that appears to be information from Williams's trial counsel's Linkedin page. It shows that Williams's trial counsel was an associate attorney in "The Law Offices of Cassandra Collier-Williams, LLC" between 2009 and 2012. Although a diligent search would have disclosed the information when the proceeding was pending before the trial court, Flannery or her counsel did not bring the alleged conflict to the trial court's attention.

On appeal, we are unable to consider any evidence that is not part of the record on appeal. *Hazel v. Knab*, 130 Ohio St.3d 22, 2007-Ohio-1955, 865 N.E.2d 46, ¶ 1.

{¶24} Even if we were to consider the allegation of judicial bias, we note that judicial bias is a "'hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge * * *.'" *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, 767 N.E.2d 166, ¶ 34, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956), paragraph four of the syllabus. Our review of the transcript in this case indicates that the trial judge allowed both parties to testify at length and properly applied the statute of menacing by stalking before granting the CSPO. We do not perceive undue friendship or favoritism toward Williams or his attorney. The third assignment of error lacks merit.

{¶25} Judgment affirmed.

It is ordered that appellee recover of appellant 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.

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TIM McCORMACK, PRESIDING JUDGE

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