

[Cite as *Vilk v. Dinardo*, 2016-Ohio-5245.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 103755

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**GREGORY J. VILK**

PETITIONER-APPELLEE

vs.

**ARMAND DINARDO, JR.**

RESPONDENT-APPELLANT

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**JUDGMENT:**  
VACATED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-15-851868

**BEFORE:** Celebrezze, J., E.A. Gallagher, P.J., and Stewart, J.

**RELEASED AND JOURNALIZED:** August 4, 2016

**FOR APPELLANT**

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Respondent-appellant, Armand DiNardo, Jr. (“appellant”), brings this appeal challenging the trial court’s judgment granting petitioner, Gregory Vilk’s (“appellee”), petition for a civil stalking protection order (“CSPO”). Appellant filed an expedited suggestion of lack of subject matter jurisdiction in this court arguing that the trial court lacked jurisdiction over the CSPO proceedings because appellee does not reside in Cuyahoga County. After a thorough review of the record and law, we vacate the trial court’s judgment.

### **I. Factual and Procedural History**

{¶2} The instant matter relates to a dispute at the Blisswood Village complex in Euclid, Ohio. Appellee is the president of the Blisswood Village Homeowners Association (“HOA”). Appellant, the first respondent, owns 15 condominiums in the Blisswood Village complex. The second respondent, William Bridge, III (“Bridge”), is a 5% owner of one of appellant’s Blisswood Village properties and also handles matters related to his son’s Blisswood Village condominium as his lawful power-of-attorney. After a tenant in Bridge’s son’s unit attempted to install a satellite dish without permission, appellee sent the son a \$1,095 invoice. The invoice was assessed as a fine and penalty for violating the HOA’s declarations, by-laws, rules, and regulations. After receiving the invoice, Bridge sought to determine its validity. Bridge contacted the HOA and asked to examine the books, records, rules, regulations, and by-laws.

{¶3} Appellant testified that following Bridge's request, he received a "threatening phone call" from appellee. Appellant testified that appellee attempted to coerce him into getting Bridge to withdraw his request to examine the HOA's books and records.

{¶4} Between June 15, 2015 and September 30, 2015, appellee and Bridge exchanged several emails regarding the invoice, the operation of the HOA, and appellee's conduct as president. Due to the ongoing controversy regarding the invoice and his disapproval of appellee's conduct, Bridge organized the "Blisswood Village Coalition." Bridge informed the Blisswood Village residents of appellee's conduct and voiced his concerns about appellee's re-election as president of the HOA.

{¶5} According to appellee, members of the coalition sent "over 100 emails humiliating or threatening [appellee]" to appellee and other members of the Blisswood Village community. Appellee submitted nine emails to the trial court during the hearing on the matter. Appellee contends that although Bridge sent the humiliating and threatening emails, Bridge sent the emails "on behalf of or at [appellant's] direction." Appellant testified that he had no involvement in these emails and that he has never sent emails on behalf of the coalition.

{¶6} In addition to the emails, the HOA office received a "death sympathy card." At the time that the office received the sympathy card, no one had passed away. Appellee testified that Bridge delivered the card. Furthermore, appellee testified that appellant sent him a text message explaining that the card was a joke and telling him to forget about it.

{¶7} On September 30, 2015, appellee filed two CSPO petitions. First, appellee filed a petition for a CSPO against appellant. Second, appellee filed a petition for a CSPO against Bridge. On that same date, the trial court granted a temporary order of protection against appellant and Bridge. The trial court consolidated appellee's petitions and scheduled a hearing for October 7, 2015.

{¶8} During the hearing on appellee's petitions, the trial court heard testimony from appellee, appellant, and Bridge. At the conclusion of the hearing, the trial court granted appellee's petitions for five-year CSPOs against appellant and Bridge. The trial court concluded:

The Court finds by a preponderance of the evidence that [appellant and Bridge] have knowingly engaged in a pattern of conduct that caused [appellee] to believe that [appellant and Bridge] will cause physical harm or has caused mental distress.

{¶9} Appellant filed the instant appeal assigning two errors for review:

I. It was error to grant the Civil Protection Stalking Order.

II. It was error to conduct a portion of the hearing without applying the rules of evidence.

Furthermore, appellant filed an expedited suggestion of lack of subject matter jurisdiction arguing that the trial court lacked subject matter jurisdiction over the CSPO proceedings. Specifically, appellant argues that the trial court's judgment granting appellee's CSPO is void, and must be vacated, because appellee resides in Geauga County.

## **II. Law and Analysis**

### **A. Subject Matter Jurisdiction**

{¶10} Appellant argues that the trial court lacked subject matter jurisdiction over the CSPO proceedings for the first time on appeal. However, under Civ.R. 12(H)(3), the question of a court’s subject matter jurisdiction can be raised at any time — even after judgment or on appeal. See *Escada Internatl. v. Eurocargo Express*, 8th Dist. Cuyahoga No. 80761, 2002-Ohio-4035, ¶ 17. The issue of a court’s lack of subject matter jurisdiction cannot be waived. See *Byard v. Byler*, 74 Ohio St.3d 294, 296, 658 N.E.2d 735 (1996).

{¶11} Civ.R. 3(B)(10) provides that an action for a civil protection order may be commenced in the county in which the petitioner resides. R.C. 2903.214 governs the filing of a petition for a civil protection order. Regarding subject matter jurisdiction, R.C. 2903.214(B) provides, “[t]he court has jurisdiction over all proceedings under this section.” The “court” is defined under R.C. 2903.214(A)(1) as “the court of common pleas of the county in which the person to be protected by the protection order resides.”

{¶12} When a petitioner seeks a civil protection order from a common pleas court in a county in which he does not reside, the court lacks subject matter jurisdiction over the case. *Reynolds v. Whitney*, 10th Dist. Franklin No. 03AP-1048, 2004-Ohio-1628, ¶ 8. A judgment rendered by a court lacking subject matter jurisdiction is void ab initio. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988), paragraph three of the syllabus. Accordingly, if the trial court lacked subject matter jurisdiction over the CSPO proceedings, its judgment granting appellee’s petition for a CSPO is void and must be vacated.

{¶13} In the instant matter, the only document in the record purportedly establishing the trial court’s subject matter jurisdiction is appellee’s CSPO petition. Appellee listed an address on his CSPO petition located on Lucerne Drive, Chagrin Falls, Ohio 44023. The trial court apparently assumed, without investigation, that the address listed on the CSPO petition was in Cuyahoga County.

{¶14} “It is a geographical fact, readily ascertainable, that Chagrin Falls is situated in both Cuyahoga and Geauga Counties.” *Redifer Bus Co. v. Lumme*, 171 Ohio St. 471, 475, 172 N.E.2d 304 (1961). A geographic review reveals that appellee’s address is unquestionably located in Geauga County. Accordingly, after reviewing the record, we find that the trial court lacked subject matter jurisdiction over this matter based on appellee’s own pleading.

{¶15} We need not address the merits of this case, because our disposition of the subject matter jurisdiction issue renders appellant’s assignments of error moot.

### **III. Conclusion**

{¶16} The address that appellee listed on his CSPO petition is unquestionably in Geauga County. By virtue of appellee’s own pleading, the Cuyahoga County Court of Common Pleas lacked jurisdiction over this matter. Accordingly, the trial court’s order is vacated.

{¶17} Because the trial court lacked subject matter jurisdiction over this matter, the court is without jurisdiction to transfer the case. *State ex rel. Frinzl v. Ohio DOT*, 8th

Dist. Cuyahoga No. 75347, 1999 Ohio App. LEXIS 437 (Feb. 11, 1999), citing *State ex rel. Dannaher v. Crawford*, 78 Ohio St.3d 391, 678 N.E.2d 549 (1997).

{¶18} The CSPO is vacated and the matter is remanded to the trial court to issue an order consistent therewith.

It is ordered that appellant recover of appellee 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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FRANK D. CELEBREZZE, JR., JUDGE

EILEEN A. GALLAGHER, P.J., and  
MELODY J. STEWART, J., CONCUR