

[Cite as *Cipriani v. Ehlert*, 2016-Ohio-5840.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103767

MICHAEL CIPRIANI

PETITIONER-APPELLANT

vs.

ROBERT EHLERT

RESPONDENT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-839454

BEFORE: McCormack, J., Jones, A.J., and Blackmon, J.

RELEASED AND JOURNALIZED: September 15, 2016

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TIM McCORMACK, J.:

{¶1} Petitioner-appellant Michael Cipriani appeals from the trial court's modification of a civil stalking protection order ("CSPO") issued under R.C. 2903.214. For the reasons that follow, we affirm.

{¶2} On January 26, 2015, Cipriani sought a petition for a CSPO against respondent, Robert Ehlert. Initially, Cipriani sought protection for Cipriani and his parents. One day later, however, Cipriani moved to amend the petition in order to add his daughter, a minor, to the order as an additional protected person. The court granted Cipriani's motion and scheduled a full hearing on the petition, which now included Cipriani's daughter as a protected person.

{¶3} On February 9, 2015, the trial court held a hearing, during which it determined that Cipriani established prima facie evidence warranting a CSPO. The court then issued a protection order against Ehlert. On September 10, 2015, respondent Ehlert moved the court to modify the CSPO in order to remove the minor child as a protected person. On October 20, 2015, the court held a hearing on respondent's motion to modify the court's order. Following the hearing, the court granted Ehlert's motion to modify and it removed the minor child from the CSPO.

{¶4} Cipriani now appeals, assigning one error for our review: The trial court erred and/or abused its discretion in granting Ehlert's motion to modify the CSPO and removing Cipriani's daughter from the list of protected persons.

{¶5} R.C. 2903.214 governs the filing of a petition for a civil protection order to protect victims of menacing by stalking, in violation of R.C. 2903.211. The statute defines menacing by stalking as follows: “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.” R.C. 2903.211(A)(1).

{¶6} In order to grant a CSPO, the trial court 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) (because the statute is silent on the standard of proof, a preponderance of evidence is the proper standard).

{¶7} A trial court may modify a CSPO if the movant shows that the original circumstances have materially changed and it is no longer equitable for the order to continue. *Prostejovsky v. Prostejovsky*, 5th Dist. Ashland No. 06-COA-033, 2007-Ohio-5743, ¶ 26. “[T]he court cannot be required to disregard significant changes in law or facts if it is “satisfied that what it has been doing has been turned through changing circumstances into an instrument of wrong.”” *Id.* at ¶ 25, quoting *System Fedn. No. 91, Ry. Emp. Dept. v. Wright*, 364 U.S. 642, 647, 81 S.Ct. 368, 5

L.Ed.2d 349 (1961), quoting *United States v. Swift & Co.*, 286 U.S. 106, 114-115, 52 S.Ct. 460, 76 L.Ed. 999 (1932).

{¶8} Here, following the testimony of Cipriani and his parents at the initial CSPO hearing, the court found that Cipriani had established that Ehlert engaged in a pattern of conduct that knowingly caused Cipriani and his parents to believe that Ehlert would cause physical harm or mental distress to them. With respect to Cipriani's daughter, the court determined it "appropriate" to add her to the protection order "because she is a family member of Michael Cipriani and [Cipriani's parents], and the remarks have been quoted coming out of Mr. Ehlert's mouth about harm to the family." The child is the daughter of Michael Cipriani and Larisa Cipriani ("Larisa"). During the pendency of the CSPO, Michael and Larisa Cipriani were engaged in divorce proceedings. At this same time, Larisa and Ehlert were romantically involved.

{¶9} Approximately eight months after the initial protection order was issued, the court held a hearing on Ehlert's motion to remove Cipriani's daughter from the protection order. At the hearing, Larisa testified that she has been in divorce proceedings with Cipriani for one year and she is the residential parent of their young daughter. Cipriani has visitation with their daughter Wednesday evenings and every other weekend. At all other times, their daughter stays with Larisa.

{¶10} Larisa testified that she and her daughter now live with Ehlert and Ehlert's mother. As a result of the protection order, her life has been "complete misery." She described her current living arrangements as "nothing but a nightmare." Larisa

explained that due to the protection order, and the fact that her daughter is listed as a protected person on the order issued against Ehlert, she must make repeated accommodations regarding their living arrangements. She stated that either Ehlert stays at a family member's house or a hotel when her daughter is with her, or she and her daughter leave the house and stay someplace else. She does not own a home, she does not presently have the ability to support herself, and she "doesn't have anybody in this country" who could help her.

{¶11} Larisa further testified that it is Ehlert's mother who helps her out with her daughter, picking the child up from school, taking her to school on occasion, and doing "everything she can to help me out." She explained that Ehlert's mother removes Larisa's daughter from the home when Ehlert is expected home. She noted one exception to this arrangement, wherein one afternoon during which the mother did not expect Ehlert home, Ehlert arrived at his home when Larisa's daughter had not yet been removed. Larisa explained that it was an accident and that her daughter was not supposed to be there.

{¶12} Larisa also testified that Ehlert supports Larisa and her daughter, providing "everything that a little child needs." She further testified that Ehlert has never harmed her daughter, nor does she have any concerns that he might harm her.

{¶13} At the conclusion of the hearing, the trial court reminded the parties that the issue at hand is the CSPO, which is issued for the purposes of separating people before something happens; the issue is not "the big life and death issues of divorce court." The

court also noted that protection orders should not be used “as new weapons in an ongoing family dispute.” In that context, the court stated that the minor child was added to the protection order prior to a full hearing, and the court would have been within its rights to decline to issue the order as it related to the child.

{¶14} Before granting the motion to remove the child from the protection order, the court noted that the protection order was “impracticable” from the start and explained the order “has forced Mrs. Cipriani and her child trying to live somewhere, they have no other place to live, and they had to play games with the system.” The court noted the importance of the fact that the child has her mother and another adult in the household that cares for her. The court stated that it was “very, very troubled that nothing happened that would increase the risk for [the child] to be around Mr. Ehlert” and found that the order was an impediment to Larisa and her child living in the household with Ehlert.

{¶15} We find that the court did not err in removing the minor child from the protection order. The evidence demonstrates that the current living arrangements of Larisa and her minor child have become a hardship, requiring Larisa and her child to repeatedly pack their belongings and uproot themselves from the only home they have, and the only help they have, in an effort to comply with the protection order. In light of the fact that Larisa and her daughter now live in Ehlert’s home, Ehlert’s mother provides assistance with the child, there is no evidence that Ehlert has ever harmed the child, and

Larisa has no concern that Ehlert would harm her child, it is no longer equitable for the protection order to continue as it relates to the minor child.

{¶16} Cipriani's sole assignment of error is overruled.

{¶17} 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.

TIM McCORMACK, JUDGE

LARRY A. JONES, SR., A.J., and
PATRICIA ANN BLACKMON, J., CONCUR