

[Cite as *Cole v. Tubbs*, 2016-Ohio-8321.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104117

TISCISIA COLE

PETITIONER-APPELLANT

vs.

KATHLEEN TUBBS

RESPONDENT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-856517

BEFORE: E.A. Gallagher, P.J., S. Gallagher, J., and Blackmon, J.

RELEASED AND JOURNALIZED: December 22, 2016

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FOR APPELLEE

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EILEEN A. GALLAGHER, P.J.:

{¶1} Petitioner-appellant Tiscisia Cole (“Cole”) appeals the trial court’s decision denying her petition for a civil stalking protection order (“CSPO”) pursuant to R.C. 2903.214. For the reasons that follow, we affirm.

{¶2} On December 31, 2015, Cole filed for an order of protection against respondent-appellee Kathleen Tubbs (“Tubbs”) in the Cuyahoga County Court of Common Pleas. An ex parte hearing was conducted on that date by the presiding and administrative judge who denied the petition and scheduled a full hearing on the matter for January 11, 2016 before another judge of the court.

{¶3} At the full hearing, both Cole and Tubbs appeared, pro se. Each of the women addressed the court under oath and, at the conclusion of the hearing, the court took the matter under advisement. On January 13, 2016, the court entered an order finding that “Petitioner Cole is not in immediate and present danger and there is no good cause shown to grant a full order of protection. The court finds that the civil stalking order is without merit. Therefore, petition for civil stalking order is denied without prejudice.”

{¶4} Cole testified that Tubbs spoke to her during a phone call Cole was having with Lasonya Harris on what she believed was October 25, 2015. Cole stated that, during the call, Tubbs “called my name twice and said that I was going to make her hurt me.” Cole further testified that prior to that date, she and Tubbs “had not had any

communication, no contact.” She went on to state that Tubbs called her home on August 27, 2015, but no conversation was had, and no message left.

{¶5} Thus, the sole complaint then had by Cole, at the time of hearing, was that Tubbs had communicated with her on October 25, 2015.

{¶6} Tubbs testified that in October 2015, Lasonya Harris did place a call to Cole after contacting Tubbs at work and that Tubbs was a third party on the call.

{¶7} Tubbs went on to state that each of the women had been involved with a Mr. Watson and that “since day one” of her relationship with Mr. Watson, Cole has called her “constantly” inquiring about the state of Tubbs’ relationship with Mr. Watson.¹

{¶8} Tubbs admitted that during the October 2015 phone call, she said the following to Cole: “I said you are messing with the right person. I said, maybe not just now, I’m going to have to take things to court. I said because you don’t seem to know how to stay out of business, businesses that don’t involve you.”

{¶9} Cole appealed the trial court’s decision, raising three assignments of error for review:

First Assignment of Error:

Trial court erred in its initial hearing of the case re: jurisdiction.

Second Assignment of Error:

Trial court erred in denying appellant a full hearing by the fact of law.

Third Assignment of Error:

¹ Tubbs was granted a CSPO against Cole in Case No. CV-15-853620.

The court erred to the prejudice of the appellant as its jurisdiction in the case, and alleged full hearing [sic].

{¶10} Cole intertwines the arguments she makes to this court, but essentially she claims error as to the trial court's jurisdiction to hear her petition for a CSPO and that she was denied a full hearing on her petition for a CSPO.

{¶11} As an initial matter, we find that the trial judge did make statements at the onset of the hearing, which apparently reflect his personal opinion as to the appropriateness of filing of petitions for civil protection orders in the common pleas court as opposed to in "the municipal courts of the cities in which they originated." The trial judge stated: "They are used by the police department to avocate [sic] the responsibilities in enforcing the laws of this state by simply referring people here for CSPOs. I believe that is wrong. I believe it is improper, and I believe that this court should not be hearing these matters."

{¶12} Irrespective of the trial judge's personal opinion regarding the filing of CSPOs, which has no basis in law, R.C. 2903.214(C) provides:

A person may seek relief under this section for the person, or any parent or household member may seek relief under the section on behalf of any other family or household member, by filing a petition with the court * * *.
R.C. 2903.214(A) defines "court" as used in this section as "the court of common pleas of the county in which the person to be protected by the protection order resides."

{¶13} After the court made his erroneous declarations as to the suitability of the forum he stated "this is a full hearing," he swore in both parties and then stated "[w]hat I

will allow you to do, Ms. Cole, is give a brief synopsis of the situation here. Let me know what's going on.”

{¶14} Each women made their sworn statement but neither called any witnesses nor did either one seek to do so. In addition to her court testimony, Cole referenced an affidavit that she filed contemporaneously with her petition that the judge indicated he would review.

{¶15} At the conclusion of the respondents statement, Cole sought permission to “make a statement in response to this.” That request was denied by the trial judge who said “I’ve heard enough.”

{¶16} The decision whether to grant a civil protection order is within the sound discretion of the trial court. *Williams v. Flannery*, 8th Dist. Cuyahoga No. 101880, 2015-Ohio-2040, ¶ 6, citing *Rufener v. Hutson*, 8th Dist. Cuyahoga No. 97635, 2012-Ohio-5061, ¶ 12. The standard of review of a trial court’s denial of a petition for a civil protection order is whether there was “sufficient credible evidence” to support the trial court’s finding that the petitioner did not prove by a preponderance of the evidence that the respondent had engaged conduct constituting menacing by stalking. *See, e.g., Corrao v. Corrao*, 8th Dist. Cuyahoga No. 103411, 2016-Ohio-4862, ¶ 16-17 (noting that the standard of review of determinations regarding civil protection orders “depends on the nature of the challenge,” i.e., that challenges to the scope of a protection order are reviewed for abuse of discretion and that “[w]hen the issue is whether a protection order should have issued at all,” the “question on review” is whether there was “sufficient

credible evidence” to support the trial court’s finding that petitioner was or was not entitled to a protection order), quoting *Allan v. Allan*, 8th Dist. Cuyahoga No. 101212, 2014-Ohio-5039, ¶ 12; *see also Williams* at ¶ 6 (applying a blended abuse of discretion and manifest weight standard of review when determining whether the issuance of a CSPO was proper); *Barium & Chems., Inc. v. Miller*, 7th Dist. Jefferson No. 14 JE 0030, 2016-Ohio-5656, ¶ 22 (“A trial court’s decision to grant or deny a civil protection order will not be disturbed where the decision is supported by the manifest weight of the evidence.”).

{¶17} The standard established at Jud.Cond.R. 2.6 states that “a judge shall accord to every person who has a legal interest in proceeding * * * the right to be heard according to law.”

{¶18} In the “comments” section of the code as addressed in Rule 2.6, it is provided that:

The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protection the right to be heard and observed.

In this case, the parties were not afforded the courtesies that we, as judges, should provide pro se litigants to assure access to justice.

{¶19} The trial court’s words towards the litigants, particularly the petitioner-appellant were terse and did not promote confidence in the judiciary or the system in which she was seeking legal redress.

{¶20} However, to grant Cole’s petition for a CSPO, the trial court was required to find that Tubbs violated R.C. 2903.211(A)(1), which provides in relevant part: “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 * * *.”

{¶21} The burden of proof on a petition for a CSPO is the preponderance of the evidence. *Cipriani v. Ehlert*, 8th Dist. Cuyahoga No. 103767, 2016-Ohio-5840, ¶ 6; *Williams*, 2015-Ohio-2040, at ¶ 7; *Strausser v. White*, 8th Dist. Cuyahoga No. 92091, 2009-Ohio-3597, ¶ 33. Therefore, to be granted a CSPO, Cole needed to show by a preponderance of the evidence that Tubbs knowingly engaged in a pattern of conduct that caused Cole to believe that Tubbs would cause her physical harm or caused her mental distress. *See Williams* at ¶ 7, 9.

{¶22} We cannot say that the trial court erred in denying the petition for a CSPO in this case. In light of the above, Cole did not meet her burden and the trial court’s decision denying Cole’s petition for a CSPO was supported by competent, credible evidence.

{¶23} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds that 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 the Appellate Procedure.

EILEEN A. GALLAGHER, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., CONCURS;
SEAN C. GALLAGHER, J., CONCURS IN JUDGMENT ONLY