

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Osamwonyi Eden Osunde,	:	
	:	
Petitioner-Appellee,	:	No. 12AP-480
	:	(C.P.C. No. 11CVH05-5526)
v.	:	
	:	(REGULAR CALENDAR)
Shirley Davis Ijeweme,	:	
	:	
Respondent-Appellant.	:	
	:	
Shirley Davis Ijeweme,	:	
	:	
Petitioner-Appellant,	:	No. 12AP-481
	:	(C.P.C. No. 11CVH07-8943)
v.	:	
	:	(REGULAR CALENDAR)
Osamwonyi Eden Osunde,	:	
	:	
Respondent-Appellee.	:	
	:	

D E C I S I O N

Rendered on March 28, 2013

James C. Lee, for Osamwonyi Eden Osunde.

Shirley Davis Ijeweme, pro se.

APPEALS from the Franklin County Court of Common Pleas.

BROWN, J.

{¶ 1} In these consolidated cases, Shirley Davis Ijeweme, petitioner/respondent-appellant, appeals from a judgment of the Franklin County Court of Common Pleas that addressed appellant's objections to two magistrate's decisions rendered in the related

cases in which the court overruled appellant's objections. In the magistrate's decisions, the magistrate granted the petition of Osamwonyi Eden Osunde, respondent/petitioner-appellee, for a civil stalking protection order ("CSPO") against appellant, and denied the petition of appellant for a CSPO against appellee.

{¶ 2} Both appellant and appellee immigrated to this country from Nigeria. They cannot get along. Appellee is married but separated from appellant's brother, Elliott. Appellee testified that Elliott abused her. Appellee also testified regarding several confrontations she had with appellant. Appellee testified that, several days after her daughter's February 7, 2011 birthday, appellant slapped her during an argument regarding a dress worn by her daughter. Appellee also testified that, in April 2011, appellant verbally abused her. Appellee also said that, on May 2, 2011, appellant hit her in the head during an argument.

{¶ 3} On May 3, 2011, appellee filed a petition for a CSPO.

{¶ 4} Appellee testified that, in early- to mid-June 2011, appellant threatened she would make sure appellee would not be granted citizenship after becoming angry that appellee would not meet her for lunch. Appellee also stated that, on July 8, 2011, she and appellant had a confrontation at appellee's marital home, and appellant pulled her arm, causing appellee to drop her baby, whom she was carrying. Appellant also hit appellee on her head multiple times. Appellee called paramedics, who arrived at the house and examined the baby.

{¶ 5} Appellant also testified about appellee's mistreatment of her. Appellant testified that appellee has come to her church, where appellant is a pastor, and spread false rumors about her. Appellant also claimed that appellee tried to poison her by allowing mold to be on foods eaten by appellant at an event. On July 20, 2011, appellant filed a petition for a CSPO.

{¶ 6} On July 28, 2011, a hearing was held before a magistrate on both petitions. On August 1, 2011, the magistrate issued identical decisions in each case, recommending that appellant's petition be denied and appellee's petition be granted. Appellant filed objections to the magistrate's decision, which the trial court denied on May 7, 2012. Appellant separately appealed the judgment of the trial court, and this court consolidated

the cases for purposes of appeal. Appellant, pro se, presents the following assignments of error:

[I.] The court prevented me from presenting certain exhibits due to the some technical issues I was advised the court had in viewing the evidences that was to be presented for the cases in question. Evidences that would buttress my testimony and argument as they would have allowed me show to the court by explaining the settings in to the court that would negate Osamwonyi Eden's false claims of family mistreatment and abuse and every other and objection they related by hearsay. This action of the court denied me a full hearing on the merits.

[II.] The court also prevented me from my right to a fair hearing and was prejudiced due to my lack of proper representation of a counsel and I was browbeaten that evidences and testimony vital to my case was treated with disregard and not considered as this affected the outcome of the case.

[III.] The court erred by not granting me continuance despite by insistence good cause intended that I would be needing legal representation and lack of legal expertise.

(Sic passim.)

{¶ 7} Appellant's assignments of error concern the trial court's granting of appellee's CSPO against appellant. Whether to grant a CSPO is within the discretion of a trial court. *Jenkins v. Jenkins*, 10th Dist. No. 06AP-652, 2007-Ohio-422, ¶ 13. R.C. 2903.214 governs the filing of a petition for a CSPO. R.C. 2903.214 provides that a petitioner seeking a CSPO must demonstrate that the respondent engaged in the offense of menacing by stalking, in violation of R.C. 2903.211. A preponderance of the evidence is required to support the issuance of a civil protection order. *Jenkins* at ¶ 17.

{¶ 8} The menacing by stalking statute prohibits two types of behavior. Specifically, R.C. 2903.211 provides that, "[n]o 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). Thus, menacing by stalking involves either behavior that causes the victim to believe that he or she will be physically harmed or behavior that causes mental distress to the victim.

To grant a civil protection order, the petitioner need not prove that the respondent intended to cause actual harm to the other person. *Jenkins* at ¶ 15, citing *Guthrie v. Long*, 10th Dist. No. 04AP-913, 2005-Ohio-1541. Neither purpose nor intent to cause physical harm or mental distress is required. *Id.* at ¶ 16. It is enough that the person acted knowingly. *Id.* Further, a pattern of conduct is defined as two or more actions or incidents closely related in time. *Id.* at ¶ 18, citing R.C. 2903.211(D)(1). However, the incidents need not occur within any specific temporal period. *Id.*, citing R.C. 2903.211(D)(2).

{¶ 9} Appellant argues in her first assignment of error that the trial court erred when it prevented her from presenting certain exhibits, thereby denying her a full hearing on the merits. Specifically, appellant contends that she attempted to submit evidence, which included photographs of her injuries and a recording of the parties with "arbitrators" invited to "settle" the issues that was on a flash drive and/or compact disc ("CD"). Appellant asserts she was prevented from playing the audio recordings and showing the photographs during trial, violating her right to a full and complete hearing.

{¶ 10} On this matter, the magistrate stated:

THE MAGISTRATE: Whether I consider it or not, I'll accept it and see if the IT department can duplicate and give you a copy. If I look and see that it appears to relate to the case and be admissible, I can consider it and obviously you'd have the opportunity at that point to take a look at it, if necessary, reconvene at that point. But I'll go ahead and at least let the witness tender this CD.

* * *

THE MAGISTRATE: I don't have the material or the equipment to present it at this point or watch it.

(Tr. 209.)

{¶ 11} Although appellant contends that she was denied a complete hearing because she was prevented from presenting the flash drive and CD, it is clear from the hearing transcript that the magistrate did, in fact, permit appellant to submit such as evidence. More importantly, the magistrate specifically indicated in his decision that he reviewed the flash drive and CD:

Respondent offered a flash drive and a compact disc that she stated had evidence in support of her case. Counsel for Petitioner objected. This Magistrate has reviewed the proffered evidence but finds nothing which amounts to any probative evidence in support of Respondent.

(Magistrate's Decision 4-5.) Thus, appellant was given a full and fair opportunity to present the evidence included on her flash drive and CD, and the magistrate reviewed the evidence but found it not probative to any issue in the case. Insofar as appellant also complains that she did not get the opportunity to explain to the trial court the context of statements made to "arbitrators" and to identify the speakers in the recordings, appellant directs us to no place in the hearing transcript where she raised this issue with the trial court. Also, insofar as appellant argues in her brief that the recordings show that appellee stated the parties had a cordial relationship, that appellee raised no claims of any assaults on the dates she later cited in her testimony, and that appellee admitted she called police as a punitive measure because she thought appellant had reported her to children's services, appellant clearly explained to the magistrate at the hearing that she believed the flash drive and CD contained evidence to support such. Thus, the magistrate was fully aware of appellant's position when he later reviewed the evidence. For all these reasons, appellant's first assignment of error is overruled.

{¶ 12} Appellant argues in her second assignment of error that the trial court erred when it denied her a fair hearing because she lacked trial counsel, and the trial court disregarded her evidence. Although not assigned as error in her stated assignment of error, appellant's actual argument under this assignment of error seems to be that the trial court's judgment was against the manifest weight of the evidence.

{¶ 13} Civil judgments that are "supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978), syllabus. "[A]n appellate court should not substitute its judgment for that of the trial court when there exists * * * competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial judge." *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984); see also *Myers v. Garson*, 66 Ohio St.3d 610, 616 (1993) (reaffirming the reasoning of *Seasons Coal*, and

"hold[ing] that an appellate court must not substitute its judgment for that of the trial court where there exists some competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial court").

{¶ 14} When considering whether a civil judgment is against the manifest weight of the evidence, an appellate court is guided by a presumption that the findings of the trier of fact were correct. *Seasons Coal Co.* at 79-80. The court in *Seasons Coal* explained:

The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony. The interplay between the presumption of correctness and the ability of an appellate court to reverse a trial court decision based on the manifest weight of the evidence was succinctly set forth in the holding of this court in *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578 [8 O.O.3d 261]:

"Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence."

See, also, *Frankenmuth Mut. Ins. Co. v. Selz* (1983), 6 Ohio St.3d 169, 172, 451 N.E.2d 1203; *In re Sekulich* (1981), 65 Ohio St.2d 13, 16, 417 N.E.2d 1014 [19 O.O.3d 192].

Id. at 80; see also *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (holding that on the trial of a civil or criminal case, a determination of the weight of the evidence and credibility of witnesses is primarily for the trier of facts).

{¶ 15} Appellant presents numerous arguments contesting appellee's testimony, the trial court's findings, and the magistrate's findings. First, appellant contends that appellee referenced a February 7, 2011 incident during which appellee claimed appellant slapped her and hit her daughter with slippers at her daughter's birthday party, but this testimony contradicted appellee's testimony that the party was at her home with her husband and kids, where appellant was not present. However, a review of this testimony indicates that appellee testified that there were two parties—one at appellee's home and one at appellant's home a few days later. Appellee testified that, at the party at appellant's

home, appellee and her mother-in-law got into a disagreement about one daughter's dress, and then several days later at appellee's home, appellant slapped appellee on the face and was swearing at her during an argument about the prior dress incident. Appellee testified that, when her daughter told appellant to stop, appellant hit the daughter with her slipper. Therefore, we find appellant's argument without merit.

{¶ 16} Appellant next argues that the court cited an incident that occurred during Easter 2011 regarding a dress. However, appellant contends the dress incident happened at the February 2011 birthday party and involved appellee's mother-in-law wanting appellee's daughter to wear a different dress. Appellant also asserts that she never threatened appellee with deportation.

{¶ 17} From our review of the trial testimony, which is very difficult to follow at times, it appears that the magistrate was incorrect when he found that the April 2011 incident at Easter time was related to the dress issue. As indicated above, it seems that the dress issue related to the February 2011 confrontation. As for the April 2011 incident, appellee testified that appellant came to her house and engaged in a verbal altercation with her. Appellant told her that she did not like appellee's friends, and she would make sure that her brother divorced her, get appellee in trouble in this country, and get appellee deported. The only conflicting evidence regarding the April 2011 incident was appellant's non-specific assertion that appellee's testimony at the hearing was filled with lies. Despite the magistrate's apparent error as to the underlying basis of each confrontation, the magistrate evidently believed appellant's actions caused appellee to believe that she would be physically harmed or be subject to mental distress.

{¶ 18} Appellant next contends that the court erred when it referenced a May 2 incident involving appellant's abuse toward appellee and an argument over a recording device, and that appellee did not support this claim with evidence. However, appellee testified extensively regarding the May 2, 2011 confrontation. Appellee testified that appellant parked her car behind hers as appellee arrived at the marital home. Appellant followed her into her home and confronted her about discussing appellant's issues with appellee's family. Appellant then told appellee that she had recordings from conversations appellee had with her sisters over the telephone, in which appellee complained about appellant's and her husband's bad treatment of her. Appellee testified that she found a

recording device under the seat of her car. Appellee also testified that appellant then began hitting her on the head while appellee was holding her baby, and appellant threatened to call children's services to report that she had attempted suicide by running her car into the garage, which apparently referred to an incident in which appellee once hit the garage with her car when she was practicing how to drive. Police then appeared at appellee's house. Appellant told appellee that she called the police to tell them that appellee was depressed. After the police left that day, appellant told appellee that she was trying to establish a case against her to show that she was mentally unstable so her children would be taken away from her. A social worker from children's services eventually came to her house to investigate based upon a call they received from someone saying that appellee was suicidal.

{¶ 19} Although appellant is correct that appellee presented no corroborating evidence to support her version of this incident, appellant gives this court no reason to contest the lower court's credibility determination. Although appellant testified that she did not strike appellee or hit appellee's children, the issue boils down to credibility. We can find no error.

{¶ 20} Appellant next contends the trial court erred when it failed to note that it was appellant who called police to appellant's house on May 2, 2011, because appellee threatened her. However, the magistrate did state that it was appellant who called the police to the home. The magistrate indicated that appellant called the police because she believed appellee was depressed and a threat to her children. Appellant fails to show precisely where she testified that she called the police because appellee had threatened her. Therefore, this argument is not well-taken.

{¶ 21} Appellant next asserts the trial court erred when it based findings upon appellee's testimony related to claims of abuse by her husband, which had nothing to do with appellant. However, although the magistrate noted several findings related to abusive behavior by appellee's husband, the magistrate made these findings apparently only to explain the family dynamic, and the magistrate made clear that his ultimate conclusions related only to appellant's conduct: "While [appellee] offered numerous examples where she felt 'not part of the family[,] these findings relate to specific instances of verbal or physical abuse as pertaining to [appellant]." (Magistrate's Decision, 2.)

Furthermore, there is no indication that the magistrate's conclusions of law were based in any part upon the husband's conduct. Therefore, this argument is without merit.

{¶ 22} Appellant also contends the trial court erred when it cited the July 8, 2011 altercation without noting appellant's testimony that appellee was the aggressor. She argues that appellee admitted that she "pulled my hand like this to push you." However, the magistrate specifically noted that who was the aggressor in this incident was disputed. The magistrate then reviewed the evidence presented, including the testimony of a neighbor, Larry Olinger, who testified that he saw appellant and appellee in appellee's driveway engaged in a struggle and saw appellant hit appellee in the face, after which appellee's husband yelled at appellant to stop. Although the magistrate did not mention appellee's above testimony that she "pulled my hand like this to push you," this statement is less than clear. It cannot be determined from this testimony, or any of the other related testimony, whether appellee actually pushed appellant. Even appellant's testimony, given in narrative form, is not specific about how appellee might have assaulted her on July 8. Therefore, we find this argument without merit.

{¶ 23} Appellant next contends that the trial court erred when it found appellee had testified appellant stated on July 8 she was going to take appellee's children. Instead, appellant asserts, it was appellee's husband who made that statement. In his findings of fact, the magistrate found that appellee testified that, on July 8, appellant "stated that they were taking the children." At the trial before the magistrate, appellee testified that she went to the marital home to pick up her three-year-old daughter, and appellant was inside the house. Appellee attempted to enter the house, but then she "hear[d] [appellant's] voice, she was yelling, go away. We are taking the daughter, we are coming to take the second daughter from you and we are going to make sure you leave this country in shame." (Tr. 46.) Therefore, contrary to appellant's argument, appellee did testify that it was appellant who said she was going to take appellee's daughter.

{¶ 24} Appellant also complains that the trial court did not explain the injuries to her hand, face, and chest that she claims appellee inflicted upon her on July 8. To the contrary, the magistrate addressed this issue in his findings of fact. The magistrate explained that appellee went to Olinger's house and told him that appellant was in her truck trying to inflict injuries on herself before police arrived, although Olinger testified

that he could not see what appellant was doing in her truck during this time. The magistrate also cited appellee's testimony that, after the altercation, appellee saw no injuries to appellant, but after police arrived, appellant presented herself to police and paramedics with injuries to her hand and face. Thus, the magistrate did provide some explanation as to how appellant received her injuries on July 8.

{¶ 25} Appellant also argues that the trial court erred when it included in the CSPO appellee's two children because appellee was unable to establish two or more incidences that caused them to believe she would cause physical harm or mental distress to them. However, there was testimony from appellee that, during the February 2011 incident, appellant hit appellee's child with a slipper. Appellee also testified that, during the May 2 incident, appellant hit appellee on the head multiple times while appellee was holding her baby and also made false allegations to children's services and the police that appellee was mentally unstable and suicidal so the children would be taken from her. Appellee further testified that, during the July 8 incident, appellant said she was going to take her older daughter. In addition, appellee testified that appellant pulled her arm, causing appellee to drop her baby, and then began hitting appellee on the head while she held the baby. Olinger corroborated appellee's story, testifying that he saw appellant strike appellee while appellee was holding the baby. Therefore, we find this evidence supports the trial court's extension of the CSPO to appellee's children.

{¶ 26} Based upon the evidence and testimony presented at the hearing, we find the trial court's decision to grant appellee's request for a CSPO was not against the manifest weight of the evidence. Appellant's second assignment of error is overruled.

{¶ 27} Appellant argues in her third assignment of error that the trial court erred when it failed to grant her a continuance despite good cause. The decision whether to grant or deny a continuance lies within the sound discretion of the trial court. *State v. Unger*, 67 Ohio St.2d 65, 67 (1981). Thus, a trial court's decision regarding a continuance will only be reversed if the trial court abused its discretion. *Fiocca v. Fiocca*, 10th Dist. No. 04AP-962, 2005-Ohio-2199.

{¶ 28} Appellant first contends that she requested a continuance because she would need legal representation for good cause indicated. However, the portion of the transcript to which she cites is at the end of the hearing after nearly all of the testimony

had been taken, rendering any request very untimely. More importantly, contrary to appellant's contention, the cited portion of the transcript does not show that she actually asked for a continuance to obtain counsel or indicated good cause. Appellant only states, "I'm pretty lame at this point. So I don't know what's the right thing to say or not. So I just leave the Court and the expertise do [sic] the right thing." Thus, appellant never explicitly or implicitly requested a continuance to obtain counsel at this point, and we can find no error.

{¶ 29} Appellant also complains that the magistrate erred when he stated that he would not continue the matter because it had been continued several times before when appellant had not requested any of the prior continuances. The magistrate's statement to which appellant refers occurred toward the end of the hearing. In the final testimony of the hearing, which appellant presented in narrative form, appellant stated:

If I had the chance to bring witnesses here, because I didn't know this is the formal – this was going to go, I would have a courtroom full of people that would testify to that. And on that basis why are my evidences being considered I would like the opportunity to bring in people on this that will testify on my behalf.

(Tr. 220-21.)

{¶ 30} The magistrate responded:

THE MAGISTRATE: I guess with respect to your – the request for having another opportunity to present witnesses, this is the formal hearing that is offered for both sides to present witnesses.

[APPELLANT]: That's fine.

THE MAGISTRATE: And I'm not inclined to continue this out any further. It's been continued several times already.

(Tr. 223.) Thus, again, it appears that appellant requested a continuance extremely untimely, after nearly all testimony had already been taken. Given the circumstances and the tardiness of appellant's request for a continuance, we cannot find the magistrate abused his discretion when he denied appellant's late request for a continuance.

Therefore, the trial court properly adopted the magistrate's decision, and appellant's third assignment of error is overruled.

{¶ 31} Accordingly, appellant's three assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

KLATT, P.J., and McCORMAC, J., concur.

McCORMAC, J., retired of the Tenth Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).
