

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

|                         |   |                        |
|-------------------------|---|------------------------|
| BROOKE EHLERS,          | : | CASE NO. CA2025-09-079 |
| Appellee,               | : |                        |
| vs.                     | : | <u>OPINION AND</u>     |
|                         | : | <u>JUDGMENT ENTRY</u>  |
|                         | : | 10/19/2026             |
| WILLIAM DARRELL PETREY, | : |                        |
| Appellant.              | : |                        |
|                         | : |                        |

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
Case No. 23 CS 4387

Smith & Webb, LPA, and Mark D. Webb, for appellee.

William Darrell Petrey, pro se.

**OPINION**

**HENDRICKSON, P.J.**

{¶ 1} Appellant, William Darrell Petrey, appeals from a decision of the Warren County Court of Common Pleas denying his motion to vacate a civil stalking protection order ("CSPO") that was initially issued in favor of appellee, Brooke Ehlers, in March 2023, and later amended in July 2024. For the reasons set forth below, we affirm the trial

court's decision. We further deny Petrey's Motion for Leave to File Limited Post-Argument Supplemental Memorandum Clarifying the Record and grant Ehlers' Motion to Strike the proposed supplemental memorandum attached to Petrey's motion for leave.

### **I. Facts & Procedural History**

{¶ 2} Ehlers is the director of the Montgomery County Coroner's Office ("MCCO"). In August 2022, Petrey and another individual, Anthony Thomas, made public records requests to the MCCO regarding the deaths of, among other individuals, Casey Pitzer and Marvin Napier. Petrey and Thomas believed Pitzer's and Napier's deaths were part of a coverup by the MCCO and other government entities.<sup>1</sup>

{¶ 3} From November 2022 through March 2023, Petrey and Thomas made frequent contact with Ehlers via her work email. They also attempted to contact her over social media and made visits to the MCCO. Petrey and Thomas made threats of criminal charges, "legal war," and internet smear campaigns against Ehlers if the records they desired were not turned over to them. For brevity, this court will not detail all the communications Petrey and Thomas had with Ehlers in this opinion. A detailed discussion of the types and manner of contact and communication Petrey and Thomas had with Ehlers and the MCCO were set forth in this court's prior decision in *Ehlers v. Thomas*, 2024-Ohio-2531 (12th Dist.) (*Thomas I*). Included in the communications Petrey had with Ehlers was an email he sent that set forth autopsy photographs and pictures of Ehlers' family taken from social media. In the email, Petrey asked, "[W]hat if it was your daughter?" The email continued:

---

1. Petrey's associate, Anthony Thomas, is not a party to the present appeal. However, proceedings involving the issuance of a CSPO against Thomas were consolidated with proceedings involving Petrey at the trial court level. Additionally, Petrey's and Thomas' initial appeal of the respective CSPOs issued against them were consolidated by this court. See *Ehlers v. Thomas, et al.*, 12th Dist. Warren Nos. CA2023-07-052 and CA2023-07-053 (July 17, 2023) (Entry of Consolidation). Therefore, where relevant, facts and proceedings where Thomas was also involved will be referenced in the body of our opinion.

If we don't get the records immediately. I'm [sic] putting you and every photo I can find of you all over the internet as one of the MURDER COVER UP doctors. . . . Your family will be crushed and embarrassed. . . .

It's not going to be right of you to allow your family to be put out there like that. But the fact is, the more you ignore us, the angrier we get. As any parent would. I hope to hear from you by the end of the day. If not, I'll start sending you the TRUE internet posts I create about you. . . .

{¶ 4} On March 6, 2023, Ehlers filed for CSPOs against Petrey and Thomas, and ex parte CSPOs were issued that same day. A full hearing before a magistrate was held on the CSPOs on March 29, 2023. Thereafter, on March 30, 2023, the magistrate issued 5-year CSPOs in favor of Ehlers against Petrey and Thomas. With respect to the CSPO issued against Petrey, the magistrate found, in pertinent part, that

[o]ver the time period of November 2022 through March 2023, Respondent [Petrey] knowingly engaged in a pattern of conduct by sending Petitioner [Ehlers] multiple emails, including an email with pictures of Petitioner and her household members, asking Petitioner how she would feel if it was her child that was dead, and threatening Petitioner's family, that caused Petitioner to suffer mental distress and fear physical harm.

In addition to ordering Petrey and Thomas not to have any contact with Ehlers or her household members, the respective CSPOs ordered, in Provision 13, that Petrey and Thomas "not make any additional posts online which specifically name Petitioner" and, in Provisions 10 and 11, prohibited them from possessing any deadly weapons, including firearms.

{¶ 5} Petrey and Thomas objected to the magistrate's decision, arguing there were several incorrect factual findings and rulings. They also objected on the basis that the online speech and firearm restrictions violated their constitutional rights. The trial court overruled their objections, and they appealed to this court. In their combined brief, Petrey and Thomas set forth a single assignment of error in which they argued the trial court

erred in granting CSPOs that restrained future online speech and their possession of firearms. See *Thomas I* at ¶¶ 9-10. Notably, Petrey and Thomas did not challenge whether the weight or sufficiency of the evidence supported the issuance of the CSPOs as a whole.

{¶ 6} In *Thomas I*, this court found that the firearm restriction set forth in the March 30, 2023 CSPOs was improper as "no evidence was presented that [Petrey or Thomas] used or threatened the use of a firearm against Ehlers or anyone else involved in the underlying facts of th[e] case." *Id.* at ¶ 28. As there was not a sufficient nexus between the firearm restriction and Petrey's and Thomas' conduct, we sustained Petrey's and Thomas' argument that trial court erred in imposing the firearm restriction. *Id.* at ¶ 25-28.

{¶ 7} This court also found the restriction on Petrey's and Thomas' future online speech was improper, concluding that the restriction was unconstitutionally overbroad. *Id.* at ¶ 22. In reaching this determination, this court relied on the Ohio Supreme Court's decision in *Bey v. Rasaweher*, 2020-Ohio-3301. We found that the trial court had not "determine[d] whether [Petrey's or Thomas'] speech fell into one of the categories of speech capable of being restricted before ordering a prior restraint" on their speech, but, "[e]ven if it had, the CSPO's blanket prohibition on using Ehlers' name [was] not the least restrictive means by which to protect Ehlers." *Id.* at ¶ 21-22. We reversed and remanded for further proceedings consistent with our opinion. *Id.* at ¶ 30.

{¶ 8} On remand, the trial court issued its first amended CSPO in Petrey's case on July 3, 2024. The First Amended CSPO removed the future online speech restrictions set forth in Provision 13 of the CSPO. A Second Amended CSPO was subsequently issued on July 22, 2024, in which the trial court removed the firearm restrictions set forth in Provisions 10 and 11. Petrey did not appeal from the First Amended CSPO or the Second Amended CSPO.

{¶ 9} On May 27, 2025, more than ten months after the Second Amended CSPO was issued, Petrey, joined by Thomas, filed a Joint Motion to Terminate Civil Stalking Protection Order. Petrey argued the CSPO should be terminated for several reasons, including (1) material misrepresentations and false testimony had been provided to the Court at the March 29, 2023 hearing; (2) no menacing, threats, or unlawful contact occurred; (3) he had acted under lawful authority at all times; (4) judicial irregularity, including bias, undermined the proceedings; (5) in *Thomas I* the court of appeals found the CSPO partially unconstitutional; and (6) Ehlers' legal counsel had filed other unsuccessful CSPOs. Ehlers opposed this motion. On June 23, 2025, a magistrate issued a decision denying Petrey's motion to terminate the Second Amended CSPO. The magistrate stated, in pertinent part, as follows:

[Petrey's] request to terminate the CSPO is akin to an attempt to relitigate the Court's findings of fact and conclusions of law, which have been rendered and reviewed by not only the undersigned Magistrate, but also the trial court and the court of appeals. While the Twelfth District modified this Court's ruling, it did not hold that the protection order in its entirety was improper. Thus, the question of whether a CSPO was properly granted in this case has been resolved, and the quest to relitigate that order two years later is improper and barred by the doctrine of res judicata. Without evidence that the original circumstances have materially changed, this Court is without the authority to consider [Petrey's] request to terminate the CSPO.

{¶ 10} Petrey filed objections to the magistrate's decision. On July 18, 2025, while his objections were pending, Petrey filed a Motion to Reopen Objections Due to Attorney Misconduct, Concealed Bias, Judicial Violations, Fraud, and Failure to File Required Brief Under Civ.R. 60(B)(5). Petrey sought to reopen objections to the magistrate's March 30, 2023 decision, which granted the original CSPO, on the basis that the attorney that represented him on the objections provided ineffective assistance of counsel. Petrey claimed such a remedy was appropriate under Civ.R. 60(B)(5).

{¶ 11} On July 30, 2025, the trial court issued a decision in which it overruled Petrey's objections to the magistrate's June 23, 2025 decision denying his Joint Motion to Terminate Civil Stalking Protection Order and it denied Petrey's July 18, 2025 Motion to Reopen Objections to the March 30, 2023 magistrate's decision. With respect to the joint motion, the court found that Petrey's "motion to terminate and objections to the Magistrate's decision fail to articulate any material change in any circumstances that would permit this Court to terminate the CSPO. [Petrey's] belief that the CSPO should never have been granted is not grounds for termination." With respect to the latter filed Motion to Reopen Objections to the March 30, 2023 magistrate's decision, the court found that Petrey's "unhappiness with his prior counsel does not justify the full vacation of the judgment in this case." The court further found that Petrey's ineffective assistance of counsel argument was "untimely, as [Petrey] was or should have been aware of [the attorney's] actions in this case in 2023, and [Petrey] provides no reason why he is just now raising this argument two years later." Petrey did not appeal the trial court's July 30, 2025 decision.

{¶ 12} On August 4, 2025, Petrey filed a Motion to Vacate Civil Stalking Protection Order Based on Material Change in Controlling Law, Binding Appellate Precedent, and Compel Application of *Counterman v. Colorado*. In his Motion, Petrey claimed the CSPO issued against him should be vacated under Civ.R. 60(B)(5) "based on a material change in controlling constitutional law and binding appellate precedent that occurred after the CSPO's issuance." Specifically, Petrey claimed that the United States Supreme Court's decision in *Counterman v. Colorado*, 600 U.S. 66 (2023), supported vacating the CSPO because he did not have a mens rea of recklessness with respect to whether his statements to Ehlers would be perceived as a threat. He also contended that this court held in *Thomas I* "that the speech and conduct alleged did not meet the constitutional

threshold for a CSPO." Finally, he argued that his prior appellate counsel led him to believe that all available avenues to terminate the CSPO had been exhausted but in "April 2025, after gaining access to advanced AI-assisted legal analysis tools," he realized there were errors and irregularities in the proceedings and that the CSPO should not be in effect. Petrey also filed, among other things, a "Notice of Material Misstatement in Amended CSPO and Request for Clarification," which he later amended, seeking to challenge certain findings and statements made by the court in its original issuance of the CSPO, the Second Amended CSPO, and its rulings on various filings Petrey had made throughout the case. Ehlers filed a memorandum in opposition to Petrey's various motions and filings.

{¶ 13} On August 25, 2025, the trial court issued a decision in which it denied Petrey's August 4, 2025 motion to vacate the CSPO, as well as all other motions and filings made by Petrey from August 1, 2025 through the date of the court's decision. The court analyzed the August 4, 2025 motion under Civ.R. 60(B), finding that Petrey's "request for vacatur of the [Second Amended] CSPO is unwarranted, as he failed to present evidence that he has a meritorious defense, failed to establish entitlement to relief, and failed to make the request in a timely manner." The trial court found that Petrey had "improperly characterize[d] the opinion of the Twelfth District" in *Thomas I* and found that *Counterman v. Colorado* was inapplicable. Finally, the trial court found that Petrey's arguments were arguments that were capable of being made in previous proceedings. The trial court stated, in pertinent part, as follows:

Had this Court issued a CSPO in contravention of the Twelfth District's ruling, that issue should have been raised in 2024. Had this Court issued a CSPO in contravention of *Counterman*, that issue should have been raised in 2023. [Petrey] has repeatedly failed to establish entitlement to any modification, termination, or dismissal of the CSPO in this case."

{¶ 14} Petrey timely appealed from the trial court's August 25, 2025 decision, raising five assignments of error for review. However, prior to addressing Petrey's assignments of error this court must address motions that were filed by the parties after appellate briefing was concluded and oral argument was held.

## **II. Post-Briefing and Post-Argument Motions**

{¶ 15} On August 30, 2026, Petrey filed a Motion for Leave to File Limited Post-Argument Supplemental Memorandum Clarifying the Record. Petrey contends that he is not seeking to reopen briefing, raise a new assignment of error, introduce new evidence, or repeat constitutional arguments already presented in his merit brief. Rather, he wishes to prevent "possible confusion concerning the evidentiary status and weight" of events that transpired in February 2023 at the MCCO. Petrey attached to his motion for leave a supplemental memorandum "clarifying the record concerning the February 24, 2023 encounter."

{¶ 16} On September 4, 2026, Ehlers filed a memorandum in opposition to Petrey's motion for leave, contending Petrey was improperly and untimely seeking to relitigate previously unappealed factual issues. Ehlers contended that Petrey's motion for leave should be denied as the matter is ripe for determination on the most recent briefs and oral argument. Ehlers further moved to strike the proposed supplemental memorandum attached to Petrey's motion for leave.

{¶ 17} Pursuant to App.R. 16(C), after an appellant has filed a reply to the brief of an appellee, "[n]o further briefs may be filed except with leave of court." We find Petrey's Motion for Leave to File Limited Post-Argument Supplemental Memorandum Clarifying the Record is not well taken and is hereby DENIED. The events surrounding the February 24, 2023 incident will be reviewed through the record as it existed in the trial court. Ehlers'

Motion to Strike the proposed supplemental memorandum is hereby GRANTED.

### **III. Appeal**

{¶ 18} Assignment of Error No. 1:

{¶ 19} THE TRIAL COURT DEFIED THIS COURT'S MANDATE IN *EHLERS V. THOMAS*, 2024-OHIO-2531, BY REIMPOSING UNCONSTITUTIONAL RESTRICTIONS ALREADY STRUCK DOWN.

{¶ 20} In his first assignment of error, Petrey argues the trial court erred in denying his Civ.R. 60(B)(5) motion to vacate the Second Amended CSPO because the trial court failed to comply with the remand in *Thomas I*, 2024-Ohio-2531 (12th Dist.). Petrey maintains that the trial court "ignored the mandate and reinstated [the] same [speech] restrictions" that had previously been found unconstitutional. We find no merit to Petrey's arguments.

{¶ 21} Following our decision in *Thomas I*, in which we found that the trial court erred in imposing the firearm restriction and the restriction on Petrey's future online speech, as the latter was unconstitutionally overbroad, the trial court amended the CSPO to remove both restrictions. The July 3, 2024 First Amended CSPO removed the future online speech restrictions, deleting Provision 13 from the CSPO. The First Amended CSPO, therefore, no longer prohibited Petrey from "mak[ing] any additional posts online which specifically name Petitioner [Ehlers]."<sup>2</sup> When the July 22, 2024 Second Amended CSPO was issued to remove the firearm restrictions set forth in Provisions 10 and 11, the court retained the deletion of Provision 13. Thus, the Second Amended CSPO, the version of the CSPO that remains in effect at this time, does not contain a firearm

---

2. The First Amended CSPO completely removed Provision 13, which, in its entirety stated that "Respondent [Petrey] shall remove from the internet any posts, TikToks, YouTube videos, or other such videos/images/depictions that reference petitioner [Ehlers] by name and *shall not make any additional posts online which specifically name petitioner.*" (Emphasis added.)

restriction or a restriction on future online speech. By removing Provisions 10, 11, and 13, the trial court complied with this court's holding and mandate in *Thomas I*. The trial court correctly executed our remand instructions. Petrey's first assignment of error is, therefore, overruled.

{¶ 22} Assignment of Error No. 2:

{¶ 23} THE TRIAL COURT ERRED IN HOLDING THAT COUNTERMAN V. COLORADO, 600 U.S. 66 (2023), IS INAPPLICABLE TO CIVIL STALKING PROTECTION ORDERS.

{¶ 24} In his second assignment of error, Petrey argues the trial court erred in denying his Civ.R. 60(B)(5) motion to vacate the Second Amended CSPO as the court failed to recognize the applicability of *Counterman v. Colorado*, 600 U.S. 66 (2023).

{¶ 25} In *Counterman*, the United States Supreme Court considered whether a defendant's conviction under a Colorado statute that made it unlawful to "[r]epeatedly . . . make[] any form of communication with another person' in 'a manner that would cause a reasonable person to suffer serious emotional distress and [did] cause that person . . . to suffer serious emotional distress'" violated the defendant's right to free speech under the First Amendment to the United States Constitution. *Id.* at 70, quoting Colo. Rev. Stat. § 18-3-602(1)(c) (2022). The Colorado state courts that analyzed the statute at issue found that the determination of whether the communication "would cause a reasonable person to suffer serious emotional distress" was analyzed under an objective standard, without any need to demonstrate the defendant's subjective intent to threaten or his culpable mental state. *Id.* at 71-72. The state court found that the defendant's messages to a woman constituted "true threats" that were not protected by the First Amendment and upheld his conviction. *Id.*

{¶ 26} The Supreme Court in *Counterman* held that before a person could be

criminally convicted for making a "true threat," the First Amendment requires proof of the speaker's subjective intent. *Id.* at 69. Specifically, the Court determined that in order to avoid chilling protected, non-threatening expression, proof that the speaker acted at least recklessly is required. *Id.* at 69, 78-80.<sup>3</sup> "A person acts recklessly, in the most common formulation, when he 'consciously disregard[s] a substantial [and unjustifiable] risk that the conduct will cause harm to another.'" *Id.* at 79, quoting *Voisine v. United States*, 579 U.S. 686, 691 (2016). "In the threats context, it means that a speaker is aware 'that others could regard his statements as' threatening violence and [he] 'delivers them anyway.'" *Id.* at 79, quoting *Elonis v. United States*, 575 U.S. 723, 746 (2001) (Alito, J. concurring in part, dissenting in part).

{¶ 27} Petrey argues that the *Counterman* decision mandates that the Second Amended CSPO be vacated because "the record contains no evidence—let alone clear and convincing evidence—that [Petrey] acted with the constitutionally required mens rea of recklessness." Petrey refers to certain aspects of his conduct that the trial court relied upon in issuing the CSPO and argues that such evidence does not establish that he acted recklessly.

{¶ 28} Generally, a petitioner's burden of proof in a CSPO proceeding brought pursuant to R.C. 2903.214 is a preponderance of the evidence. See *Kronk v. Getts*, 2024-Ohio-1516, ¶ 8 (12th Dist.); *Fouch v. Pennington*, 2012-Ohio-3536, ¶ 9 (12th Dist.). An exception to the preponderance-of-the-evidence burden of proof exists under R.C. 2903.214(E)(1)(b), when the CSPO includes an order that the respondent be

---

3. The Supreme Court found that the mental state of recklessness "offers the right path forward" and noted that "as we go up the subjective mens rea ladder [to knowingly or purposefully], th[e] imposition on States' capacity to counter true threats becomes still greater—and, presumably, with diminishing returns for protected expression." *Counterman v. Colorado*, 600 U.S. 66, 79-80 (2023). The court indicated that requiring a more stringent mens rea, such as knowingly or purposefully, "make[s] it harder for a State to substantiate the needed inferences about mens rea . . . [and] prevent[s] States from convicting morally culpable defendants." *Id.* at 80.

electronically monitored. In such instances, there must be "clear and convincing evidence that the petitioner reasonably believed that the respondent's conduct at any time preceding the filing of the petition endangered the health, welfare, or safety of the person to be protected and that the respondent presents a continuing danger to the person to be protected." R.C. 2903.214(E)(1)(b).

{¶ 29} When the trial court issued its original CSPO and the First and Second Amended CSPOs, the trial court included the following findings:

The Court finds by a preponderance of the evidence that 1) Respondent has knowingly engaged in a pattern of conduct that caused Petitioner to believe that Respondent will cause physical harm or cause or has caused mental distress; and 2) the following orders are equitable, fair, and necessary to protect the persons named in this Order from stalking offenses.

This Court finds by clear and convincing evidence that 1) Petitioner or Petitioner's family or household members reasonably believed Respondent's conduct before the filing of the Petition endangered the health, welfare, or safety of Petitioner or Petitioner's family or household members; 2) Respondent presents a continuing danger to Petitioner or Petitioner's family or household members; and 3) the following orders are equitable, fair, and necessary to protect the persons named in this Order from experiencing a continuing danger.

Though the court made the "clear and convincing" findings required under R.C. 2903.214(E)(1)(b), the court never ordered that Petrey be subject to electronic monitoring. The court's clear and convincing finding was, therefore, superfluous and only the preponderance-of-the-evidence burden of proof applied to the issuance of the CSPO.

{¶ 30} As for Petrey's contention that *Counterman* requires that the CSPO issued against him be vacated because there is no evidence that he acted "with the constitutionally required mens rea of recklessness," we find no merit to his argument. The statute involved in this case required the more stringent mens rea of "knowingly."

{¶ 31} Before a CSPO can be issued under R.C. 2903.214, the petitioner bears a burden of demonstrating that the "respondent engaged in conduct constituting menacing by stalking," as set forth in R.C. 2903.211(A)(1). *Harnar v. Becker*, 2021-Ohio-784, ¶ 6 (12th Dist.). Pursuant to R.C. 2903.211(A)(1),

[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 a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person's belief that the offender will cause physical harm to the other person or the other person's family or household member or mental distress to the other person or the other person's family or household member, the other person's belief or mental distress may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(Emphasis added.) "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature." R.C. 2901.22(B). Thus, unlike the statute involved in *Counterman*, the statutory scheme for the issuance of a CSPO in Ohio requires a finding that the respondent act *knowingly*, a mens rea that is elevated or more stringent than the recklessness minimum mens rea recognized by the Supreme Court in *Counterman*.

{¶ 32} In the present case, when the CSPO was issued by the trial court, the court explicitly found "by a preponderance of the evidence that . . . [Petrey] has knowingly engaged in a pattern of conduct that caused [Ehlers] to believe that Respondent will cause physical harm or cause or has caused mental distress." Whether Ehlers' evidence proved by a preponderance of the evidence that Petrey acted "knowingly" would have been a proper subject for review in Petrey's initial appeal, but this issue was not raised by him in *Thomas I*. As such, res judicata prevents this court from considering the issue now. "Res

judicata prevents the litigation of issues that were raised on appeal or could have been raised on appeal." *Schooler v. Combs*, 2024-Ohio-2111, ¶ 13 (12th Dist.). "Any issue that could have been raised on direct appeal and was not is res judicata and is not subject to review in subsequent proceedings." *Id.*

{¶ 33} Furthermore, "Civ.R. 60(B) may not be used as a substitute for appeal." *Doe v. Trumbull Cty. Children Services Bd.*, 28 Ohio St.3d 128, 131 (1986). "[T]he availability of Civ.R. 60(B) relief is generally limited to issues that cannot properly be raised on appeal." *Haas v. Bauer*, 2004-Ohio-437, ¶ 25 (9th Dist.). Petrey's filing of his August 4, 2025 motion to vacate the CSPO does not provide him with the opportunity to relitigate issues that were capable of being raised on direct appeal. *D00TZ 606, L.L.C. v. Dennis*, 2025-Ohio-4313, ¶ 28 (12th Dist.).

{¶ 34} Petrey's second assignment of error is, therefore, without merit and is overruled.

{¶ 35} Assignment of Error No. 3:

{¶ 36} THE TRIAL COURT ERRED IN FINDING APPELLANT'S CIV.R. 60(B)(5) MOTION UNTIMELY, DESPITE ONGOING CONSTITUTIONAL HARM.

{¶ 37} In his third assignment of error, Petrey argues the trial court erred in denying his Civ.R. 60(B) motion on the grounds that it was untimely. Petrey maintains that "each day [the CSPO] remains in place inflicts ongoing constitutional harm," thereby making his motion for relief from judgment timely.<sup>4</sup> We find no merit to his argument.

---

4. In support of his argument that "ongoing injury makes the [Civ.R. 60(B)] motion timely as a matter of law," Petrey cites to *In re Whitman*, 81 Ohio St.3d 239, 242-243 (1998). We find this case inapplicable to the case at hand. *Whitman* involved a former spouse's request for relief from judgment as it related to property division in a separation agreement. The Ohio Supreme Court held that "[w]here the parties to a dissolution of marriage have expressly agreed in a separation agreement that the agreement may be modified by court order, and the agreement has been incorporated into the decree, a trial court may, pursuant to its continuing jurisdiction to enforce the decree, grant relief from judgment under Civ.R. 60(B)(1), (2), or (3) as to the property division in the separation agreement without vacating the decree of dissolution." *Id.* at 239, paragraph one of the syllabus. *Whitman* is a family law case that does not address constitutional violations or ongoing constitutional harm.

{¶ 38} Pursuant to Civ.R. 60(B),

the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken.

{¶ 39} "[T]o prevail on a Civ.R. 60(B) motion, the moving party must demonstrate that (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time." *Goebel v. Hopkins*, 2022-Ohio-4718, ¶ 14 (12th Dist.), citing *GTE Automatic Electric v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus.

{¶ 40} "The decision to grant or deny a Civ.R. 60(B) motion lies within the trial court's discretion, and the decision will be reversed only for an abuse of discretion." *Id.* at ¶ 15, citing *Purcell v. Schaefer*, 2014-Ohio-4894, ¶ 26 (12th Dist.). An abuse of discretion implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 41} The trial court denied Petrey's Civ.R. 60(B)(5) motion, in part, because the request was untimely. Petrey's latest motion for relief from judgment was filed on August 4, 2025. This is more than two years after the CSPO was originally issued, more than two years after the United States Supreme Court's decision in *Counterman*, and more than a

year after this court's decision in *Thomas I* and the trial court's subsequent amendments to the CSPO to comply with the remand in *Thomas I*. Given that the bases Petrey asserts for why he was entitled to relief from judgment have existed and been known or were discoverable for more than a year, we find that the trial court did not abuse its discretion in denying Petrey's Civ.R. 60(B)(5) motion on the basis that it was untimely.<sup>5</sup> Petrey's third assignment of error is overruled.

{¶ 42} Assignment of Error No. 4:

{¶ 43} THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUSTAIN A CSPO, AND MATERIAL MISSTATEMENTS INFECTED THE RECORD.

{¶ 44} In his fourth assignment of error, Petrey challenges whether Ehlers' presented sufficient evidence for the issuance of the CSPO, contending that the "record shows, at most, a single lawful office visit and one rhetorical email" and that the "trial court relied on demonstrably false claims."

{¶ 45} The time to challenge the sufficiency or weight of the evidence supporting the issuance of the CSPO was on appeal in *Thomas I*. The factual and legal basis for the trial court's issuance of the CSPO was established in March 2023, following the full hearing before the magistrate. As Petrey's arguments could have and should have been raised on appeal in *Thomas I*, his arguments are barred by the doctrine of res judicata. *Schooler*, 2024-Ohio-2111, at ¶ 13 (12th Dist.). Petrey's fourth assignment of error is overruled.

---

5. Petrey has argued that his August 4, 2025 motion to vacate should be considered "timely" because he only recently "discover[ed] the depth of ongoing harm and a viable remedy" through the "use of Artificial Intelligence platforms and emerging technologies." The fact that Petrey purportedly "discovered" or gleaned a new understanding of the record—the same record that has existed since the CSPO was originally issued and challenged in 2023—does not warrant relief from judgment under Civ.R. 60(B)(5). See, e.g., *Deutsche Bank v. Talliere*, 2024-Ohio-829, ¶ 39 (8th Dist.).

{¶ 46} Assignment of Error No. 5:

{¶ 47} THE TRIAL COURT IMPROPERLY APPLIED RES JUDICATA, IGNORED PENDING MOTIONS, AND PERMITTED JUDICIAL BIAS AND DUE PROCESS VIOLATIONS.

{¶ 48} In his final assignment of error, Petrey argues the trial court (1) improperly applied res judicata; (2) erred by ignoring his "timely filed motions, including his Amended Notice of Misstatement"; (3) demonstrated judicial bias by "reimpos[ing] restrictions already vacated by this Court"; and (4) committed multiple errors, the cumulative effect of which warranted vacating the CSPO.

#### **A. Res Judicata**

{¶ 49} Petrey contends that res judicata was improperly applied by the trial court to bar him from raising "ongoing constitutional concerns" relating to the CSPO. He asserts that a CSPO provides prospective relief and is therefore subject to modification or termination when facts and constitutional standards change.

{¶ 50} "There is no section of the revised code that provides for modification or termination of a CSPO." *McMullen v. Withrow*, 2022-Ohio-657, ¶ 13 (11th Dist.), citing *Jones v. Hunter*, 2009-Ohio-917, ¶ 12 (11th Dist.). Nonetheless, "courts have held that an order made pursuant to R.C. 2903.214 is subject to modification or termination 'if the movant shows that the original circumstances have materially changed and it is no longer equitable for the order to continue.'" *Jones* at ¶ 12, quoting *Prostejovsky v. Prostejovsky*, 2007-Ohio-5743, ¶ 26 (5th Dist.). See also *Robson v. Mason*, 2025-Ohio-5385, ¶ 9 (4th Dist.). However, the authority of a court to modify or terminate a CSPO based upon changed circumstances does not prevent the assertion of res judicata to bar claims that could have been raised on direct appeal but were not. Such is the case here.

{¶ 51} Petrey has not identified the "ongoing constitutional harm" he relies upon in

seeking relief from judgment, other than to reference the trial court "reimposing the exact same unconstitutional restrictions" and the trial court not applying *Counterman*. However, as we discussed in our resolution of the first and second assignments of error, neither of these premises serve as a basis for relief from judgment. Petrey has not demonstrated a change of circumstances or changed constitutional standards that apply to this case. Res judicata was properly applied by the trial court to bar consideration of arguments that Petrey could have and should have previously brought before the court in *Thomas I*.

### **B. Pending Motions**

{¶ 52} Petrey argues the trial court erred in failing to rule on "timely filed motions, including his Amended Notice of Misstatement." However, contrary to Petrey's arguments, the trial court did rule on his motions, including his Amended Notice of Misstatement. The court expressly denied Petrey's motions in its August 25, 2025 Decision and Entry Denying Motion to Vacate, stating, in pertinent part, as follows:

Also before the Court is the notice of material misstatement in amended CSPO and request for clarification of Respondent filed August 5, 2025, supplemental memorandum of Respondent filed August 5, 2025, and the amended notice of misstatement, request for clarification, and motion to correct the record of Respondent filed August 7, 2025.

. . .

All arguments raised in Respondent's filings from August 1, 2025 through the filing of this decision are **DENIED**.

{¶ 53} Petrey's argument is, therefore, without merit.

### **C. Judicial Bias**

{¶ 54} Petrey argues that the "magistrate and [trial] judge's decision to reimpose restrictions already vacated by this Court demonstrates actual or apparent bias" and offends due process. However, as previously discussed, the trial court did not reimpose restrictions that had been found unconstitutional and improper in *Thomas I*. Rather, on

remand, the trial court removed the offending firearm and speech restrictions that were previously set forth in Provisions 10, 11, and 13. The Second Amended CSPO, the version of the CSPO that has been in effect since July 22, 2024, therefore complied with this court's mandate in *Thomas I* and Petrey's claims of bias are unfounded.

#### **D. Cumulative Error**

{¶ 55} Finally, Petrey argues that the many errors committed by the trial court "reveal a pattern of disregard for due process and constitutional safeguards" and, when taken together, mandate reversal. "[I]n order for the cumulative error doctrine to apply, 'an appellate court must find that multiple errors, none of which individually rose to the level of prejudicial error, actually occurred in the trial court.'" *Nationwide Agribusiness Ins. Co. v. Heidler*, 2019-Ohio-4311, ¶ 66 (12th Dist.), quoting *State v. Cramer*, 2004-Ohio-1712, ¶ 67 (12th Dist.). Here, no such error, harmless or otherwise, occurred. Because this court has found no merit to any of Petrey's assignments of error, Petrey cannot demonstrate cumulative error. *See id.*

{¶ 56} Petrey's fifth assignment of error is overruled.

#### **IV. Conclusion**

{¶ 57} Having found no merit to any of Petrey's arguments or assignments of error, we hereby affirm the judgment of the trial court denying Petrey's August 4, 2025 motion to vacate the Second Amended CSPO.

M. POWELL and SIEBERT, JJ., concur.

**JUDGMENT ENTRY**

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

Appellant's August 30, 2026 Motion for Leave to File Limited Post-Argument Supplemental Memorandum Clarifying the Record is denied. Appellee's September 4, 2026 Motion to Strike appellant's supplemental memorandum attached to appellant's motion for leave is granted.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed to appellant.

*/s/ Robert A. Hendrickson, Presiding Judge*

*/s/ Mike Powell, Judge*

*/s/ Melena S. Siebert, Judge*