

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

J.A.C., :
 :
 Plaintiff-Appellee, :
 : No. 110999
 v. :
 :
 A.L., ET AL., :
 :
 Respondents-Appellants. :

JOURNAL ENTRY AND OPINION

**JUDGMENT: REVERSED, VACATED, AND REMANDED
RELEASED AND JOURNALIZED: June 30, 2022**

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-21-953789

Appearances:

Michael P. Harvey Co., L.P.A., and Michael P. Harvey, *for
appellee.*

Herman Law, LLC, and Edward F. Herman, *for
appellants.*

EILEEN T. GALLAGHER, J.:

{¶ 1} Respondents-appellants, A.L. (“A.L.”) and N.L. (“N.L.”) (together the “appellants”), appeal the trial court’s judgment granting a civil stalking protection order (“CSPO”) in favor of plaintiff-appellee, J.A.C. (“J.A.C.”). Appellants raise the following assignment of error for review:

1. In a civil stalking protection order proceeding brought pursuant to R.C. 2903.214, the trial court erred in imposing a protection order after it had concluded that no factual basis existed for granting a civil stalking protection order.

{¶ 2} After careful review of the record and relevant case law, we vacate the trial court's order entered on October 13, 2021.

I. Procedural and Factual History

{¶ 3} On October 1, 2021, J.A.C. filed separate petitions for CSPO against his next-door neighbors, appellants, pursuant to R.C. 2903.214. The petition filed against A.L. alleged as follows:

[A.L.] on "2020" started trespassing in my back yard. I have a fence and I told him to stop; he didn't and kept doing this and it ended up in a screaming match. I told him this has to stop and was forced to put up a gate so I could lock him out.

[In] 2019, [A.L.] engaged in talking about my daughter after my son died in my home. I lost 2 kids and [A.L.] told me [my son] must have got some bad stuff like his death meant nothing. [A.L.] and his wife continue to harass me all summer long [in] 2021. I tried selling my house; put more shrubs in to block them; this is escalating.

On [September] 7th about 12:15 I was cutting my hair and shaving outside because I can see better and use my truck window as a mirror and I hear him yell out the upstairs window "what's up fag," as he views me from his window. He comes home for lunch and I've heard him say this word before in his driveway talking to someone else[.]

I am so tired * * * by his and his wife's behavior and filed a police report on 09/29/2021. This has escalated to a danger level.

{¶ 4} In turn, the petition filed against N.L. alleged as follows:

On several occasions [N.L.] has aggressively pushed towards me her [two] pit bulls in a threatening manner while I've been walking. This has escalated to the point I feel unsafe and made to feel like not coming home all summer long I spent away and felt I had to sell my house.

On 16th of September 2021, [N.L.] texted me calling me garbage. I blocked her from texting me.

She engaged in talking about my son before he died and after, and my only living daughter after my son's funeral.

On the 29th of September [N.L.] seen me come out of my house; my truck was parked in front of my gate and she was in her car with her son driving past me; slammed on her brakes; I was grabbing my jacket going for a walk and get a cup of coffee down the street like I do every night as I was trying to put on my jacket she puts her car in reverse and floors the gas going 50 feet trying to block me from walking across the street almost hitting me; throws up her arms laughing at me intimidating me as her husband was on porch with some guy that did work on the house that day and another neighbor walking towards me; so all together 5 people; I kept walking and then crossed the street feeling threatened and embarrassed. Later that night I felt I had no choice but to go file a police report on her and her husband. Report # 2021-00301946. I've lost 2 children and I can't take it anymore[.] I tried selling my home and this has escalated to a threatening level. I've spent thousands of dollars trying to block them.

{¶ 5} On the same date the petitions were filed, an ex parte hearing was held before a magistrate pursuant to R.C. 2903.214(D)(1). At the conclusion of the hearing, the magistrate denied an ex parte CSPO against A.L. However, the magistrate granted an ex parte CSPO against N.L., ordering her to “stay 15 feet away” from J.A.C. The matter was set for a full hearing to commence before the trial court on October 13, 2021.

{¶ 6} At the hearing, the trial court heard from each of the parties and emphasized that CSPO's are reserved for credible threats of physical harm or mental distress. On his own behalf, J.A.C. reiterated his allegations that appellants continuously harassed him throughout the summer of 2021. Specifically, J.A.C. alleged that A.L. (1) called him a derogatory name on September 7, 2021, (2) and

continuously trespassed on his property. In addition, J.A.C. alleged that N.L. (1) “used her two pit bulls aggressively against [him] on three different occasions” while they were walking down the sidewalk, (2) allows her pit bulls to roam in his front yard, and (3) almost hit him with her car when she was backing into her driveway with her vehicle. (Tr. 9-15.) Finally, J.A.C. alleged that the appellants collectively (1) sent their son onto his front lawn with a lawn mower to “cut a strip of grass just to upset [him],” (2) allow children to play in his front yard “just to aggravate [him],” and (3) hurt his feelings by referring to his daughter as a drug-addict. (Tr. 7-8.) J.A.C. testified that the appellants’ conduct caused him to feel “humiliated,” “intimidated,” “embarrassed,” and “threatened.” (Tr. 16.)

{¶ 7} When provided the opportunity to respond, appellants denied any allegation that they engaged in a pattern of conduct intended to harass, threaten, or insult J.A.C. In contrast, appellants maintained that they have made attempts to befriend J.A.C. since moving into their home and that they offered to help J.A.C. with anything he needed while he was grieving the loss of his children. Appellants admitted that their dogs have entered J.A.C.’s yard when returning home from walks. However, they insisted that their dogs have never been aggressive towards J.A.C. Appellants further stated that they would have prevented their dogs from entering J.A.C.’s yard if he would have asked them to do so. Finally, N.L. adamantly denied any suggestion that she attempted to hit J.A.C. with her vehicle. She explained that she only backed her vehicle into her driveway because her son had left his driver’s permit inside their home that he needed to retrieve.

{¶ 8} At the conclusion of the hearing, the court expressed its disapproval with the parties' failure to resolve their differences amicably, stating:

You know, you guys can drive each other crazy if you want as neighbors, which is — but you're not going to waste our time down here because it's crap. The protection order that was issued by the magistrate against * * * N.L., that one is dissolved. You guys are ordered to, you know, leave each other alone. I don't know what else to say. I think that you [J.A.C.] have some sort of hypersensitivity perhaps where in your mind that they are doing stuff and maybe they are doing some things.

Maybe they are, you know, calling [you] names or you're overhearing this or you're overhearing that. I don't know. But it doesn't rise to the level that means that a protection order can go in place.

I mean, we put protection orders when people are fearful of death, that someone's trying to kill them or they're coming after them or they're harassing them in a sense where they are in fear for their life.

I don't believe that you're in fear. I think, as you indicated the last time, which made you go to the police, hey, they embarrassed me. They embarrassed me because, you know, she almost hit me. I mean, I'm going to ask you guys — I'm going to order you guys to kind of leave each other alone.

(Tr. 18-19.) In its journal entry, dated October 13, 2021, the trial court vacated the protection order issued against N.L. on October 1, 2021. However, despite the court's indication on the record that the allegations did not warrant a protection order, the trial court ordered as follows:

Respondents shall not abuse petitioner, shall not disturb the petitioner's residence, shall not enter or interfere with the petitioner's place of employment/business, shall not initiate or have any contact with the petitioner, shall not contact the petitioner via social media, text, telephone, or communications by any other means, and shall not cause or encourage any other person to do any act prohibited by this order.

Petitioner shall not abuse petitioner, shall not disturb the respondents' residence, shall not enter or interfere with the respondents' place of

employment/business, shall not initiate or have any contact with the respondents, shall not contact the respondents via social media, text, telephone, or communications by any other means, and shall not cause or encourage any other person to do any act prohibited by this order.

Any violation of this order may result in punishment for contempt of court.

{¶ 9} Appellants now appeal from the trial court's judgment.

II. Law and Analysis

{¶ 10} In their sole assignment of error, appellants argue the trial court erred by granting a CSPO in favor of J.A.C. when the court stated on the record that a protection order was not warranted under the relevant law. Specifically, appellants contend that a CSPO was not appropriate because the trial court did not find their conduct towards J.A.C. "violated [R.C. 2903.211], the criminal stalking statute."

{¶ 11} R.C. 2903.214 allows a petitioner to obtain a CSPO by filing a petition alleging that the respondent engaged in conduct constituting menacing by stalking as defined in R.C. 2903.211. In relevant part, R.C. 2903.211 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).

{¶ 12} Thus, to obtain a CSPO, a petitioner must establish, "by a preponderance of the evidence, that the respondent caused the petitioner to believe he or she would cause [the] petitioner mental distress or physical harm, not that the respondent did in fact cause physical harm or mental distress." *L.J. v. M.P.*, 8th

Dist. Cuyahoga No. 109403, 2021-Ohio-312, ¶ 7, citing *M.D. v. M.D.*, 2018-Ohio-4218, 121 N.E.3d 819, ¶ 98-99 (8th Dist.), citing *State v. Spaulding*, 151 Ohio St.3d 378, 2016-Ohio-8126, 89 N.E.3d 554, and *State v. Horsley*, 10th Dist. Franklin No. 05AP-350, 2006-Ohio-1208, ¶ 48.

{¶ 13} If the trial court determines that a CSPO is warranted following a full hearing, it may issue an order

that contains terms designed to ensure the safety and protection of the person to be protected by the protection order, including, but not limited to, a requirement that the respondent refrain from entering the residence, school, business, or place of employment of the petitioner or family or household member.

R.C. 2903.214(E)(1)(a). The court is then required to deliver a copy of the CSPO to the petitioner, to the respondent, and to all law enforcement agencies that have jurisdiction to enforce the order. R.C. 2903.214(F)(1). In addition, the court is required to advise the parties that, as a result of the CSPO, it may be unlawful to possess or purchase a firearm for the duration of the order. R.C. 2903.214(F)(2).

{¶ 14} A CSPO issued under R.C. 2903.214 is valid until a date certain, but not for more than five years. R.C. 2903.214(E)(2)(a). A person who violates a CSPO is subject to criminal prosecution for a violation of R.C. 2919.27 and may be punished for contempt of court. R.C. 2903.214(K).

{¶ 15} Generally, this court reviews a trial court's decision to grant a CSPO under an abuse of discretion standard. *N.P. v. T.N.*, 8th Dist. Cuyahoga No. 106314, 2018-Ohio-2647, ¶ 20, citing *Williams v. Flannery*, 8th Dist. Cuyahoga No. 101880, 2015-Ohio-2040, ¶ 6. An abuse of discretion is where the trial court's decision is

unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1988). The trial court properly grants a CSPO if there is “some competent, credible evidence to support each element of menacing by stalking.” *M.J.W. v. T.S.*, 8th Dist. Cuyahoga No. 108014, 2019-Ohio-3573, ¶ 26, quoting *Strausser v. White*, 8th Dist. Cuyahoga No. 92091, 2009-Ohio-3597, ¶ 33.

{¶ 16} After careful consideration of the transcript and the language set forth in the trial court’s judgment entry, we are unable to conclude that the trial court issued a CSPO as contemplated under R.C. 2903.214. Although the trial court warned the parties that they could be punished for contempt of court under R.C. 2903.214(K) and crafted restrictions that mirror those permitted under R.C. 2903.214(E), it is clear from the record that the trial court did not comply with the procedural requirements of the statute to effectuate a CSPO. Specifically, the trial court did not specify how long the order would remain in effect; nor did they deliver a copy of the order to law enforcement agencies or notify the parties of the pertinent firearm restrictions. In addition, and perhaps most significantly, the trial court did not find that appellants engaged in conduct constituting menacing by stalking as defined in R.C. 2903.211. In fact, the trial court expressly stated that the factual allegations raised by J.A.C. did not “rise to the level that means that a protection order can go in place.”

{¶ 17} Under the totality of these circumstances, it is evident that the trial court crafted an equitable order that amounted to a sua sponte order of protection that was not authorized by R.C. 2903.214. However, the Ohio Supreme Court has

recognized that the relief authorized under R.C. 2903.214 is a “special statutory remedy that is designed to prevent violence * * *.” *Bey v. Rasaweher*, 161 Ohio St.3d 79, 2020-Ohio-3301, 161 N.E.3d 529, ¶ 16, quoting *J.P. v. T.H.*, 9th Dist. Lorain No. 15CA010897, 2017-Ohio-233, ¶ 28. Although several statutes authorize the issuance of a protection order, this court is not aware of any case law that would permit a trial court to issue a protection order, subject to contempt proceedings, that is not predicated on the comprehensive statutory schemes set forth under the Ohio Revised Code. The court’s power to act is conferred by statute. Accordingly, we find the trial court had no inherent authority to enter reciprocal orders of protection against the parties where, as here, the court found the requirements of R.C. 2903.214 were not proven by a preponderance of the evidence.

{¶ 18} We acknowledge the trial court’s efforts to resolve this dispute in a peaceful manner by ordering the parties to stay away from each other moving forward. As recognized by the trial court, however, a protection order is not appropriate merely because neighbors share unfriendly or untenable relationships. *See McKinley v. Kuhn*, 4th Dist. Hocking No. 10CA5, 2011-Ohio-134, ¶ 14, quoting *Kramer v. Kramer*, 3d Dist. Seneca No. 13-02-03, 2002-Ohio-4383, ¶ 17 (“R.C. 2903.211 was ‘not enacted for the purpose of alleviating uncomfortable situations, but to prevent the type of persistent and threatening harassment that leaves victims in constant fear of physical danger [or mental distress].’”).

{¶ 19} The sole assignment of error is sustained. Judgment is reversed, and the matter is remanded to the trial court with instructions to vacate the judgment entry entered on October 13, 2021.

{¶ 20} Reversed, vacated, and remanded.

It is ordered that appellants recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to 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.

EILEEN T. GALLAGHER, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., and
MARY EILEEN KILBANE, J., CONCUR