

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

S.W.,	:	
	:	
Petitioner-Appellee,	:	No. 112152
	:	
v.	:	
	:	
S.L.R.B.,	:	
	:	
Respondent-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 6, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-22-969134

Appearances:

S.B., *pro se*.

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} Petitioner-appellant, S.B., appears before this court *pro se* and appeals the issuance of a civil stalking order of protection against him. Because Appellant failed to file objections to the protection order with the trial court as required by the Ohio Rules of Civil Procedure, he waived error on appeal and we affirm the judgment of the trial court.

RELEVANT FACTS AND PROCEDURAL HISTORY

{¶ 2} On September 26, 2022, S.W. filed a petition for a civil stalking protection order (“CSPO”) against appellant. An ex parte temporary order was issued by a magistrate on that day with a hearing scheduled for October 11, 2022. On October 11, 2022, a magistrate held a hearing on the petition. Appellant did not receive service of the petition but appeared at the hearing and waived service of the order at the hearing. At the hearing, both S.W. and appellant testified. S.W. provided the trial court with exhibits to corroborate some of her testimony. On October 20, 2022, the magistrate signed an order granting a CSPO prohibiting appellant from contact with S.W. The CSPO was effective from the filing date of the petition until April 19, 2024. The trial court signed the magistrate’s order granting the CSPO on that same day. Appellant did not file objections to the CSPO; instead, he filed the instant appeal.

{¶ 3} In granting the petition for the CSPO, the trial court found that there was a pattern of conduct that caused S.W. to suffer mental distress. In making its findings, the trial court considered S.W.’s testimony that in August 2021, appellant sent her repeated text messages expressing a desire to speak with her and then appeared at her home, uninvited, where they engaged in a verbal argument. The trial court also considered S.W.’s testimony that, following the August 2021 incident, appellant sent multiple unsolicited messages and electronic funds transfers to S.B through the phone application “Cash App” until December 2021. S.W. had blocked

appellant on social media and testified that she only learned how to block appellant on Cash App in December 2021. Regarding these contacts, the trial court found that

[w]hile Brown's motives may have [sic] innocent, he routinely and repeatedly sent unwanted communications to Wilson on "Cash App" after being asked to cease communicating with her. [S.B.] established that [appellant] sent her various messages and funds transfers during a four-month period from August to December, 2021 and, further, demonstrated that the communications were uninvited and unwanted.

{¶ 4} S.W. testified that appellant appeared at her home in February 2022 without invitation. The trial court found this to be "similar to [prior instances] * * *, while [appellant's] motives for appearing at [S.W.'s] residence may have been benign or innocent, his actions were unwanted and appear to reflect a pattern of continued contact and communication after being told to cease." S.W. also testified that appellant again came uninvited to her home in July 2022 where appellant was confronted by her boyfriend.

{¶ 5} Additionally, S.W. stated that she believed appellant slashed her tires in December 2021. She also provided details as to statements made by her boyfriend to appellant in July 2022. In considering this portion of S.W.'s testimony, the trial court found S.W.'s claim that appellant slashed her tires unproven. It further did not consider statements made by S.W.'s boyfriend in making its decision whether a CSPO was warranted. Finally, S.W. testified that appellant filed a small claims action against her. The trial court determined appellant did not file that "case in order to harass or menace [S.W]."

{¶ 6} In addition to testimony regarding appellant's actions, S.W. testified as to her reaction to appellant's unwanted contact with her and her reasons for seeking a CSPO. The trial court summarized this testimony and its consideration of same as follows:

When asked to describe how her interactions with [appellant], as described in her testimony, caused her to feel, [S.W.] stated that she felt unsafe (particularly as a result of Brown's multiple unannounced visits to her home) and nervous. [S.W.] also testified that as a result of her interactions with [appellant], she takes more precautions when venturing away from her home, and is currently looking for a new residence.

{¶ 7} In issuing the CSPO, the trial court determined

That S.W established a pattern of conduct by [appellant], that caused her to suffer from mental distress. In her testimony, [S.W.] described three separate events involving [appellant], including a variety of unwanted visits by, and numerous communications from, [appellant]. As [S.W.] established the existence of multiple actions by, and statements from, [appellant], [S.W.'s] request for a full civil stalking protection order against [appellant] is granted.

LAW AND ARGUMENT

{¶ 8} Appellant raises one assignment of error¹ in which he argues that he was not served with notice of the hearing. He also argues that S.W. did not tell the truth at the hearing regarding certain matters, including her interactions with him and her use of Cash App, that she invited him to her home to receive a Christmas gift, and that her statement that she did not know why he filed a civil suit against her was false.

¹ The text of the assignment of error is contained within the Appendix.

{¶ 9} Appellant appeared before the trial court and filed this appeal pro se. Although entitled to some latitude, appellant is presumed to know the law and procedure and is held to the same standards as a party represented by counsel. *Bradley v. Bradley*, 8th Dist. Cuyahoga No. 109792, 2021-Ohio-2514, ¶ 21. With this standard in mind, appellant filed an appeal of a CSPO. The Ohio Rules of Civil Procedure provide specific requirements before an appeal may be taken where a hearing was held by a magistrate.

{¶ 10} In this case, the magistrate held a hearing and prepared findings of fact and conclusions of law, which the trial court adopted in accord with Civ.R. 65.1(F)(3)(c)(iii). Once the trial court filed the CSPO, Civ.R. 65.1(F)(3)(d)(i) allowed appellant 14 days to file written objections. Appellant did not file objections to the order. Civ.R. 65.1(G) mandates objections be filed prior to the filing of an appeal, reading:

Notwithstanding the provisions of any other rule, an order entered by the court under division (F)(3)(c) or division (F)(3)(e) of this rule is a final, appealable order. However, a party must timely file objections to such an order under division (F)(3)(d) of this rule prior to filing an appeal, and the timely filing of such objections shall stay the running of the time for appeal until the filing of the court's ruling on the objection.

{¶ 11} The purpose of the rule is the furtherance of two principles:

First, it promotes the fair administration of justice, including affording the trial court an opportunity to review the transcript and address any insufficiency of evidence or abuse of discretion that would render the order or a term of the order unjust. Second, it creates a more robust record upon which the appeal may proceed.

{¶ 12} In *A.A. v. Z.A.*, 8th Dist. Cuyahoga No. 111529, 2023-Ohio-217, ¶ 14, this court found that Civ.R. 65.1(G) mandates that a party must file objections to a CSPO prior to the filing an appeal. The failure to object operates as a waiver of any claimed error in an appeal:

In the instant case, Z.A. did not file any objections to the trial court’s adoption of the magistrate’s decision granting the CSPO prior to filing this appeal. Without timely filed objections pursuant to Civ.R. 65.1(G), Z.A. waived any argument challenging the trial court’s decision to adopt the CSPO on appeal. Therefore, we decline to address the merits, and we overrule the first and second assignments of error.

Id; *Hill v. Ferguson*, 1st Dist. Hamilton No. C-210278, 2022-Ohio-13, ¶ 12 (“Although we have jurisdiction over this case, Ferguson’s failure to object as required by Civ.R. 65.1(G) waived any argument challenging the trial court’s adoption of the magistrate’s DVCPO.”). Further, finding a waiver by an appellant who failed to file objections as required by Civ.R. 65.1(G) “is consistent with the principle that the fair administration of justice requires an appealing party to afford the trial court an opportunity to review and address any issue that would render the order unjust.” *Hill* at ¶ 12, citing 2016 Staff Note, Civ.R. 65.1(G). Because appellant failed to file objections to the CSPO in the trial court, he waived any error on appeal and cannot now contest the CSPO in an appeal. As such, we decline to address the assignment of error on its merits.

CONCLUSION

{¶ 13} Appellant raises arguments contesting the magistrate’s findings of fact as to his waiver of service and the admission of evidence. He further challenges

the magistrate's findings regarding the veracity and import of S.W.'s testimony. These arguments are the type that fall squarely within the mandate of Civ.R. 65.1(G), which rule was adopted to allow "the trial court an opportunity to review the transcript and address any insufficiency of evidence or abuse of discretion that would render the order or a term of the order unjust." 2016 Staff Notes to Civ.R. 65.1. Appellant's failure to file objections to the CSPO in the trial court precludes our consideration of the merits of his assignment of error where he claims error in the magistrate's findings of fact and conclusions of law as adopted by the trial court.

{¶ 14} 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.

MICHELLE J. SHEEHAN, PRESIDING JUDGE

EMANUELLA D. GROVES, J., and
SEAN C. GALLAGHER, J., CONCUR

APPENDIX

Appellant's sole assignment of error reads:

The trial court error on the facts and overall ruling due to the misinformation of the facts that was provided by [S.B.] in the case. Along with not taking account distress upon me when she stolen my proper[t]y, including two registered firearms that she know [I'm] legally responsible for, all for personal gain which I tried to be resolve as good friends at that time. Then, sought a protection order only after of her being sued for her actions. Lastly, I was not served properly to be aware of what's going on and prep properly but rejected the only proof on a flash drive that shown me in video recording trying to leave her [S.B.] life but her prevented me doing so. [Sic]