

[Cite as *Derolph v. Cirillo*, 2004-Ohio-5564.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LESLIE DEROLPH

Appellee-Petitioner

-vs-

FRANK CIRILLO

Appellant-Respondent

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Shiela G. Farmer, J.

Hon. Julie A. Edwards, J.

Case No. 2004CA00014

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Licking County Court of
Common Pleas, Case No. 03CV782

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

October 18, 2004

APPEARANCES:

For Appellee-Petitioner

For Appellant-Respondent

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Hoffman, P.J.

{¶1} Respondent-appellant Frank Cirillo appeals the granting of a stalking civil protection order by the Licking County Court of Common Pleas against him and in favor of petitioner-appellee Leslie DeRolph.

STATEMENT OF CASE AND FACTS

{¶2} Appellant resides with his family at 242 Rugg Avenue in Newark, Ohio. David and Cathy McElfresh lived at 260 Rugg Ave, and Cathy McElfresh's daughter, the petitioner-appellee in this matter, also lived on Rugg Avenue. The McElfreshs are involved in a divorce proceeding, and according to appellant, Cathy McElfresh alleges appellant's wife was having an affair with her husband.

{¶3} Appellee testified at the full hearing: On May 19, 2003, appellee helped her mother move some personal items from her residence. Appellant pulled up in front of his house, four houses down, he and his children got out of the car, and he proceeded to holler obscenities at her mom, harassing and antagonizing her. Appellee stated she asked him to go into his house and leave them alone, at which point, appellant pointed at appellee and said they were both dead. Appellee testified she was terrified, and felt threatened.

{¶4} Appellee then testified regarding a July 5, 2003 incident in which appellant and his children were both standing in front of her house, staring at her.

{¶5} On July 12, 2003, an incident occurred at the Walmart store in Newark, Ohio. Both Dawn Gartner, the store manager, and appellee testified at the full hearing regarding the incident. While shopping at the store, appellant's wife approached appellee and began yelling at her. Upon being informed of the confrontation, Gartner heard appellant say if he saw appellee and her husband, he was going to kill them, or beat them, or some other

words. As appellant was coming from the checkout line, he walked by appellee, pointed at her, and mouthed to her, "You're dead," while sliding his right index finger across his throat and shaking his head "yes" with a big smile on his face. Appellant and his wife were escorted out of the store.

{¶6} On July 14, 2003, appellee petitioned the trial court for a civil protection order against appellant. The trial court granted the motion ex parte and scheduled a full hearing on the petition. On September 24, 2003, appellee testified at the full hearing regarding the above incidents and appellant's continued violation of the ex parte order. At the conclusion of the hearing, the magistrate continued the civil protection order for a period of five years. After overruling appellant's objections to the magistrate's decision, the trial court issued final order on January 26, 2004.

{¶7} It is from January 26, 2004 civil protection order appellant now appeals raising the following assignment of error:

{¶8} "THE COURT ERRED BY GRANTING A STALKING CIVIL PROTECTION ORDER IN THIS MATTER SINCE IT WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE."

I

{¶9} R. C. 2903.214, which governs the issuance of stalking civil protection orders, provides, in relevant part:

{¶10} "(C) A person may seek relief under this section for the person, or any parent or adult household member may seek relief under this section on behalf of any other family or household member, by filing a petition with the court. The petition shall contain or state both of the following:

{¶11} "(1) An allegation that the respondent engaged in a violation of section 2903.211 of the Revised Code against the person to be protected by the protection order, including a description of the nature and extent of the violation;

{¶12} "(2) A request for relief under this section."

{¶13} The decision whether or not to grant a civil protection order is well within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *Williams v. McDougal* (May 16, 2001), Gallia App. No. 00CA014, unreported. An abuse of discretion connotes more than a mere error of law or judgment; rather, it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} Moreover, it is well-established that "[j]udgments 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.* (1978), 54 Ohio St.2d 279, syllabus. As the trier of fact is in the best position to view the witnesses and their demeanor, in making a determination that a judgment is against the manifest weight of the evidence, this court is mindful that we must indulge every reasonable presumption in favor of the lower court's judgment and findings of fact. *Shemo v. Mayfield Hts.* (2000), 88 Ohio St.3d 7, 10; *Gerijo, Inc. v. Fairfield* (1994), 70 Ohio St.3d 223, 226. In other words, "an appellate court may not simply substitute its judgment for that of the trial court so long as there is some competent, credible evidence to support the lower court findings." *State ex rel. Celebrezze v. Environmental Enterprises, Inc.* (1990), 53 Ohio St.3d 147, 154. Thus, in the event that the evidence is reasonably susceptible to more than one interpretation, this court must construe it consistently with the

lower court's judgment. *Gerijo* at 226; *Karches v. Cincinnati* (1988), 38 Ohio St.3d 12, 19.

As noted earlier, the petitioner must show, by a preponderance of the evidence the respondent engaged in a violation of R.C. 2903.211, the menacing by stalking statute, against the person seeking the order.

{¶15} R. C. 2903.211(A) states, "[n]o person by engaging in a pattern of conduct shall knowingly cause another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person."

{¶16} At the hearing, appellee provided a significant amount of evidence showing a number of threatening incidents took place. The trial court found these incidents constituted threats of bodily harm which individually and collectively caused appellee mental distress and appellee's fear was reasonable in light of same. Moreover, the trial court found appellee's allegations to be credible. The trial court concluded this conduct was sufficient to cause appellee to believe appellant would cause her physical harm.

Based on the foregoing, we find the trial court did not err in finding sufficient evidence existed to support the granting of the stalking civil protection order in the instant case, and did not abuse its discretion in ordering such.

{¶17} The order of the Licking County Court of Common Pleas is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Edwards, J. concur

JUDGES

