

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SHERRY J. HAYTON	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Petitioner-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. John F. Boggins, J.
-vs-	:	
	:	Case No. 04-COA-030
JOSEPH C. WHITE	:	
	:	
Respondent-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Civil appeal from Ashland County Court of Common Pleas, Case No. 04-CPO-106
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	DECEMBER 8, 2004

APPEARANCES:

For Petitioner-Appellee

JOHN L. GOOD
930 Claremont Avenue
Ashland, Ohio 44805

For Respondent-Appellant

TIMOTHY E. POTTS
60 West Second Street
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Boggins, J.

{¶1} This is an appeal from the granting of a stalking Civil Protection Order against Respondent-Appellant Joseph C. White by the Ashland County Court of Common Pleas.

{¶2} Petitioner-Appellee is Sherry J. Hayton.

{¶3} Appellant has failed to comply with Local App.R. 4(A) which requires appellant to attach to his brief a copy of the judgment entry appealed from. Although failure to comply with these rules is failure to prosecute for which dismissal may be entered *sua sponte*, we decline to dismiss on procedural grounds and proceed to address the merits of this appeal.

STATEMENT OF THE FACTS AND CASE

{¶4} Petitioner-Appellee Sherry Hayton and her husband purchased a farm in the year 2000 which is located adjacent to property where Respondent-Appellant Joseph C. White and his family live.

{¶5} It appears that there was some confusion as to the actual property borders which resulted in fences and signs being put up by the Haytons and torn down by the Whites on more than one occasion.

{¶6} The Whites also rode their ATV's on the Hayton's property and made threatening gestures at the Haytons every time they drove by the property.

{¶7} On February 17, 2003, the Haytons were having a family gathering when Appellant Joseph White, who appeared to be intoxicated, came onto their property, walked onto the porch and began screaming obscenities at the Haytons, shaking his fist at them and stating that he would "kick" Mrs. Hayton's "ass". (T. at 27). Appellant

White also tried to initiate a fight with Mrs. Hayton's son-in-law who was present at the time. Appellant Joseph White's son Christopher was also present but he remained down by the road while this incident occurred. Id.

{¶8} Appellee Hayton called the sheriff for the first time as a result of this incident.

{¶9} During the ensuing months, Christopher White caused damage to the Hayton property by doing "doughnuts" in their yard (T. at 21), revved his engine when he passed by the house and drove his ATV through their fields. Id.

{¶10} A cherry tree which Appellee Hayton had planted in her yard was destroyed by an ATV. The tire tracks left in the snow led to the White property. (T. at 32).

{¶11} The Whites continually stood at or near the property line and fired their guns onto the Hayton property. (T. at 35, 115-116). On one occasion, a bullet, coming from the direction of the White property, whizzed over Chris Hayton's head and struck the Hayton's barn. (T. at 33, 84-84). The shot caused one of the horses to panic, run through a fence and injure itself. (T. at 33). Chris Hayton testified that he looked in the direction of the shot and saw Christopher White holding a rifle. (T. at 84). The Haytons were forced to stop pasturing their horses were afraid to use their woods as a result of such shooting. Id.

{¶12} In March, 2004, Appellee Hayton's children Bret and Chris were gathering stones near the property line when they were approached by Joseph White who appeared to be intoxicated. (T. at 81). Appellant White charged at the boys, screaming and making threats. Id. Appellant White ripped off his shirt and threatened

to kill Chris Hayton. Id. Chris Hayton testified that he was genuinely afraid. Id. Appellant White followed the boys along the property line and continued to yell obscenities at them as they headed back toward their house on their tractor. Id.

{¶13} When the boys told their mother what had happened she contacted the sheriff's department, this time being the fourth time overall. She was advised by the deputies to seek a civil protection order.

{¶14} On March 29, 2004, Appellee White filed a petition for a civil protection order.

{¶15} On March 30, 2004, the Ashland County Common Pleas Court granted an ex parte stalking civil protection order on behalf of Petitioner-Appellee Sherry J. Hayton.

{¶16} A full hearing was scheduled for April 6, 2004, but was continued to April 13, 2004, at the request of Respondent-Appellant.

{¶17} On April 13, 2004, and again on April 29, 2004, full evidentiary hearings were conducted. At the conclusion of the second hearing, the trial court granted a five year stalking civil protection order.

{¶18} By Judgment Entry filed May 3, 2004, the trial court memorialized its decision.

{¶19} It is from this decision which Respondent-Appellant appeals, assigning the following error for review:

ASSIGNMENT OF ERROR

{¶20} "I. THE ASHLAND COUNTY COURT OF COMMON PLEAS ISSUANCE OF A PROTECTION ORDER AGAINST RESPONDENT-APPELLANTS WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I.

{¶21} In his sole assignment of error, Appellant argues that the decision of the trial court was against the manifest weight of the evidence. We disagree.

{¶22} Revised Code §2903.214, which governs the issuance of stalking civil protection orders, provides in relevant part:

{¶23} "(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:

{¶24} "(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;

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

{¶26} 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.

{¶27} 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.

{¶28} To be entitled to a stalking civil protection order in violation of R.C. 2903.214, the petitioner must show, by a preponderance of the evidence that the respondent engaged in a violation of R.C. §2903.211, the menacing by stalking statute, against the person seeking the order.

{¶29} Revised Code §2903.211(A) states that "[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."

{¶30} At the hearing, petitioner-appellee provided a significant amount of evidence showing that a number of threatening incidents took place since petitioner-appellee moved onto the property adjacent to that owned by respondent-appellants. The trial court found that respondent-appellant participated in a scheme or plan to drive the petitioner-appellee away. Moreover, the trial court found petitioner-appellee's

allegations to be credible and further found respondent-appellant to not be credible. The trial court concluded that this conduct was sufficient to cause petitioner-appellee to believe that respondent-appellant would cause her physical harm.

{¶31} Based on the foregoing, we find that the trial court did not err in finding that sufficient evidence existed to support the granting of the stalking civil protection order in the instant case.

{¶32} Appellant's sole assignment of error is denied.

{¶33} The decision of the Ashland County Court of Common Pleas is affirmed.

By: Boggins, J.

Gwin, P.J. and

Hoffman, J. concur

JUDGES

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO

FIFTH APPELLATE DISTRICT

