[Cite as *B.M. v. G.H.*, 2020-Ohio-3629.]

# IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

B.M.,

Petitioner-Appellee,

v.

G.H.,

Respondent-Appellant.

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**OPINION AND JUDGMENT ENTRY**
**Case No. 19 MA 0076**

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Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 18 CV 2588

**BEFORE:**
Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

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**JUDGMENT:**
Affirmed.

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*Atty. James Wise*, Hartford & Wise, Co., LPA, 91 West Taggart, P.O. Box.85, East Palestine, Ohio 44413, for Petitioner-Appellee, No Brief Filed.

*Atty. Tracey A. Laslo*, 325 East Main Street, Alliance, Ohio 44601, for Respondent-Appellant.

Dated: June 30, 2020

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**WAITE, P.J.**

**{¶1}** Appellant G.H. appeals a January 29, 2019 decision of the Mahoning County Court of Common Pleas granting Appellee B.M.'s civil protection petition. Appellant argues Appellee failed to establish that Appellant was at least eighteen years of age. Appellant also argues Appellee failed to establish a pattern of behavior, and either that Appellant knowingly caused Appellee to believe she would physically harm her, or that Appellee suffered mental distress. As the protection order in this matter has expired, this appeal is moot. As such, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Facts

**{¶2}** On October 17, 2018, Appellee filed a petition seeking a civil protection order against Appellant. The next day, the magistrate denied a request for an ex parte order after conducting a hearing on the matter. (1/22/19 Hrg. Tr., p. 6.) On November 6, 2018, Appellee filed a *pro se* motion asking the trial court to expedite a full hearing based on the escalation of Appellant's behavior, including a threat to "kill us both," and her continual presence outside of Appellee's work place. (11/6/18 *Pro Se* Motion to Expedite Case.) The trial court denied the motion.

**{¶3}** The magistrate did conduct a full hearing on the petition on January 22, 2019. The first witness to testify was an employee of Howard Hanna Realty. This employee was essentially in charge of human resources for the business. She testified that both Appellant and Appellee worked for the company until July of 2017 when Appellant was terminated and instructed that she would not be allowed back into the office building. Appellee continued to be employed by Howard Hanna.

**{¶4}** After Appellant's termination, Appellant continued to communicate with Appellee through Facebook, email, and text messages. Appellee testified that she asked Appellant "hundreds of times" to stop contacting her. (1/22/19 Hrg. Tr., p. 16.) The communication was not limited to electronic means. On October 8, 2018, while Appellee was running in a local park, she saw Appellant. She attempted to avoid her, but Appellant began to follow Appellee on her run. Appellee testified: "she pursued me through the park so much so that other people who were at the park started to wave me down and say, '[h]ey, this person's coming after you. You know, do you know who they are?' " (1/22/19 Hrg. Tr., pp. 16-17.) At some point during this encounter, Appellee called her husband and informed him of Appellant's behavior. She was concerned because the road she was on came to a dead end and no one else was in the area at that time. Once she finished her run, she saw Appellant waiting for her near the entrance to the parking lot. However, her husband had also arrived and had pulled his vehicle next to Appellee's car, having driven to the park because he feared for Appellee's safety based on Appellant's behavior.

**{¶5}** The next day, Appellee attended an open house showing. According to Appellee, she is required to post that she will be present at an open house. This provides notice to the public that the real estate is being shown. After leaving the open house, Appellee noticed Appellant's car following her as she drove. Appellee also noticed that Appellant was videotaping her during this drive. Appellee feared that the cars would collide or that Appellant would follow her to her home.

**{¶6}** A few days later, Appellee was working a phone shift at the Howard Hanna office and saw that Appellant had parked her car outside of the building and had entered

a nearby coffee shop, where she apparently stayed until the shop closed. Once the coffee shop closed, Appellant waited inside her car that was still parked outside of the office. Afraid for her well-being, Appellee told her manager, who accompanied her outside and saw Appellant sitting in her car outside of the building.

**{¶7}** Shortly thereafter, Appellant sent Appellee an email quoting song lyrics: "the gun was not mine. I raise from the dead all the time. I do not like your little games." (1/22/19 Hrg. Tr., p. 24.) Appellant stated in the email that she thought of Appellee every time she heard the song. Appellee felt threatened, particularly at the reference to guns and death.

**{¶8}** Appellee testified that she continually looks out of the window while at work to make sure Appellant is not waiting outside. She no longer runs in the park and is afraid to do her job because she must publicly announce where she will be holding an open house. At one point, she contacted the Mahoning County Sheriff's Office and was told that there was nothing that they could do.

**{¶9}** On January 29, 2019, the magistrate issued a one-year civil protection order. This order was to expire on January 23, 2020. On February 7, 2019, Appellant filed an objection to issuance of the order and on March 8, 2019, filed a supplement objection. On June 11, 2019, the trial court overruled Appellant's objections and adopted the magistrate's decision. It is from this entry that Appellant timely appeals.

*Sua Sponte* Mootness

**{¶10}** Although not raised within Appellant's brief, this record reveals that the protection order expired on January 23, 2020. Appellant did not seek a stay of the order nor did she attempt to expedite this appeal. Appellee did not file a brief.

**{¶11}** “The mootness doctrine provides, ‘American courts will not decide * * * cases in which there is no longer any actual controversy.’ ” *In re A.G.*, 139 Ohio St.3d 572, 2014-Ohio-2597, 13 N.E.3d 1146, ¶ 37, citing Black's Law Dictionary 1100 (9th Ed.2009). “However, courts are vested with the jurisdiction to address moot issues when such issues are capable of repetition yet evade review.” *Citizens Word v. Canfield Twp.*, 152 Ohio App.3d 252, 2003-Ohio-1604, 787 N.E.2d 104, ¶ 8, citing *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 527 N.E.2d 807 (1988), paragraph one of the syllabus. “Courts are also vested with jurisdiction to address moot issues when those issues concern an important public right or a matter of great public or general interest.” *Id.,* citing *In re Appeal of Huffer*, 47 Ohio St.3d 12, 14, 546 N.E.2d 1308 (1989).

**{¶12}** Neither exception to the mootness doctrine has been met in this matter. The trial court had the option to grant a protective order for a period up to five years. The court granted an order to be effective for only one year, and there is nothing within the record to suggest that Appellee has attempted to extend this order. Thus, the issue does not appear to be capable of repetition without review. Also, the facts of this case do not involve a matter of great public interest.

**{¶13}** The Ohio Supreme Court recently accepted review on the issue of whether “the collateral consequences exception to mootness appl[ies] to an appeal from an expired protection order when the appellant faces possible collateral consequences that may not be ascertainable at the time of the appeal[.]” *Cyran v. Cyran,* 152 Ohio St.3d 484, 2018-Ohio-24, 97 N.E.3d 487, ¶ 6. The Court answered the question in the negative, holding that speculation regarding possible future consequences to a person subject to a protection order is insufficient to overcome the mootness doctrine. *Id.* at ¶ 11.

**{¶14}** A “collateral disability is an adverse legal consequence of a conviction or judgment that survives despite the [defendant's service or satisfaction of the] sentence.” *State v. Bittles*, 2nd Dist. Greene No. 2018-CA-15, 2018-Ohio-4228, ¶ 4, citing *In re S.J.K.*, 114 Ohio St.3d 23, 2007-Ohio-2621, 867 N.E.2d 408, ¶ 10; *Pollard v. United States*, 352 U.S. 354, 77 S.Ct. 481, 1 L.Ed.2d 393 (1957).

**{¶15}** A high standard has been placed on arguments involving whether a possible collateral consequence is sufficiently clear to avoid speculation. The Ohio Supreme Court rejected the Eighth District’s position that a domestic violence protective order could affect divorce, postdivorce, and custody proceedings, and thus, review of an expired order should involve an exception to the mootness doctrine. *Cyran v. Cyran*, 152 Ohio St.3d 484, 2018-Ohio-24, 97 N.E.3d 487, citing *Wilder v. Perna*, 174 Ohio App.3d 586, 2007-Ohio-6635, 883 N.E.2d 1095. The *Cyran* Court explained that “[f]inding a reasonable possibility that a collateral consequence may occur calls for speculation. * * * Speculation is insufficient to establish a legally cognizable interest for which a court can order relief using the collateral-consequences exception to the mootness doctrine.” *Id.* at ¶ 11. See also *City of Dublin v. Willms*, 10th Dist. Franklin No. 17AP-847, 2018-Ohio-5144 (Any concern that a future court could use a finding to render an unfavorable determination in an unrelated hypothetical proceeding is highly speculative); *Bittles, supra,* (Where a driver’s license suspension has been imposed on a defendant who has not provided pre-suspension and post-suspension insurance premiums or otherwise demonstrated a collateral disability as the result of the mere existence of a record of the driver's license suspension has not met the burden of proving collateral consequences.)

**{¶16}** The *Cyran* Court carved out several exceptions to its holding: felony convictions, misdemeanor convictions that enhance the penalty for a future criminal charge or penalty, traffic cases which result in points being added to a driver's record, and cases where a collateral consequence is imposed as a matter of law. *Id.* at ¶ 9. The Court emphasized that there are no restrictions that occur by operation of law on a person after the expiration of a civil protective order. *Id.* at ¶ 11. Neither federal nor state law restricts the right to own a firearm based on an expired CPO. C*yran v. Cyran,* 2016-Ohio-7223, 63 N.E.3d 187, ¶ 5 (2d Dist.), affirmed by *Cyran v. Cyran,* 152 Ohio St.3d 484, 2018-Ohio-24, 97 N.E.3d 487.

**{¶17}** The appellant holds the burden of demonstrating actual collateral consequences. *Cyran* at ¶ 14. As Appellant did not address mootness in her brief, she did not raise the issue that any specific collateral consequences exist in her case. We again note that Appellant did not request a stay or otherwise attempt to expedite her appeal. Pursuant to *Cyran,* speculative collateral consequences are insufficient to overcome the mootness doctrine. The order has expired without any attempt by Appellee to extend the order. As such, this appeal is moot.

**{¶18}** Even though this appeal is moot, in the interests of fairness we will summarily address Appellant's arguments. For ease of understanding, they will be addressed out of order.

ASSIGNMENT OF ERROR NO. 2

> Petitioner failed to show that Respondent knowingly caused Petitioner to believe that Respondent would cause physical harm to Petitioner or that Respondent knowingly caused Petitioner mental distress. As such,

> Petitioner failed to prove menacing by stalking under R.C. § 2903.211 and her request for a Civil Stalking Protection Order should have been denied.

**{¶19}** Appellant argues that Appellee failed to establish a pattern of conduct as defined within R.C. 2903.211(D)(1). She claims the record does not support that she knew Appellee would be in the park on the day of the alleged encounter and that Appellee testified she did not know Appellant's mental state.

**{¶20}** R.C. 2903.211(D)(1) defines "pattern of conduct" as:

> [T]wo or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, or two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents, directed at one or more persons employed by or belonging to the same corporation, association, or other organization. * * * or the posting of messages, use of intentionally written or verbal graphic gestures, or receipt of information or data through the use of any form of written communication or an electronic method of remotely transferring information, including, but not limited to, a computer, computer network, computer program, computer system, or telecommunications device, may constitute a "pattern of conduct."

**{¶21}** R.C. 2903.211(D)(2) defines mental distress as:

> (2) "Mental distress" means any of the following:

(a) Any mental illness or condition that involves some temporary substantial incapacity;

(b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.

**{¶22}** Appellant misstates and leaves out significant portions of Appellee's testimony. The events that led Appellee to seek a protection order began when Appellant was fired by Howard Hanna Realty and informed that she was not permitted in the building in the future. (1/22/19 Hrg. Tr., p. 12.)

**{¶23}** After Appellant's termination, she continued to electronically communicate with Appellee even though Appellee asked her "hundreds of times" to stop. (1/22/19 Hrg. Tr., p. 16.) The situation escalated with an encounter in a local park during Appellee's run. Appellee stated that she felt threatened and unsafe, and eventually called her husband for safety's sake.

**{¶24}** While Appellee admitted she did not know if Appellant was certain she would be in the park at that time, Appellant mischaracterizes Appellee's testimony. Appellee testified that she did not know if Appellant had followed her to the park, but it is clear from her testimony that Appellant would not leave her alone once she learned Appellee was there.

**{¶25}** The next day, Appellant followed her in her car as she drove home from an open house. Appellee testified that Appellant videotaped her driving. Appellee became

so concerned she called the Mahoning County Sheriff's Office but was told that they could not assist in the matter.

**{¶26}** While working at her office, Appellee noticed that Appellant had parked outside the building and was waiting in a nearby coffee shop. After the coffee shop closed, Appellant sat in her vehicle outside the office. Again, Appellee was so concerned she informed a manager, who escorted Appellee out of the office and saw Appellant sitting in her vehicle outside of the building.

**{¶27}** Appellant sent Appellee an email quoting song lyrics and containing a message that caused Appellee to feel threatened.

**{¶28}** Appellee testified that all of these events caused her great fear, to the extent that it affected her work. She also stopped running, and could not concentrate at work.

**{¶29}** Appellee's testimony sufficiently established a pattern of conduct. Appellee testified as to at least four separate incidents and numerous emails, text messages, and Facebook messages sent by Appellant.

**{¶30}** We have previously defined what behavior constitutes mental distress for purposes of protective orders:

> Mere mental stress or annoyance does not constitute mental distress for purposes of the menacing by stalking statute. *Caban*, 7th Dist. No. 08MA36, 2009-Ohio-1034, ¶ 29. The statute does not, however, require proof that the victim sought or received treatment for mental distress. *Retterer v. Little*, 3d Dist. No. 9-11-23, 2012-Ohio-131, ¶ 41, citing *State v. Szloh*, 189 Ohio App.3d 13, 2010-Ohio-3777, 937 N.E.2d 168, ¶ 27 (2d Dist.). Nor does the statute require that the mental distress be totally or

> permanently incapacitating or debilitating, rather it merely has to be substantial. *Retterer*, citing *Lias v. Beekman*, 10th Dist. No. 06AP-1134, 2007-Ohio-5737, at ¶ 16. Incapacity has been determined to be substantial if it has a significant impact upon the victim's daily life. *Retterer*, quoting *State v. Horsley*, 10th Dist. No. 05AP-350, 2006-Ohio-1208, ¶ 48. Evidence of changed routine can support a finding of mental distress. *Retterer*, citing *Smith v. Wunsch*, 162 Ohio App.3d 21, 2005-Ohio-3498, 832 N.E.2d 757, at ¶ 20, citing *Noah v. Brillhart*, 9th Dist. No. 02CA0050, 2003-Ohio-2421, ¶ 16, and *State v. Scott*, 9th Dist. No. 20834, 2002-Ohio-3199, ¶ 14. The Third Appellate District has determined that testimony that the offender's conduct caused the victim considerable fear and anxiety can also support a finding of mental distress under R.C. 2903.211. *Retterer*.

*Morton v. Pyles*, 7th Dist. Mahoning No. 11 MA 124, 2012-Ohio-5343, ¶ 15.

**{¶31}** There is ample evidence within the record to support a finding of substantial mental distress, an impact on Appellee's life, changed routines, and fear. As noted within *Morton,* Appellee is not required to seek or receive treatment for her distress nor is she required to show that her distress has been permanently or totally incapacitating.

**{¶32}** While Appellant raises several cases to support her argument, the cases are clearly distinguishable. In *Caban v. Ransome,* 7th Dist. Mahoning No. 08 MA 36, 2009-Ohio-1034, we held that there must be evidence that shows more than simple annoyance in order to prove mental distress.

**{¶33}** In *Morton*, the evidence revealed that the protected party, who had a mental disability, wanted to have contact with the respondent. The limited record did not

establish the extent of the protected party's mental disability sufficient to determine whether the respondent's behavior was causing the distress or whether not being allowed to see the respondent was causing distress. *Id.* at ¶ 24.

**{¶34}** *Ramsey v. Pellicioni,* 7th Dist. Mahoning Nos. 14 MA 134; 14 MA 135, 2016-Ohio-558, ¶ 33, also involved mere annoyance. The fact that the objectionable conduct was alleged to have continued for seven years did not, by itself, show that it actually caused mental distress.

**{¶35}** Unlike these cases, the instant matter involves specific testimony that Appellee feared Appellant based on her behavior. There is sufficient evidence to support finding a pattern of conduct and mental distress. Accordingly, Appellant's second assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 1

> Petitioner's failure to identify Respondent during the hearing and failure to make any effort to establish that Respondent was over 18 years of age constitute failure to meet the basic requirements of R.C. § 2903.214. As such, Petitioner's request for a Civil Stalking Protection Order should have been denied.

**{¶36}** Appellant argues that before a trial court may consider specific allegations of stalking, the petitioner must first show that the respondent is over eighteen years of age. Appellant contends that no evidence was presented at trial to demonstrate her age. Appellant also argues that Appellee failed to produce any testimony that she was the person who committed the alleged acts.

**{¶37}** Pursuant to R.C. 2903.214(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 all of the following:
>
> (1) An allegation that the respondent is eighteen years of age or older and engaged in a violation of section 2903.211 of the Revised Code against the person to be protected by the protection order or committed a sexually oriented offense against the person to be protected by the protection order, including a description of the nature and extent of the violation[.]

**{¶38}** Contrary to Appellant's arguments, R.C. 2903.214(C) does not specifically require a petitioner to produce evidence of the respondent's age at trial. Rather, this information is to be presented in the petition. This is evident from the language of the statute, which states: "*The petition* shall contain or state all of the following: (1) An allegation that the respondent is eighteen years of age or older." (Emphasis added.) R.C. 2903.214(C)(1).

**{¶39}** The age requirement is jurisdictional, and is a result of Am.Sub.H.B. 10, where the legislature sought to distinguish between juvenile and adult civil protection orders. *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529, 998 N.E.2d 446, ¶ 28, J. French dissenting. The law provides that juvenile courts have exclusive jurisdiction over civil protection orders involving persons under the age of eighteen. *Id.*

**{¶40}** The record shows Appellant did not raise any issues related to the age requirement until her supplemental objection to the magistrate's decision. The petition in this matter does not specify Appellant's age. This seems to be due to a deficiency in the pre-printed form Appellee was provided, which contains a blank for the petitioner to fill in the respondent's birthdate. Apparently, this is the only mechanism for establishing the age of a respondent on this form. However, it is unreasonable to assume that any petitioner would have access to any respondent's date of birth at the time such a petition is filed. The form should, but does not, include a section where the petitioner is able to simply assert that the respondent is over the age of eighteen. The birthdate line is the sole mechanism provided on the petition's pre-printed form for a petitioner to indicate that a respondent is over the age of eighteen.

**{¶41}** Regardless, it is clear from the record that Appellee entered an appearance in this matter and was present before the trial court during at least one hearing. While a full hearing was eventually conducted, the record reveals that the court had earlier conducted an ex parte hearing. The appellate record does not include any transcript of this hearing, and we cannot speculate whether this issue was addressed at that hearing. "[W]here necessary transcripts are missing, we must presume the regularity of the record." *Taylor v. Collier*, 7th Dist. Mahoning No. 13 MA 117, 2015-Ohio-4099, 43 N.E.3d 810, ¶ 12.

**{¶42}** Appellant also claims that Appellee failed to identify her at trial as the person who committed the alleged behavior. However, Appellee clearly testified that Appellant engaged in the behavior described in the various incidents. There is no requirement that

a petitioner provide an in-court identification of a respondent in a civil protection order hearing. Appellant's arguments have no merit.

Conclusion

**{¶43}** Appellant argues that Appellee failed to establish that she was over the age of eighteen and did not provide an in court identification. Appellant also argues that Appellee failed to establish a pattern of conduct and mental distress, thus the trial court's grant of a civil protection order is against the manifest weight of the evidence. However, as the protection order has expired this appeal is moot. As such, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Robb, J., concurs.

D'Apolito, J., concurs.

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For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Respondent-Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**