

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
HARRISON COUNTY

JESSICA LEE,

Plaintiff-Appellee,

v.

JAMES P. ASH,

Defendant-Appellant.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 21 HA 0009**

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Civil Appeal from the  
Court of Common Pleas of Harrison County, Ohio  
Case No. CVH-2021-0068

**BEFORE:**

David A. D’Apolito, Cheryl L. Waite, Carol Ann Robb, Judges.

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**JUDGMENT:**

Affirmed.

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No Brief Filed for Plaintiff-Appellee and

*Atty. Steven A. Stickles*, 500 Market Street, Suite #10, Steubenville, Ohio 43952, for  
Defendant-Appellant.

Dated: September 13, 2022

**D'APOLITO, J.**

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{¶1} Appellant, James P. Ash, appeals from the August 18, 2021 judgment of the Harrison County Court of Common Pleas granting Appellee's, Jessica Lee, Petition for a Civil Stalking Protection Order ("CSPO"). On appeal, Appellant asserts the trial court's judgment is against the manifest weight of the evidence. Finding no reversible error, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

{¶2} On July 28, 2021, Appellee filed a Petition for a CSPO against Appellant pursuant to R.C. 2903.214. That same day, the trial court granted an ex parte CSPO.

{¶3} A full hearing was held on August 5, 2021. Both parties were present and unrepresented by counsel. Appellee testified and presented three witnesses: Crystal DeSillum (Appellant's daughter); Tiffany Ash (Appellant's daughter); and Steven Hawkins (Appellant's son and Appellee's fiancé). Appellant testified and presented one witness: Crystal Ash (Appellant's wife).

{¶4} At the hearing, DeSillum testified that she spoke with Appellant on July 25, 2021. Appellant wanted DeSillum to tell Appellee and Hawkins "that the next time he sees them he will shoot them." (8/5/2021 CSPO Hearing T.p., p. 19). On July 26, 2021, Hawkins called DeSillum indicating he was meeting the sheriff at his house because Appellee "felt that she was unsafe for her and the children" because of Appellant. (*Id.* at p. 20). On July 28, 2021, Appellant called DeSillum on speaker phone with the sheriff and asked her, "Did I say if Steven [Hawkins] and Jess [Appellee] came to my house I would shoot them?" (*Id.* at p. 21). DeSillum replied, "Yes." (*Id.*) Appellant interrupted DeSillum and said, "Don't you ever call me, text me or come to my house again. And if you die before me I will piss on your grave." (*Id.*) On cross-examination, DeSillum stated that the bad blood among Appellant, Appellee, and Hawkins all started over one year ago when Appellant threw a bowl, pushed Appellee, and she had a mark on her face. Appellant "grabbed a gun" and DeSillum begged him to stop. (*Id.* at p. 26).

{¶5} Tiffany Ash recalled an incident where Appellant and Appellee got into a "very heated" argument at his house and Appellant "picked up some kind of blue glass

object, [and] threw it across the room.” (*Id.* at p. 32). Tiffany Ash said Appellant “had a loaded gun.” (*Id.* at p. 34). Appellant and Hawkins began arguing and Appellant “fired his gun at Steven’s [Hawkins’] foot.” (*Id.* at p. 35). On cross-examination, Tiffany Ash indicated that incident took place in June of 2020. Tiffany Ash said “when Steven [Hawkins] had seen Jessica [Appellee] she had bruises on the side of her face and I think what had happened \* \* \* [was] when dad [Appellant] was trying to get her [Appellee] out of the door he had slammed the door and that [it was] believed it had hit Jessica [Appellee] in the face.” (*Id.* at p. 41). On re-direct, Tiffany Ash stated, “So within a year since the incident I know that Jess [Appellee] lives in - - like she’s afraid.” (*Id.* at p. 43). “They’re scared to live in their own town, you know. Jessica [Appellee] goes out and she gets called a whore and a liar and a thief \* \* \*.” (*Id.*)

{¶16} Hawkins testified that he and Appellee have children together. Hawkins recalled the June 5, 2021 incident at Appellant’s house. When Hawkins arrived, he saw Appellee’s “chin [was] bleeding.” (*Id.* at p. 46). Hawkins confronted Appellant and Appellant “pulled out a gun, [and] shot at [Hawkins’] feet.” (*Id.*) Since that incident, Hawkins said Appellant “was just running my name into the dirt. We would see him, he would threaten us” and “it was to the point that we couldn’t even go to the gas station.” (*Id.* at p. 48). Living in a small town, Hawkins said, “There’s been times at the gas station that I would drive by and [Appellant] would flip his shirt up and I think that was to show me that he was carrying a firearm to threaten me.” (*Id.* at p. 51).

{¶17} Appellee testified that she went to Appellant’s house on June 5, 2021 to defend herself due to him spreading lies about her. They started screaming at each other and something was thrown at her when she was sitting on the couch. Appellee began to leave. Appellant was getting “aggressive” and the “door was slammed” thereby hitting her. (*Id.* at p. 55). After Hawkins arrived, Appellee explained to him that her “face was bloody” because Appellant “had hit [her] with a door.” (*Id.* at p. 56). Appellee removed her kids and went home. Appellee said “we are constantly getting calls from people, you know, stating that [Appellant’s] going around town threatening to put a bullet in you.” (*Id.* at p. 56-57). Appellee explained she has left the state multiple times due to Appellant’s threats, which included the presence of guns. Appellee also said she felt “threatened or

harassed” when Appellant “yelled out of a truck window” at her a “few times.” (*Id.* at p. 58).

{¶18} Crystal Ash testified that Appellant drives by Appellee’s and Hawkins’ house because Crystal’s stepmother lives on the same street. Crystal Ash also stated that Appellant does not mention Appellee’s or Hawkins’ names to her.

{¶19} Appellant denied harassing Appellee and Hawkins. Appellant believes Appellee has a problem with depression. Appellant acknowledged telling Hawkins that if Hawkins ever stepped foot on his property again Appellant “would shoot him.” (*Id.* at p. 66). Appellant said, “I will not go intentionally looking for him [Hawkins] [and] I won’t go looking for her [Appellee].” (*Id.* at p. 66-67). Appellant stated, “I want nothing to do with them.” (*Id.* at p. 68). On cross-examination, Appellant indicated there is another way to Crystal Ash’s stepmother’s house where he would not have to pass Appellee’s and Hawkins’ house.

{¶10} On August 18, 2021, the trial court granted Appellee’s Petition and issued a CSPO against Appellant effective until July 28, 2023. In the Order, the court found that Appellant “has repeatedly threatened physical harm to [Appellee].” (8/18/2021 Order of Protection, p. 2).

{¶11} The court then checked the box stating:

The Court finds by a preponderance of the evidence that 1) Respondent [Appellant] has knowingly engaged in a pattern of conduct that caused Petitioner [Appellee] to believe that Respondent [Appellant] will cause physical harm or cause or has caused mental distress; and 2) the following orders are equitable, fair, and necessary to protect the persons named in this Order from stalking offenses.

(*Id.*)

{¶12} Appellant filed a timely appeal and raises two assignments of error.<sup>1</sup>

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<sup>1</sup> Appellee did not file a brief.

**ASSIGNMENT OF ERROR NO. 1**

**THE TRIAL COURT'S DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE BY INCORRECTLY INTERPRETING O.R.C. 2903.211 AS THE APPELLANT WAS NOT ENGAGED IN A PATTERN OF CONDUCT THAT CAUSED, OR WOULD HAVE CAUSED, APPELLEE TO BELIEVE SHE WOULD BE CAUSED PHYSICAL HARM OR MENTAL DISTRESS.**

**ASSIGNMENT OF ERROR NO. 2**

**THE TRIAL COURT DID ERR AND DID RULE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN DETERMINING THERE WAS EVIDENCE IN THE RECORD THAT THE APPELLANT MADE ANY THREATENING STATEMENTS TOWARDS THE APPELLEE AND WAS AWARE OF ANY PROBABILITY THAT HIS THREATENING STATEMENTS WOULD GET BACK TO THE PLAINTIFF.**

{¶13} In his first and second assignments of error, Appellant takes issue with the granting of the CSPO and challenges the trial court's judgment as being against the manifest weight of the evidence. Thus, for ease of discussion and because Appellant's assignments are interrelated, we will consider them in a consolidated fashion.

{¶14} We review the decision to grant a CSPO for an abuse of discretion. *T.V. v. R.S.*, 8th Dist. Cuyahoga No. 110049, 2021-Ohio-2444, ¶ 22. "An abuse of discretion is more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Thompson Farms, Inc. v. Estate of Thompson*, 7th Dist. Columbiana No. 20 CO 0014, 2021-Ohio-2364, ¶ 79, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶15} Appellant contends the CSPO should not have been granted. Thus, we apply a manifest weight of the evidence standard of review. *Tabak v. Goodman*, 7th Dist. Mahoning No. 21 MA 0042, 2022-Ohio-1123, ¶ 6, citing *D.R.B. by K.G.B. v. G.T.B.*, 7th Dist. Noble No. 17 NO 0452, 2018-Ohio-2787, ¶ 8.

Weight of the evidence concerns “the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the (finder of fact) that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.” (Emphasis sic.) (*State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541), quoting Black’s at 1594.

*Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12. When evaluating whether a decision is contrary to the manifest weight of the evidence, every reasonable presumption must be made in favor of the judgment. *Id.* at ¶ 21, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3 (and if the evidence is susceptible to more than one construction, the court of appeals must interpret the evidence in a manner consistent with the judgment).

*Tabak, supra*, at ¶ 6.

{¶16} Here, the CSPO was filed in accordance with R.C. 2903.214. Pursuant to that statute, the issuance of a CSPO requires the petitioner to establish a violation of R.C. 2903.211, “Menacing by stalking,” which states in part:

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 a family or household member of the other person or cause mental distress to the other person or a family or household member of the other person. In addition to any other basis for the other person’s belief that the offender will cause physical harm to the other person or the other person’s family or household member or mental distress to the other person or the other person’s family or household member, the other person’s belief or mental distress may be based on words or conduct of the offender that

are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs. R.C. 2903.211(A)(1).

{¶17} “Pattern of conduct” is defined as “two or more actions or incidents closely related in time.” R.C. 2903.211(D)(1).

{¶18} “A person acts knowingly, regardless of purpose, when the person is aware that the person’s conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.” R.C. 2901.22(B).

{¶19} “Mental distress” is defined as:

(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.

R.C. 2903.211(D)(2).

“Mental distress need not be incapacitating or debilitating.” *Joy v. Letostak*, 10th Dist. Franklin No. 14AP-1040, 2015-Ohio-2667, ¶ 25. “Explicit threats are not necessary to establish menacing by stalking under R.C. 2903.211.” *Bartells v. Bertel*, 12th Dist. Butler No. CA2016-11-216, 2018-Ohio-21, ¶ 56, citing *Lundin v. Niepsuj*, 9th Dist. Summit No. 26015, 2014-Ohio-1212, ¶ 19. It is instead the “duty of the trier of fact to determine whether a victim suffered mental distress as a result of the offender’s actions.” *Middletown v. Jones*, 167 Ohio App.3d 679, 2006-Ohio-3465, 856 N.E.2d 1003 ¶ 7 (12th Dist.). In making this determination, the trial court “may rely on its knowledge and experience in determining whether mental distress has been caused.” *Smith v. Wunsch*, 162 Ohio App.3d 21, 2005-Ohio-3498, ¶ 18 (4th Dist.). \* \* \*

*Tabak, supra*, at ¶ 9.

{¶20} Based on the facts presented, the trial court did not abuse its discretion in granting Appellee’s Petition for a CSPO against Appellant as Appellee established that Appellant violated R.C. 2903.211(A)(1). The record reveals a pattern of conduct by Appellant as well as a sufficient finding that Appellant caused Appellee mental distress.

{¶21} As stated, Hawkins recalled the initial June 5, 2021 incident at Appellant’s house. When Hawkins arrived, he saw Appellee’s “chin [was] bleeding.” (8/5/2021 CSPO Hearing T.p., p. 46). Hawkins confronted Appellant and Appellant “pulled out a gun, [and] shot at [Hawkins’] feet.” (*Id.*) Since that incident, Hawkins said Appellant “was just running my name into the dirt. We would see him, he would threaten us” and “it was to the point that we couldn’t even go to the gas station.” (*Id.* at p. 48). Living in a small town, Hawkins said, “There’s been times at the gas station that I would drive by and [Appellant] would flip his shirt up and I think that was to show me that he was carrying a firearm to threaten me.” (*Id.* at p. 51).

{¶22} Appellee testified that she went to Appellant’s house on June 5, 2021 to defend herself due to him spreading lies about her. They started screaming at each other and something was thrown at her when she was sitting on the couch. Appellee began to leave. Appellant was getting “aggressive” and the “door was slammed” thereby hitting her. (*Id.* at p. 55). After Hawkins arrived, Appellee explained to him that her “face was bloody” because Appellant “had hit [her] with a door.” (*Id.* at p. 56). Appellee removed her kids and went home. Appellee said “we are constantly getting calls from people, you know, stating that [Appellant’s] going around town threatening to put a bullet in you.” (*Id.* at p. 56-57). Appellee explained she has left the state multiple times due to Appellant’s threats, which included the presence of guns. Appellee also referenced mental distress by saying she felt “threatened or harassed” when Appellant “yelled out of a truck window” at her a “few times.” (*Id.* at p. 58).

{¶23} The foregoing was confirmed by Appellant’s daughters, Crystal DeSillum and Tiffany Ash. DeSillum testified that Appellant wanted DeSillum to tell Appellee and Hawkins “that the next time he sees them he will shoot them.” (*Id.* at p. 19). DeSillum said Hawkins called her indicating he was meeting the sheriff at his house because Appellee “felt that she was unsafe for her and the children” because of Appellant. (*Id.* at



p. 20). Tiffany Ash also referenced mental distress by stating, “So within a year since the incident I know that Jess [Appellee] lives in - - like she’s afraid.” (*Id.* at p. 43). “They’re scared to live in their own town, you know. Jessica [Appellee] goes out and she gets called a whore and a liar and a thief \* \* \*.” (*Id.*)

{¶24} Appellant denied harassing Appellee and Hawkins. However, Appellant admitted to a pattern of conduct, i.e., continually driving past Appellee’s and Hawkins’ house even though there is another route to the stepmother’s house where he would not have to pass their house. The record also reveals threats and harassments.

{¶25} Because the testimony presents a “he-said,” “they-said” situation, the trial court was in the best position to judge credibility and determine whether to believe Appellant or Appellee and her witnesses. *See Tabak, supra*, at ¶ 20. Given the deference we must afford the trial court’s judgment, as well as its credibility determinations when presented with any conflicting evidence, the trial court committed no error in granting Appellee’s Petition for a CSPO against Appellant. *Id.* at ¶ 21.

{¶26} Appellant’s first and second assignments of error are without merit.

### **CONCLUSION**

{¶27} For the foregoing reasons, Appellant’s assignments of error are not well-taken. The August 18, 2021 judgment of the Harrison County Court of Common Pleas granting Appellee’s Petition for a CSPO against Appellant is affirmed.

Waite, J., concurs.

Robb, 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 Harrison County, Ohio, is affirmed. Costs to be taxed against the 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.**