[Cite as *Miller v. Leone*, 2024-Ohio-1325.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

CATHERINE CERCONE MILLER,

Petitioner-Appellee,

v.

DOMINIC LEONE, III,

Respondent-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 MA 0074

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2023 CV 00831

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Judges, and Craig R. Baldwin, Judge of the Fifth District Court of Appeals, Sitting by Assignment.

JUDGMENT:
Affirmed.

Atty. Peter Pattakos and *Atty. Gregory B. Gipson*, The Pattakos Law Firm LLC, for Respondent-Appellant

Atty. Lynn A. Maro, Maro & Schoenike Co., for Petitioner-Appellee

Dated: March 21, 2024

WAITE, J.

{¶1} Appellant Dominic Leone, III appeals the civil stalking protection order ("CSPO") that was issued against him in favor of Appellee and her family. When the CSPO was issued, Appellant was the judge of the Struthers Municipal Court, and Appellee was the Mayor of Struthers. Appellant argues that no pattern of conduct was proven, which is required for the issuance of a CSPO. However, this record shows there was a long pattern of conduct extending over more than a year involving dozens of people and many locations. Appellant further argues that his words and actions were protected by the First Amendment right to freedom of speech. The CSPO in this case did not contain any provisions regulating Appellant's speech, and the First Amendment cases cited by Appellant in his brief do not support any viable freedom of speech claim in this case. Appellant's two assignments of error are overruled and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On May 5, 2023, Petitioner-Appellee Catherine Miller, Mayor of Struthers, Ohio, filed a petition seeking a CSPO against Respondent-Appellant Dominic Leone, III. At the time, Appellant was the judge of Struthers Municipal Court. An ex parte CSPO was ordered that same day in favor of Appellee and three members of her family. A full hearing on the matter was held on May 18, 2023. Appellee called five witnesses. Appellant had no witnesses and presented no evidence. The court granted the CSPO on June 5, 2023, to be effective until May 4, 2025. This timely appeal followed.

{¶3} Appellant raises two assignments of error on appeal.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT ERRED IN GRANTING A DOMESTIC VIOLENCE CIVIL STALKING PROTECTION ORDER AGAINST RESPONDENT, BECAUSE PETITIONER FAILED TO OFFER EVIDENCE TO SUPPORT A FINDING THAT THE JUDGE ENGAGED IN A 'PATTERN OF CONDUCT' THAT CONSTITUTED 'MENACING BY STALKING' UNDER R.C. 2903.211.

{¶4} Appellant contends there was insufficient evidence to grant a CSPO. A menacing by stalking civil protection order requires an allegation that the respondent committed a violation of R.C. 2903.211. R.C. 2903.214(C)(1). R.C. 2903.211(A)(1) provides: "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." Thus, there are two ways to prove menacing by stalking: by showing the offender caused the petitioner to believe the offender would cause physical harm; or by showing the offender caused the petitioner to suffer mental distress. Both require proof that a pattern of conduct occurred. Appellant contends there is insufficient evidence to substantiate either theory of menacing by stalking, and that the evidence does not support that a pattern of conduct occurred.

{¶5} In order to sustain a CSPO, "[t]he petitioner must demonstrate, by a preponderance of the evidence, that the respondent has engaged in menacing by stalking." *Kranek v. Richards*, 7th Dist. Jefferson No. 11 JE 2, 2011-Ohio-6374, ¶ 14.

{¶6} Appellant challenges the sufficiency of the evidence in support of the CSPO. Sufficiency of the evidence is a legal question evaluating its adequacy. *R.G. v. R.M.*, 2017-Ohio-8918, 88 N.E.3d 1027, ¶ 9 (7th Dist.), ¶ 9, citing *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). The question is whether the evidence, if believed, provides sufficient proof on all of the elements. *Id.* citing *State v. Yarbrough*, 95 Ohio St.3d 227, 240, 2002-Ohio-2126, 767 N.E.2d 216. An evaluation of witness credibility is not involved in a sufficiency review and the evidence and all rational inferences are evaluated in the light most favorable to the petitioner. A judgment will not be reversed on sufficiency grounds unless the reviewing court determines that no rational fact-finder could find the existence of the elements by the relevant burden of proof. *Id.*

{¶7} As used in R.C. 2903.211, a pattern of conduct occurs when "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." R.C. 2903.211(D)(1).

{¶8} A person acts "knowingly" when that person is aware his or her conduct will probably cause a certain result or will probably be of a certain nature. R.C. 2901.22(B).

{¶9} "Mental distress" means either: (a) any mental illness or condition involving some temporary substantial incapacity; or (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).

{¶10} Mere mental stress or annoyance does not constitute mental distress for purposes of the menacing by stalking statute. *Caban v. Ransome*, 7th Dist. Mahoning No. 08MA36, 2009-Ohio-1034, ¶ 29. The statute does not, however, require that the

mental distress be totally or permanently incapacitating or debilitating, rather, it merely has to be substantial. *Id.* An order based on mental distress requires the petitioner to have actually suffered mental distress, even temporarily, as compared to an order based on physical harm, which simply requires that the petitioner believes the respondent will cause physical harm. *R.G. v. R.M.*, *supra*, 2017-Ohio-8918, at ¶ 12. When proving mental distress, a temporary incapacity is substantial if it significantly impacts the petitioner's daily life, and evidence of changed routine is pertinent. *Id.* at ¶ 17, citing *Ramsey v. Pellicioni*, 7th Dist. Mahoning No. 14 MA 134, 2016-Ohio-558, ¶ 21. "An inability to sleep or concentrate on work can qualify as a temporary substantial incapacity[.]" *Id.* Consultation with a mental health provider is some evidence of mental distress. *Id.*

{¶11} "Testimony that a respondent's conduct caused the person considerable fear can support a finding of mental distress." *Nolder v. Nolder*, 7th Dist. Columbiana No. 22 CO 0027, 2023-Ohio-2371, ¶ 23, quoting *A.V. v. McNichols*, 2019-Ohio-2180, 137 N.E.3d 534, ¶ 24 (4th Dist.). "[T]he testimony of the victims themselves as to their fear is sufficient to establish mental distress[.]" *R.G. v. R.M* at ¶ 27, quoting *Elkins v. Manley*, 8th Dist. No. 104393, 2016-Ohio-8307, ¶ 15.

{¶12} "Menacing by stalking can be based, in part, on the defendant using obscene or derogatory language or profane gestures." *Darling v. Darling*, 7th Dist. Jefferson No. 06 JE 6, 2007-Ohio-3151, ¶ 22.

{¶13} In the present matter, Appellant contends that no pattern of conduct was shown because Appellee did not provide any examples of statements he made that could be interpreted as physical threats. Appellant cites *Krzystan v. Bauer*, 6th Dist. Ottawa

No. OT-15-039, 2017-Ohio-858, in support of his claim that proof of actual threats must be offered, but a close reading of this case actually supports Appellee's argument, not Appellant's. The Sixth District in *Krzystan* explained what could be considered by the trial court when ruling on a petition for a CSPO: "In determining what constitutes a pattern of conduct, courts must take every action into consideration 'even if some of the person's actions may not, in isolation, seem particularly threatening.' " *Id.* at ¶ 18, citing *Guthrie v. Long*, 10th Franklin No. 04AP–913, 2005-Ohio-1541, ¶ 12. The Sixth District noted that "physical gestures, body language or tone of voice" could be used to support the conclusion that words constituted a physical threat. *Id.* at ¶ 22. These are the same types of evidence Appellee used, in part, to establish her petition.

{¶14} Appellant also cites *Darling*, *supra*, in support. *Darling* held that merely use of rude gestures or snide remarks would not justify issuing a permanent civil protection order. *Darling* at ¶ 22. We note the instant case involves much more than mere rude gestures and snide remarks. *Darling*, like *Krzystan*, stands for the proposition that explicit threats are not necessary to prove menacing by stalking, which undercuts Appellant's argument.

{¶15} Before reviewing the details of the evidence used to support the CSPO petition, we must first address the contention that Appellant raises throughout his brief that has absolutely no support in the record. Appellant claims that Appellee filed the CSPO petition for political reasons; to hurt Appellant's political campaign in the May 2, 2023 primary election, in which Appellee supported Appellant’s opponent. Appellant did not present evidence at the hearing on the CSPO. Appellee's evidence, although not directed to dispute this claim, clearly contradicts Appellant's allegation. For example, the

petition for CSPO was not filed until May 5, 2023, which was after the primary election. One witness testified that Appellant's behavior toward Appellee changed long before Appellee showed support for Appellant's opponent in the primary election. Appellee herself testified that Appellant's behavior changed in 2020, years before the 2023 primary election. Because Appellant provided no evidence in his defense at the final hearing, and the evidence of record in no way supports Appellant's contentions in this regard, we find Appellant's claims that the CSPO was based on purely political reasons to be spurious.

{¶16} There is considerable evidence provided by five witnesses that Appellant's conduct toward Appellee became increasingly erratic, aggressive, and intimidating over the course of more than a year. Appellant's bailiff, Cheryl Host, testified that in January of 2023, she told Appellee to be careful because Appellant was having "outbursts," was "irate," would be "very loud, screaming," was "more and more and more * * * angry," and that all of this anger was directed at Appellee. (5/18/23 Tr., pp. 59-60.) Appellant screamed vulgarities for the entire building to hear, such as "C-U-N-T" and "f'ing B-I-T-C-H." (5/18/23 Tr., p. 68.) Host was concerned for Appellee's safety due to the increasing frequency and severity of the outbursts.

{¶17} The Clerk of Struthers Municipal Court, Amsi Medina, testified that she went to Appellee to caution her due to Appellant's angry, agitated behavior. (5/18/23 Tr., p. 89.) The outbursts began before Appellee started supporting Appellant's opponent in the 2023 primary election. (5/18/23 Tr., p. 97.) Medina described one outburst from Appellant that she thought was a threat. Appellant said: "[I]f I lose, we're all going down together. And he was talking about the mayor." (5/18/23 Tr., p. 89.) Medina believed this contained a physical threat, and told Appellee.

{¶18} Medina testified that Appellee changed her work routine due to Appellant's outbursts. Appellee would call Medina to see if Appellant was in the building, and if he was, Appellee would not enter the building. (5/18/23 Tr., p. 93.)

{¶19} A clerk in Medina's office, Joann Nicola, testified that Appellant came to her office and told everyone in the office that Appellee was being investigated by the FBI. (5/18/23 Tr., p. 42.) This was not true. (5/18/23 Tr., p. 128.) After that incident, Nicola observed that Appellant's behavior and temperament changed, and Nicola went to discuss this with Appellee. Appellee told Nicola that she was frightened for herself, for her family, and for everyone in city hall. (5/18/23 p. 45.) She was afraid of physical retaliation from Appellant. (5/18/23 Tr., p. 46.) Nicola testified that she also had concerns for Appellee's safety. (5/18/23 Tr., p. 46.)

{¶20} Struthers Police Chief Roy Roddy testified that he was very concerned for Appellee's safety because of Appellant's behavior. (5/18/23 Tr., p. 28.) Appellee told him her concerns for her safety and that she felt threatened by Appellant. (5/18/23 Tr., p. 28.) Chief Roddy testified that he was in charge of security for the building and set up extra safety procedures to "keep anything from possibly happening" between them. (5/18/23 Tr., p. 25.) He gave Appellee a special parking space in the police garage so she could get to and from her office without walking past any other offices in the building, including Appellant's. He also assigned an extra police officer to the building on the day after the primary election because he was not sure how Appellant would react following the election. He testified that employees of the building told him Appellant had threatened Appellee. (5/18/23 Tr., p. 32.)

{¶21} Appellee testified about the progression of Appellant's words and actions that led to filing for a CSPO. Appellee testified that she and Appellant were friends. Appellant would sponsor the baseball teams of Appellee's children and go to their games. In the spring of 2020, his behavior toward her began to change. Prior to that, if they had disagreements, they would have a discussion and resolve them. (5/18/23 Tr., p. 106.) Appellant had been a very calm person, and was not known for yelling or screaming. (5/18/23 Tr., p. 106.) Over time, Appellant became a completely different person. He became more aggressive and abrasive toward her, to the point that they could not communicate at all. (5/18/23 Tr., p. 108.) At some point, the very sight of Appellee would "make him go crazy." (5/18/23 Tr., p. 112.) Over 40 people contacted her expressing their concerns for her safety due to Appellant's conduct. (5/18/23 Tr., p. 112.)

{¶22} In the months prior to filing for a CSPO, Appellee started checking to see if Appellant planned to be on the bench each day to avoid having contact with him. (5/18/23 Tr., p. 122.) She started checking security cameras and avoided even using the restroom if Appellant was nearby or in the hall. She testified that she heard three or four outbursts from Appellant directed personally at her.

{¶23} Appellee also testified that Appellant lived only a few doors away from her and she was concerned for her safety due to his escalating behavior. (5/18/23 Tr., p. 124.) Appellee would close the blinds at home, and her husband started going everywhere with her to protect her from Appellant. (5/18/23 Tr., p. 125.)

{¶24} On May 2, 2023, the date of the primary election, Appellee was at her polling place in Struthers when Appellant arrived. The "second he got there" he started screaming "look at those fat bitches." (5/18/23 Tr., p. 115.) The people in line to vote,

voicing concerns about Appellant's behavior, approached the police before they voted. Appellee recorded Appellant's behavior, sent a copy of the recording to the Mahoning County Board of Elections, and a sheriff's deputy was dispatched to the polling place. Appellant continued yelling and began stepping in front of Appellee when she would approach a person to talk to them, boxing her out of the conversation. (5/18/23 Tr., p. 116.) This caused her to have to walk away from him over 20 times.

{¶25} Appellee called the board of elections twice that morning due to fear for her physical safety from Appellant's actions. Later in the morning, Appellant stepped within a few feet of Appellee, clenching his fists and yelling in a rage "we can get rowdy" and "let's get rowdy," causing Appellee to back away. (5/18/23 Tr., p. 118.) A Struthers police officer was there to vote, but stayed with Appellee for about 20 minutes after he voted because of Appellant’s behavior.

{¶26} Appellee testified that she went to a mental health counselor due to Appellant's actions. (5/18/23 Tr., p. 126.) She testified that she lost 29 pounds caused by the stress of Appellant's behavior. She has had trouble sleeping because of Appellant. She testified that she began avoiding any place where Appellant might be. (5/18/23 Tr., p. 129.)

{¶27} Appellee testified that she heard Appellant tell people that she was being investigated by the FBI, and that this was not true. (5/18/23 Tr., p. 128.) She was aware of him saying this to many people, including people in Poland Township who were outside of her jurisdiction as Mayor of Struthers and could not vote for her.

{¶28} It is difficult to understand Appellant's argument that no pattern of conduct was established by Appellee's evidence. Appellee's testimony alone supports a pattern

of Appellant's conduct. Her testimony that she received 40 calls about Appellant's behavior toward her are proof of an extensive pattern of conduct on Appellant's part. The testimony offered by all of the witnesses encompasses outbursts and threats by Appellant in many different locations over a long period of time, from 2020 through 2023. Similar to Appellant's political retribution claim discussed earlier, the argument that no pattern of conduct was shown has absolutely no basis in the record.

{¶29} Based on the extensive testimony from Appellee's witnesses, and with no rebuttal witnesses or evidence from Appellant, the trial court granted the CSPO. There was evidence of direct threats, outrageous outbursts, screaming fits, threatening gestures, and that many people contacted Appellee because they feared for her safety. There was also extensive evidence of the actual mental distress suffered by Appellee. She was in fear of Appellant, changed how and when she went to work to avoid him, changed habits at home, visited a counselor because of him, lost significant weight and had her sleep disrupted, and could not even go to the restroom at her place of employment without checking to see if Appellant was nearby. This evidence supports that both prongs of R.C. 2903.211 were satisfied (proof of threats, and proof of actual mental distress). Since Appellant challenges only the sufficiency of the evidence, we must accept that the witnesses were credible. Any reasonable trier of fact could have granted the CSPO based on the unrebutted evidence offered by Appellee. As such, Appellant's first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN GRANTING A DOMESTIC VIOLENCE CIVIL STALKING PROTECTION ORDER AGAINST RESPONDENT,

BECAUSE PETITIONER FAILED TO OFFER EVIDENCE THAT RESPONDENT ENGAGED IN ANY CONDUCT THAT WAS NOT PROTECTED FROM SANCTION BY THE FIRST AMENDMENT.

{¶30} Appellant contends that the issuance of a domestic violence protection order against him violated his right to free speech under the First Amendment of the United States Constitution. This assignment of error is invalid on its face, since the protection order in this case is a civil stalking protection order, not a domestic violence protection order. Assuming Appellant actually intended to refer to a CSPO, he appears to be making a First Amendment constitutional challenge to the application of the CSPO statute, R.C. 2903.214. Such a challenge asserts that a statute is unconstitutional as applied to the challenger's particular conduct, even though it may be legally applied to others. *Columbus v. Meyer*, 152 Ohio App.3d 46, 2003-Ohio-1270, 786 N.E.2d 521 (10th Dist.), ¶ 31; *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801, 803, 104 S.Ct. 2118, 2127, 80 L.Ed.2d 772 (1984). An "as applied" challenge does not prevent the law from being enforced against others, nor does it render the law itself invalid. *Regal Cinemas, Inc. v. Mayfield Hts.*, 137 Ohio App.3d 61, 73, 738 N.E.2d 42, 50 (8th Dist.2000).

{¶31} Appellant first argues that his words were merely rude or insulting, and as such, were protected by the First Amendment. Appellant conveniently ignores the fact that his words were not the sole, or even primary, factor that led to the filing of the CSPO. It was his apparent increasing anger, the violent nature of his outbursts, and the changes in his behavior described as irate, abrasive, agitated, and outrageous. These aspects of his behavior involve physical gestures, body language, and tone of voice, all of which can

be used to establish that a physical threat was being made and that any resulting mental distress was reasonable. *Krzystan*, *supra*, 2017-Ohio-858, ¶ 22.

{¶32} The First Amendment provides, in part: "Congress shall make no law * * * abridging the freedom of speech * * *." The Ohio Constitution, Article I, Section 11, contains a similar provision: "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press."

{¶33} "As a general rule, the First Amendment to the United States Constitution protects citizens from government actions that abridge free speech." *Puterbaugh v. Goodwill Industries of the Miami Valley, Inc.*, 2d Dist. Miami No. 2013-CA-39, 2014-Ohio-2208, ¶ 35, citing *Hudgens v. N.L.R.B.*, 424 U.S. 507, 513, 96 S.Ct. 1029, 47 L.Ed.2d 196 (1976). "The right to free speech secured by the First Amendment is not absolute, however, and the government may regulate it in a manner that is consistent with the Constitution." *Bey v. Rasawehr*, 161 Ohio St.3d 79, 2020-Ohio-3301, 161 N.E.3d 529, ¶ 21, citing *Virginia v. Black*, 538 U.S. 343, 358, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). "It has been recognized that threats which intimidate or cause fear or apprehension by the recipient are unprotected by the First Amendment." *State v. Myers*, 3d Dist. Henry No. 7-99-05, 2000 WL 327238, *3 (Mar. 30, 2000), citing *Dayton v. Dunnigan*, 103 Ohio App.3d 67, 71, 658 N.E.2d 806 (2d Dist.1995). It is not "within the protection of the First Amendment's guarantee of free speech to knowingly cause another to believe one will cause physical harm or mental distress to him or her by engaging in two or more actions or incidents closely related in time." *State v. Bilder*, 99 Ohio App.3d 653, 664, 651 N.E.2d

502 (9th Dist.1994), quoting *State v. Benner* (1994), 96 Ohio App.3d 327, 329-330, 644 N.E.2d 1130 (1994).

{¶34} As Appellee points out, when a statute is challenged as violative of the constitutional right of free speech as applied to a particular person, the burden is on the challenger to offer clear and convincing evidence of a presently existing set of facts which makes the statute void as to him or her and unconstitutional as applied. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229, 231, 520 N.E.2d 188 (1988). Again, Appellant did not offer any evidence at the CSPO hearing, and thus, did not even attempt to provide clear and convincing evidence that issuance of the CSPO would amount to a constitutional violation.

{¶35} In addition, Appellant cites caselaw in which the underlying argument relies on the fact that a person is being punished for exercising the right to free speech. The word "punish" or "punishment" is used throughout Appellant's brief. However, issuance of a CSPO is not punishment. The purpose of the CSPO is to prevent future injury to the protected parties. *Hamlin-Scanlon v. Taylor*, 9th Dist. Summit No. 23773, 2008-Ohio-411, ¶ 11; *Irwin v. Murray*, 6th Dist. Lucas No. L-05-1113, 2006-Ohio-1633, ¶ 15.

{¶36} The primary case relied upon by Appellant, *Bey v. Rasawehr*, does not involve a general challenge to the issuance of a CSPO on First Amendment grounds. The matter under review in *Bey* was whether a specific provision of the CSPO (that restricted the respondent's ability to post comments on the internet) amounted to a prior restraint on protected free speech.

> Rasawehr does not contest the trial court's decision to issue CSPOs. He instead contests only the relief ordered in paragraph nine of the CSPOs,

> arguing specifically that the trial court's order that he refrain from posting about appellees on any social-media service, website, discussion board, or similar outlet or service and that he refrain from posting about the deaths of appellees' husbands in any manner that expressed, implied, or suggested that appellees were culpable in those deaths is a prior restraint on free speech that violates the First Amendment to the United States Constitution.

Id. at ¶ 18. Appellant does not challenge any such provision of his CSPO, and in fact, there are no provisions restricting speech. The CSPO simply orders Appellant to stay away from Appellee and her family.

{¶37} Appellant discusses a variety of factual claims to support his First Amendment argument, particularly regarding the supposed political nature of the dispute between the parties, but Appellant did not offer any evidence at the CSPO hearing regarding political speech or the right to make political speeches. Regardless, "[t]he right to free speech secured by the First Amendment is not absolute, * * * and the government may regulate it in a manner that is consistent with the Constitution." *Bey*, *supra*, at ¶ 21, citing *Virginia v. Black*, 538 U.S. 343, 358, 123 S.Ct. 1536, 155 L.Ed.2d 535 (2003). "It has been recognized that threats which intimidate or cause fear or apprehension by the recipient are unprotected by the First Amendment." *State v. Myers*, 3d Dist. Henry No. 7-99-05, 2000 WL 327238, *3 (Mar. 30, 2000), citing *Dayton v. Dunnigan*, 103 Ohio App.3d 67, 71, 658 N.E.2d 806 (2d Dist.1995). (Citations omitted). Even Appellant admits that at least one of the instances Appellee testified about can be regarded as a direct threat.

{¶38} Appellant's argument, based on assumptions not established in the record, seems to be that a politician cannot obtain a CSPO against another politician unless the petitioner can prove that a pattern of explicit threats was made. As explained above, this is not at all the standard for granting a CSPO, and there is no basis in First Amendment jurisprudence for any such argument. Assuming arguendo that the record did contain some support for Appellant's claims, the record clearly reflects that the anger and animosity Appellant displayed toward Appellee predated any political disputes between the two of them, and Appellant has not cited any political statements that he seeks to protect through the First Amendment.

{¶39} We also note that "the First Amendment does not protect any individual who knowingly makes false statements or expresses opinions that imply false statements of fact." *Disciplinary Counsel v. Gardner*, 99 Ohio St.3d 416, 2003-Ohio-4048, 793 N.E.2d 425, ¶ 15. One of the allegations against Appellant was that he spread lies about Appellee, particularly that she was under investigation by the FBI. Appellee testified that this was untrue, and there is no evidence in the record to dispute her testimony. Such lies contributed to Appellee's demonstrated mental distress. Appellant's reliance on the First Amendment does not aid his cause, because the First Amendment does not protect a person who makes unfounded false accusations against another.

{¶40} Appellant cites dozens of cases that deal with basic First Amendment legal concepts, but he has not provided any nexus between the facts of this case and a legitimate First Amendment freedom of speech issue. Appellee and Appellant do agree that the First Amendment does not protect "insulting or fighting words which by their very utterance inflict injury * * *." *Bilder* at 664. The First Amendment is not implicated in the

issuance of this CSPO in any fashion, and it certainly does not provide excuse for his outrageous behavior specifically directed at Appellee as contained in this record.

{¶41} Appellant's second assignment of error is overruled.

Conclusion

{¶42} Appellant appeals the CSPO issued against him on the basis of insufficient evidence and as a violation of the First Amendment right to freedom of speech. The evidence at the final hearing showed an escalating series of extreme and outrageous outbursts by Appellant towards Appellee at her workplace, at her home, and in public places. Appellant argues that no pattern of conduct was proven, but the record reflects a long pattern of escalating conduct extending over years. Appellant also argues that his words and actions were protected by the First Amendment freedom of speech. The CSPO in this case did not contain any provisions regulating Appellant's speech. Further, the First Amendment does not protect against speech that by its very utterance inflicts harm or that spreads falsehoods, and Appellant did not even attempt to meet his burden of proof to show that the CSPO or the menacing by stalking statute violated any First Amendment right. Accordingly, both of Appellant's assignments of error are overruled and the civil stalking protection order is affirmed in full.

Robb, P.J. concurs.

Baldwin, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's 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 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.