STATE OF MICHIGAN

COURT OF APPEALS

CARRIE A. SMITH, Plaintiff-Appellee,	UNPUBLISHED February 17, 2011
v	No. 294917 Livingston Circuit Court
MARK S. SMITH, Defendant-Appellant.	LC No. 08-041505-PP

Before: MURPHY, C.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order finding him in criminal contempt for violating a personal protection order (PPO) entered on behalf of plaintiff. Defendant was sentenced to 60 days in jail with work release. We affirm.

The trial court entered and later amended a PPO on behalf of plaintiff that prohibited defendant from making contact with plaintiff, entering the subdivision where she lived, or distributing photographic or video images of plaintiff, as well as other conditions not pertinent to this appeal. Plaintiff moved for a show cause hearing for violation of the PPO and alleged that defendant had placed nude photographs of her in the mailboxes of several neighbors and contacted her by telephone. Following a contested hearing, the trial court found defendant had violated the PPO.

Defendant first contends there was insufficient evidence to support the trial court's finding that he violated the PPO. This Court reviews a trial court's issuance of an order of contempt for an abuse of discretion. *In re Contempt of Henry*, 282 Mich App 656, 671; 765 NW2d 44 (2009). "A trial court's findings in a contempt proceeding must be affirmed on appeal if there is competent evidence to support them." *Brandt v Brandt*, 250 Mich App 68, 73; 645 NW2d 327 (2002). Criminal contempt requires the petitioner or prosecuting attorney to prove beyond a reasonable doubt that the alleged contemnor disregarded or disobeyed a court order. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007).

After reviewing the record, we find there was competent evidence to find defendant violated the PPO by entering plaintiff's subdivision and placing a nude photograph of her in the mailboxes of her neighbors. Two of plaintiff's neighbors testified that they received nude photographs of plaintiff in their mailboxes, and plaintiff learned that five of her neighbors in total

received the same materials. While defendant argues that no witness saw him place the photograph in any of the mailboxes, we conclude a rational trier of fact could have found beyond a reasonable doubt that defendant distributed the materials. Circumstantial evidence and reasonable inferences derived therefrom may be sufficient to prove guilt beyond a reasonable doubt. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2008). Plaintiff testified that defendant had previously engaged in similar conduct by distributing nude photographs of her to her former neighbors and by showing a nude photograph of her to two strangers in a courtroom lobby. Defendant himself acknowledged that he displayed a nude photograph of plaintiff in the past. Consequently, defendant's prior acts were relevant to show that he acted according to a common plan or scheme and distributed the photographs to humiliate plaintiff. See MRE 404(b). In addition, plaintiff testified that she recognized the handwriting on the photographs and stated that the writing looked like defendant's handwriting. Admittedly, defendant's expert testified that, in her opinion, the handwriting on the photograph did not match the handwriting exemplar defendant had provided. However, "a trier of fact is not bound to accept the opinion of an expert." *People v Clark*, 172 Mich App 1, 9; 432 NW2d 173 (1988). Here, the trial court found the validity of the determination made by defendant's expert to be questionable because an alternate example of defendant's handwriting was drastically different from the exemplar provided to the expert. "This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses." *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

We need not address defendant's argument that plaintiff's uncorroborated testimony that he contacted her by telephone was insufficient to establish that a violation of the PPO had occurred because the trial court did not make a specific finding on this allegation. In any event, defendant's discussion of this issue essentially serves as a challenge to plaintiff's credibility. As noted above, we will not interfere with the factfinder's credibility determinations. *Passage*, 277 Mich App at 177.

Defendant also contends that his criminal contempt conviction was against the great weight of the evidence. We review a challenge based on the great weight of the evidence to determine "whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003).

In arguing the trial court's finding was against the great weight of the evidence, defendant primarily attempts to undermine plaintiff's credibility. However, "[c]onflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *People v Lemmon*, 456 Mich 625, 647; 576 NW2d 129 (1998).

In addition, defendant's claim that the trial court's finding was against the great weight of the evidence because it contradicted indisputable physical facts is without merit. While a new trial may be granted where testimony contradicts indisputable physical facts or laws, *Lemmon*, 456 Mich at 642-644, defendant has failed to identify any testimony that would meet this test. Defendant's bald assertion that it would have been impossible for him to have placed the photographs in plaintiff's neighbor's mailboxes in light of his testimony that he was no longer in possession of any such photographs at that time does not constitute an "indisputable physical fact."

In short, we hold that the evidence does not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Musser*, 259 Mich App at 218-219.

Affirmed.

/s/ William B. Murphy
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro