

DA 10-0290

IN THE SUPREME COURT OF THE STATE OF MONTANA

2010 MT 289N

GEORGE COZINO and DEBORAH ANN COZINO,

Petitioners and Appellees,

v.

GLENN ROYCE JONES,

Respondent and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. ADR 10-306
Honorable Thomas M. McKittrick, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Nathan J. Hoines; Hoines Law Office, Great Falls, Montana

For Appellees:

Alexander (Zander) Blewett, III, Anders Blewett; Hoyt & Blewett, PLLC,
Great Falls, Montana

Submitted on Briefs: December 15, 2010

Decided: December 30, 2010

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court 1996 Internal Operating Rules, as amended in 2006, the following decision shall not be cited as precedent. It shall be filed as a public document with the Clerk of the Supreme Court and its case title, Supreme Court cause number and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 On April 28, 2010 George and Deborah Cozino filed a sworn petition for temporary order of protection against Glenn Jones. The Cozinos alleged that Jones engaged in a pattern of harassment that put them in fear of bodily injury, and severely impacted the quality of their life and their ability to enjoy their own home. The District Court granted a temporary order of protection on April 28, and held a hearing on the petition on May 11, 2010 at which the Cozinos, Jones and others testified. On May 20, 2010, the District Court entered a permanent order of protection in favor of the Cozinos and against Jones.

¶3 The District Court found that Jones had engaged in harassing, intimidating and threatening behavior toward the Cozinos over a period of two years, based upon Jones' desire for revenge against George Cozino for applying for a job that Jones wanted, and for other perceived personal affronts. The District Court found that despite a criminal charge of stalking pending against Jones, along with an order requiring him to stay 1500 feet from the Cozinos, Jones continued to come within 1500 feet of their residence to intimidate and harass them. The District Court further found that Jones continued to

harass the Cozinos after they sent him a letter demanding that he cease contact with them. The District Court found that the Cozinos' testimony was credible and that Jones' testimony was not credible.

¶4 The District Court concluded that Jones purposely or knowingly caused Cozinos substantial emotional distress and reasonable apprehension of bodily injury by repeatedly following, harassing, threatening and intimidating them in violation of § 45-5-220, MCA. The District Court further concluded that there was good cause under §§ 40-15-202 and -204, MCA, that the order of protection be made permanent.

¶5 On appeal, Jones urges this Court to re-evaluate the testimony at the hearing and to construe it in a light favorable to him. We decline to do so. In cases tried to the court without a jury, the court's findings will not be set aside unless clearly erroneous, giving due regard to the opportunity of the trial court to judge the credibility of witnesses. *M. R. Civ. P. 52(a)*; *Guthrie v. Hardy*, 2001 MT 122, ¶ 24, 305 Mont. 367, 28 P.3d 467. The District Court's findings clearly depended in large part upon an assessment of the credibility of the witnesses. There is no basis for second-guessing the District Court's determinations on credibility or for re-assessing what was shown by the testimony. There was also substantial evidence supporting a permanent restraining order, including Jones' violation of a prior order to remain 1500 feet from the Cozinos.

¶6 It is manifest on the face of the briefs and the record that there was not an abuse of discretion. We find no reason in fact or law to disturb the District Court's order.

¶7 Affirmed.

/S/ MIKE McGRATH

We concur:

/S/ BRIAN MORRIS

/S/ MICHAEL E WHEAT

/S/ JAMES C. NELSON

/S/ JIM RICE