

[Cite as *Strausser v. White*, 2009-Ohio-3597.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92091

TAMMY L. STRAUSSER

PETITIONER-APPELLEE

vs.

ROBERT E. WHITE

RESPONDENT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-664685

BEFORE: Boyle, J., Rocco, P.J., and Jones, J.

RELEASED: July 23, 2009

JOURNALIZED:
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY J. BOYLE, J.:

{¶ 1} Respondent-appellant, Robert White, appeals from a judgment granting petitioner-appellee, Tammy Strausser, a civil stalking protection order (“CSPO”). For the reasons that follow, we affirm.

{¶ 2} On July 14, 2008, Strausser filed a petition for a CSPO against White under R.C. 2903.214. After an ex parte hearing, the trial court granted a temporary protection order that prohibited White from coming within 100 feet of Strausser. The trial court later held a full hearing to determine whether to issue Strausser a five-year protection order. Strausser presented the following evidence at the hearing.

{¶ 3} Strausser was a mail carrier in North Olmsted. She had delivered White’s mail for over three years through a slot on his porch. Strausser and White were friendly at first, having “normal conversations.” Sometime around November 2007, Strausser injured herself and had to miss work. During that time, she received a letter from White in her mailbox at her home in Parma. The letter did not have a stamp on it. Strausser knew that meant that White had been to her house. She stated that she never gave him her address. In the letter, which was entered into evidence, White wrote, “Hi Tammy. I didn’t know how much I’d miss you and your smile. I ache inside to see you. (I can’t say this

in a garage, so I'll write it.) I hope I see you soon and often. Love you, B.W.” Strausser confronted White and asked him how he got her address. White told her that he had called the post office and got her last name. Strausser gave the letter to her supervisor, Kevin Whelan.

{¶ 4} Eventually, when Strausser delivered White's mail, their conversations began to get longer, up to 10 to 15 minutes. Strausser knew that she could not talk to White that long and still finish her route, so she began to walk away from him while he was still talking. She told him that if she continued to talk to him that long, her job at the post office would be in jeopardy. Strausser said that White got upset with her because she would not talk to him.

{¶ 5} In February 2008, Strausser received a second letter from White at her house. This letter did not have a stamp on it either; the envelope just had “Tammy” handwritten on it. In this letter, White apologized for “possibly being instrumental in having your job evaluated in a negative way.” He further stated, “I am hoping your evaluator doe[s] not know about me and how I have been holding you up. I have been forcing conversations with you to the degree that you come back with cutting sarcasm to me. I take blame for this.” He then suggested that they no longer have conversations except for postal business and no longer have “friendship waves.” He concluded with “[m]ost of all, we won't have to listen to those creepy words ever again, [t]hey are watching.” He signed

it, “[y]our route customer at 27018 Kennedy Ridge.” Strausser said that the letter made her angry and frustrated because she was just trying to do her job. She also said that she felt violated that White came to her house to deliver the letters. Strausser also gave this letter to Whelan.

{¶ 6} By late March 2008, Strausser and White’s interactions became more heated. On March 24, Strausser called the post office to report an incident that occurred after White made a comment to her about the amount of snow that had fallen that month. Strausser said that she just wanted White to stop talking to her, so she was as rude as she could possibly be to him. She responded to him that he should just move to where there is no snow. White told her that he did not appreciate her sarcasm. White further stated that he was going to call the post office to have her removed as his mail carrier. When she told him that would make her happy, he stated that “if they did nothing he would take care of it himself.” Strausser wrote a statement about this incident when she got back to the post office and indicated that she no longer felt safe delivering White’s mail.

{¶ 7} On March 26, Lynn Blanton, postmaster of North Olmsted, went to White’s home to investigate Strausser’s allegations. In her notes from the visit, Blanton indicated that she did not feel that White was a physical threat to Strausser because he was “very elderly and has had a hip replacement and has a

bad knee.” Blanton stated that White did tell her that Strausser “aroused” him and admitted that he drove to Strausser’s house and placed the letters in her mailbox. White told Blanton that Strausser voluntarily gave him her address. Blanton indicated that White agreed “not to disturb Tammy when she was delivering.” White further agreed to “[a]bsolutely no conversation and or waving.”

{¶ 8} The next day, Blanton told Strausser about meeting with White. Blanton instructed Strausser to continue to deliver White’s mail, but that if he talked to her or approached her in any way, she was supposed to immediately notify Blanton. Later that day, Strausser informed Blanton that she “nearly panicked” when she delivered White’s mail, and she refused to do it again unless he got a curbside mailbox. Strausser testified that she “just could not handle the mental stress of going up to his house every day and having to be confronted by him.”

{¶ 9} Blanton suspended White’s mail at that point until he opened a post office box or obtained a curbside mailbox.

{¶ 10} After the conversation about the snow and after Blanton talked to White, Strausser testified the situation with White became more tense. Strausser said she would have anxiety attacks when she pulled up to White’s street because she was worried she would have to see him and talk to him. She

told Whelan that she felt like White was harassing her, and she did not want to deliver his mail anymore.

{¶ 11} On April 7, 2008, Strausser reported that White pulled up behind her “and just stayed there and then drove off.” Strausser further reported that White “was out raking leaves that didn’t exist at the time of mail delivery.”

{¶ 12} On April 14, 2008, an anonymous male postal customer called the post office’s consumer affairs department and reported that he had seen Strausser driving while talking on her cell phone. The male customer said he was concerned about the safety of school children and pedestrians. He claimed it was not the first time he had seen Strausser on her cell phone.

{¶ 13} Sherri Sullins of consumer affairs alerted Blanton to the call. Blanton told Sullins, via email, that Strausser had reported that there was a male on her route who was stalking her. Blanton further indicated to Sullins that she was “curious” to know how the anonymous male knew Strausser’s first and last names and stated that it seemed to “solidify the possibility” that White was indeed stalking Strausser.

{¶ 14} On April 17, 2008, Strausser documented another incident with White. As she was delivering mail to another postal customer, White approached her. He tried to give her a letter. He told her, “you need to take this.” She told him that he needed to take the letter to the post office. She

proceeded to walk away and he followed her. He told her, “you need to look at this, it is about you.” It was purportedly a letter to the inspector general of the United States Post Office. Strausser continued to ignore White, and his voice became louder. White told her, “I know you can hear me” and “this was not done.” Strausser immediately called the post office and reported the incident.

{¶ 15} On April 22, 2008, Strausser filed a police report with Officer Sichko of the North Olmsted police. The report was entered into evidence. Officer Sichko indicated that he spoke with White. White told him that Strausser “initially came onto him in a sexual way and that she gave him her address.” White also admitted to Officer Sichko that he went to Strausser’s house and hand delivered the two letters. White agreed not to talk to Strausser. Strausser told Officer Sichko that she did not want to press charges since she thought White would no longer speak to her.

{¶ 16} Strausser stated that in May 2008, even though she was no longer delivering White’s mail, she still got severe chest pains and anxiety attacks when she delivered the mail to other customers on White’s street. Strausser documented an incident that occurred on May 19, where she reported to her supervisors that she was walking past White’s house when he yelled at her that she had “some nerve” and that she “lied to [him].” She said that she felt very uncomfortable and had many sleepless nights.

{¶ 17} On May 27, Sullins sent another email to Blanton stating that she needed to be able to tell White why the post office would not deliver his mail to his door. Sullins stated in the email, “I realize there is some history here and that [Strausser was] not just making up this ‘stalking’ charge against [White].” Blanton told Sullins that White “continued to have contact with Ms. Strausser even when he agreed not to.” Blanton further informed Sullins that she had “the inappropriate letters” that White sent to Strausser that he “admittedly personally delivered to her house.” Blanton also told Sullins that she could not “put Letter Carrier, Tammy Strausser[,] on his porch again where he can corner her again” and that Strausser had “filed a restraining order with the local police department.”

{¶ 18} Blanton testified that she later learned that Strausser had lied to her about filing the restraining order. Blanton stated that on June 20, 2008, she issued a disciplinary “letter of warning” to Strausser for lying.

{¶ 19} Strausser testified that during one of her last conversations with White, he told her he did not want her delivering his mail, and they got into an argument. She told him he could call the post office. White responded, “[i]f it’s the last thing I do, I’m going to make you pay.” Strausser testified that this conversation made her “fearful.”

{¶ 20} Strausser filed another police report at the end of June because White would not leave her alone. Three or four days after she filed the report, he stopped talking to her. The last day he spoke to her was July 2nd. She filed her petition for the CSPO on July 8, 2008.

{¶ 21} Strausser said that at the time of the full hearing on the CSPO, she still had to deliver mail on White's street and she still had anxiety over it. She said, "just seeing him outside makes me uneasy and uncomfortable." Strausser testified that White had also approached her when she was delivering mail on her business route, including at Speedway, which was less than a mile from his house, and at McDonald's. She said that she did not believe these were chance encounters. As a result of these incidents and at the recommendation of a victim advocate, Strausser started seeing a psychologist. Strausser said that she felt that White was a threat to her, and she had suffered ongoing mental anguish because of his conduct.

{¶ 22} Whelan testified that in February or March of 2008, White came to the post office to speak to Whelan and Blanton. During that meeting, White promised he would put a mailbox by the curb. Whelan told White not to talk to Strausser. Whelan also stated that he told Strausser to stop talking to White's neighbors about the incidents.

{¶ 23} White testified as if on cross-examination that he wrote a letter to Blanton in June 2008 explaining that Strausser voluntarily gave him her address. He further stated that he rejected Strausser's sexual advances and that by him doing so, he caused her to become a "scorned woman."

{¶ 24} White agreed that he would sometimes stand in his yard when Strausser delivered the mail. But he said that he only yelled at her twice in all the years that she delivered his mail. The first time he told her that she had a lot of nerve coming around the neighborhood after what had happened and that she ought to go to a convent and have the nuns wash her mouth out for lying. He denied following Strausser to Speedway and McDonald's and said it was coincidental that he was there at the same time.

{¶ 25} White further admitted that on May 19, 2008, he approached Strausser to give her a letter to mail for him. He said that he wanted to let her know that the letter was about her to the inspector general in Washington, D.C. White further admitted that he called the post office to complain about Strausser using her cell phone while driving when he saw her on the phone. He said he wanted to get vindication.

{¶ 26} At the close of the hearing, the court made the following findings of fact by a preponderance of the evidence: White knowingly engaged in a pattern of conduct that caused Strausser to believe that White would cause physical

harm to her or had caused mental distress to her. The court further found from Strausser's testimony that White continued to harass her and that her testimony was supported by the testimony of Whelan and Blanton. The court then issued the protection order effective for five years and ordered that White should not come within 500 feet of Strausser.

{¶ 27} It is from this judgment that White appeals, raising a sole assignment of error for our review:

{¶ 28} “[1.] The trial court erred and abused its discretion when it granted a civil protection order against Robert E. White when there were insufficient facts introduced into evidence to justify the granting of such an order.”

{¶ 29} The issuance of a CSPO is governed by R.C. 2903.214. Under this section, a person may seek civil relief for themselves, or on behalf of a family member, against an alleged stalker by filing a petition alleging “that the respondent engaged in a violation of section 2903.211 [menacing by stalking statute] of the Revised Code against the person to be protected by the protection order.” R.C. 2903.214(C)(1).

{¶ 30} In order to grant a petition for a CSPO, the trial court must hold a full hearing and proceed as in a normal civil action. R.C. 2903.214(D)(3). Notably, the petition is not evidence to be considered at that full hearing. *Felton v. Felton*, 79 Ohio St.3d 34, 42-43, 1997-Ohio-302. The trier of fact must

determine whether the preponderance of the evidence presented at the hearing establishes that the respondent engaged in a violation of R.C. 2903.211, the menacing by stalking statute. See R.C. 2903.214(C)(1); see, also, *Felton* at 42 (holding that since a court considering a protection order is to proceed as in a normal civil action and since statute is silent on standard of proof, preponderance of evidence is the proper standard).

{¶ 31} R.C. 2903.211 states that “[n]o person by engaging in a pattern of conduct shall knowingly cause another to believe that the offender will cause physical harm to the other person or cause mental distress to the other person.” R.C. 2903.211(A)(1). A “pattern of conduct” is defined as “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).

{¶ 32} R.C. 2903.211(D)(2) defines “mental distress” as either of the following: “(a) [a]ny mental illness or condition that involves some temporary substantial incapacity”; “(b) [a]ny 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.” Expert testimony is not required to establish mental distress, and the trier of fact “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. Further, “the testimony of the victim herself as to her fear is sufficient to establish mental distress.” *State v. Horsley*, 10th Dist. No. 05AP-350, 2006-Ohio-1208, at ¶48.

{¶ 33} Thus, when granting a protection order, the trial court must find that the petitioner has shown by a preponderance of the evidence that the respondent committed menacing by stalking. *Reynolds v. White* (Sept. 23, 1999), 8th Dist. No. 74506, citing *Felton*, paragraph two of the syllabus. This court has held that when the respondent contends on appeal that it was error for the trial court to issue the protection order, the question on review is whether there was some competent, credible evidence to support each element of menacing by stalking. *Id.*¹

{¶ 34} White claims that Strausser did not present sufficient evidence to show that White threatened her physically nor did she show that he caused her mental distress. We note first that Strausser was not required to establish both prongs of the menacing statute. While we agree that the evidence presented did not support that White engaged in a pattern of conduct knowingly causing

¹In *White*, we explained how there has been inconsistency among the appellate courts regarding the standard to be used when reviewing a protection order. Some courts simply review protection orders under an abuse of discretion standard. Others consider whether the judgment was supported by competent, credible evidence going to all the essential elements, and others “applied some combination of the two.” See *White*.

Strausser to believe that he would physically harm her, we do find that Strausser presented some competent, credible evidence supporting each element of the second prong of the menacing statute, i.e., that White knowingly engaged in a pattern of conduct that caused her mental distress.

{¶ 35} Strausser presented twenty exhibits at trial and four witnesses: herself, Blanton, Whelan, and White. She explained how White got angry with her when she refused to talk to him any longer. In retaliation, White began to harass Strausser. White even obtained Strausser's home address and personally delivered two letters to her without stamps on them. Although White told Blanton that Strausser voluntarily gave him her address, Strausser denied that she did. Strausser testified that she felt uncomfortable because White went to her house and because of what he said in the letters. Strausser immediately gave both letters to her supervisor.

{¶ 36} Strausser further presented evidence that she reported every incident of harassment to her supervisors, including incidents where White followed her on her route, went out on the street and approached her, lost his temper with her, yelled at her from his yard, and threatened to make her "pay." The evidence also established that White continued to harass Strausser after he had been told by Whelan, Blanton, and Officer Sichko to leave her alone and to not have contact with her. White even tried to get Strausser to deliver a letter

for him after all this, telling her the letter was about her to the inspector general.

{¶ 37} Further, Strausser presented evidence that White's actions caused her to have anxiety attacks when she approached his street. She also experienced severe chest pains and sleepless nights. Strausser also testified that she felt threatened delivering mail in his neighborhood, that his comments made her "fearful," and that she suffered ongoing mental anguish. Strausser had also seen a psychologist because of her anxiety over these incidents.

{¶ 38} Moreover, White himself corroborated some of Strausser's testimony regarding his pattern of conduct. White admitted that he personally delivered at least the first letter. White also admitted to two incidents where he yelled at Strausser from his yard after he had been told to leave her alone. He further admitted that he approached her (also after he had been told to leave her alone) to mail a letter – which he told her was about her – and he also admitted that he called the post office to complain about her cell phone use because he wanted vindication.

{¶ 39} Accordingly, we find that Strausser presented competent, credible evidence that White engaged in pattern of conduct that knowingly caused her mental distress. We conclude that the trial court did not err when it found that

Strausser established, by a preponderance of the evidence, that White committed menacing by stalking.

{¶ 40} White's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

KENNETH A. ROCCO, P.J., and
LARRY A. JONES, J., CONCUR