[Cite as *Beckwith v. State*, 2018-Ohio-4716.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105671

GREGORY E. BECKWITH

PLAINTIFF-APPELLANT

vs.

STATE OF OHIO

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-811154

BEFORE: McCormack, P.J., E.T. Gallagher, J., and Jones, J.

RELEASED AND JOURNALIZED: November 21, 2018

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TIM McCORMACK, P.J.:

{¶1} Plaintiff-appellant Gregory Beckwith ("Beckwith") appeals the trial court's grant of summary judgment in favor of defendant-appellee the state of Ohio ("the state"). For the following reasons, we affirm.

Procedural and Substantive History

{¶2} In April 2012, Beckwith was found guilty of menacing by stalking in violation of R.C. 2903.211(A)(1), with a furthermore specification that he committed the offense by trespassing "on the land or premises where the victim lives, is employed, or attends school." Beckwith appealed his conviction to this court. *State v. Beckwith*, 8th Dist. Cuyahoga No. 98497, 2013-Ohio-492 ("*Beckwith I*"). The following facts and procedural history were set forth in *Beckwith I*:

In December 2011, Beckwith was charged with menacing by stalking, with Ashia Benson ("Benson") named as the victim. The charge carried a furthermore specification that Beckwith trespassed on the land or premises where Benson "lives, is employed, or attends school." The matter proceeded to a bench trial, at which the following evidence was adduced.

Benson testified that she was hired as a "page" at the Cleveland Public Library in March 2011. Her typical duties included showing and shelving books. Benson further testified that when she first started working at the library she was advised that "people come up there because some of them crazy, some of them creepy, but they not really. It's just how they are. It's not like they going to do anything to you."

Benson first met Beckwith in late May or early June 2011. At first, she noticed that Beckwith "was everywhere [she] was." She explained that when she was shelving books on a particular floor she would observe Beckwith. Beckwith would then follow her when she proceeded to a different floor. Benson testified that this pattern became common, about three times a week. Benson realized that these encounters were not coincidences when he started making grunting noises at her every time she walked by him. Benson reported these encounters to her supervisors and other coworkers.

Benson testified that she first reported an incident sometime between May and November 2011 where Beckwith asked her to locate a specific book for him. She gave the book to him and watched him walk downstairs, put the book on the table, and walk away. Another time, Beckwith approached Benson while she was shelving books and asked her to help him download a song on his cell phone. On a third occasion, Benson testified that she believed Beckwith was filming her with his cell phone as she walked through the library.

As a result of these incidents, Cleveland Public Library Security Guard Christopher Flak ("Flak") advised Beckwith on October 18, 2011, that he was no longer permitted at the library. Flak testified that Beckwith "complied and left." Benson testified that Beckwith did not return to the library after that, but she did have two encounters with him near the Hyatt Hotel at The Arcade directly across the street from the library. During the first encounter, she observed Beckwith outside of the library where the bus drops her off in the morning before work. During the second encounter, on November 16, 2011, Beckwith followed Benson as she was walking into the entrance of The Arcade. Benson noticed Beckwith's reflection behind her in the glass door. She turned around and observed Beckwith with his cell phone pointed toward her buttocks. Benson stated that these incidents made her feel uncomfortable and "creeped out." At work, her heart would beat fast when someone walked past her. Her coworker, Aja Russo, testified that she never observed Beckwith follow Benson. Benson's supervisor testified that she observed Beckwith around Benson on two occasions. On both

> occasions, he was in the same area as Benson, but he did not interact with her. Her supervisor further testified that as a result of these incidents, they moved her to shelve in a different area.
>
> Benson testified that in the 13 months that she has been working at the library she has made complaints about other people. She has encountered numerous people who come into the library and "follow people and make people feel uncomfortable." Benson recalled one incident where she heard a man unzipping his pants a few aisles away from her. Another time, a man with "creepy hair" unzipped his pants while he looked at her through the book stacks.
>
> At the conclusion of trial, the court found Beckwith guilty. The court then sentenced him to 17 months in prison. The court also ordered that Beckwith pay a $500 fine.

Beckwith I at ¶ 2-8.

{¶3} In February 2013, this court reversed Beckwith's conviction, finding that the state had failed to provide sufficient evidence to support the conclusions that Beckwith knowingly caused his victim mental distress or physical harm, or that he trespassed when he committed the offense pursuant to the furthermore specification. *Beckwith I*.

{¶4} On July 24, 2013, Beckwith filed a wrongful imprisonment petition under R.C. 2743.48(A). The parties engaged in discovery, and Beckwith testified in a civil deposition on December 18, 2013.

{¶5} On January 21, 2014, the state filed a motion for summary judgment, arguing that Beckwith could not succeed under the fourth prong of R.C. 2743.48(A), which requires a petitioner to establish that no criminal proceeding can or will be brought against him for any act associated with his original conviction. Beckwith also filed a motion for summary judgment.

{¶6} The trial court granted the state's motion for summary judgment, and this court ultimately reversed that decision. *Beckwith v. State*, 2015-Ohio-1030, 29 N.E.3d 1009 (8th Dist.) ("*Beckwith II*"). Upon reversal, the case was remanded to the trial court to determine

whether Beckwith had satisfied the fifth prong of R.C. 2743.48(A). The fifth prong requires a petitioner to establish that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

{¶7} The parties again filed cross-motions for summary judgment. In support of its motion for summary judgment, the state attached evidence related to Beckwith's criminal trial in this case, an affidavit from Benson, and evidence of Beckwith's criminal history from unrelated cases. In support of his motion for summary judgment, Beckwith argued that the only evidence relevant to summary judgment was the record from the related criminal case and his own civil deposition.

{¶8} Beckwith also filed a motion to strike exhibits attached to the state's motion for summary judgment pertaining to Beckwith's other criminal cases. On March 15, 2017, the trial court granted the state's motion for summary judgment, denied Beckwith's motion for summary judgment, and denied Beckwith's motion to strike.

{¶9} Beckwith appealed, presenting one assignment of error for our review.

Law and Analysis

{¶10} Beckwith's sole assignment of error asserts that the trial court erred in granting the state's motion for summary judgment and denying his motion for summary judgment because as a matter of law he met his burden of proof by a preponderance of the evidence in establishing R.C. 2743.48(A)(5). Beckwith argues that he established that he was actually innocent of menacing by stalking and any lesser-included offenses. He also argues that the trial court erred in denying his motion to strike.

{¶11} A decision granting summary judgment is reviewed de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). This court conducts an independent review of the record to determine whether summary judgment is appropriate. Summary judgment is appropriate when "(1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the nonmoving party." Civ.R. 56(C); *Hull v. Sawchyn*, 145 Ohio App.3d 193, 196, 762 N.E.2d 416 (8th Dist.2001).

{¶12} Ohio's wrongful imprisonment statute, R.C. 2743.48, was added to the Revised Code in 1986 "to authorize civil actions against the state, for specified monetary amounts, in the Court of Claims by certain wrongfully imprisoned individuals." *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 9, citing *Doss v. State*, 135 Ohio St.3d 211, 2012-Ohio-5678, 985 N.E.2d 1229, ¶ 10. "[T]he General Assembly intended that the court of common pleas actively separate those who were wrongfully imprisoned from those who have merely avoided criminal liability." *Walden v. State*, 47 Ohio St.3d 47, 52, 547 N.E.2d 962 (1989).

{¶13} R.C. 2743.48(A) defines a wrongfully imprisoned individual as one who satisfies each of the following requirements:

> (1) The individual was charged with a violation of a section of the Revised Code by indictment or information, and the violation charged was an aggravated felony or felony.
>
> (2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

> (3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.
>
> (4) The individual's conviction was vacated, dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.
>
> (5) Subsequent to sentencing and during or subsequent to an imprisonment, an error in procedure resulted in the individual's release, or it was determined by the court of common pleas in the county where the underlying criminal action was initiated that the charged offense, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

{¶14} Here, previous litigation has established that Beckwith has satisfied the first four prongs of the statute, and those four prongs are therefore undisputed. This appeal concerns the fifth prong. Specifically, this appeal concerns whether Beckwith established by a preponderance of the evidence that he was innocent of the charged offense and any lesser-included offenses.

{¶15} In support of his argument, Beckwith notes that this court found that Benson's testimony established that she did not suffer the requisite mental distress under R.C. 2903.211(A)(1), and that Benson's testimony indicated that Beckwith did not knowingly cause Benson mental distress. *Beckwith I* at ¶ 16-18. This court further found that the trial court erred in finding sufficient evidence to support Beckwith's conviction of a furthermore specification for trespassing where Benson "lives, is employed, or attends school" because "the library was a public place." *Id*.

{¶16} A reversal based on insufficient evidence does not necessarily establish a defendant's innocence. Specifically, in a wrongful imprisonment action, a petitioner is not

entitled to a status of innocence based on an acquittal, but instead must establish his innocence by a preponderance of the evidence. *Ratcliff v. State*, 94 Ohio App.3d 179, 182, 640 N.E.2d 560 (4th Dist.1994), citing *Walden*, 47 Ohio St.3d 47, 547 N.E.2d 962, at paragraph three of syllabus. In analyzing innocence under the fifth prong of the statute, Ohio courts are to distinguish between an affirmative showing of actual innocence and a conviction vacated based on a dearth of evidence of guilt. *Doss v. State*, 8th Dist. Cuyahoga No. 104867, 2017-Ohio-1286, ¶ 11

{¶17} Beckwith was convicted of menacing by stalking with a furthermore specification that he trespassed on the land or premises where Benson "lives, is employed, or attends school," in violation of R.C. 2903.211(A)(1), which 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 member 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.

To determine whether Beckwith affirmatively established his innocence by a preponderance of the evidence, we must examine the evidence that he submitted in support of his motion for

summary judgment. To support his motion, Beckwith pointed to "specific, glaring contradictions and deficiencies in the evidence" based on the trial record, the civil deposition, and this court's decision in *Beckwith I*.

{¶18} Beckwith points out that he testified that he never returned to the library after being asked to leave by library security and that he happened to see Benson twice near the library but did not speak to or acknowledge her. Therefore, according to Beckwith, the evidence demonstrates the nonexistence of any intent on his part to cause Benson mental distress. Further, Beckwith points out that the state failed to establish that Benson actually experienced any mental distress in this case.

{¶19} The state, in turn, relies on Benson's affidavit stating that Beckwith caused her mental distress. Beckwith argues that the state offered this affidavit too late, and further, that it cannot establish that Beckwith acted knowingly. Despite Beckwith's assertion as to the timing of the affidavit, he points to no legal reason why the timing is problematic or should preclude the affidavit from being considered. We find that Benson's affidavit, together with her testimony that Beckwith "creeped her out" and made her uncomfortable, are sufficient to preclude an affirmative showing of actual innocence by a preponderance of the evidence.

{¶20} Further, while Beckwith is correct that we cannot rely on the victim's affidavit to determine that he acted knowingly, we find that the balance of the evidence on the record, including Beckwith's civil deposition, establishes that he acted knowingly. In light of this conclusion, we cannot find that Beckwith succeeded in establishing his innocence by a preponderance of the evidence.

{¶21} We disagree with the state's contention that Beckwith waived the issue of the trial court's denial of his motion to strike. Although not assigned as a separate error on appeal, it is

readily apparent from Beckwith's brief that he disputes the trial court's denial of his motion to strike.

{¶22} However, it was not necessary, in conducting our *de novo* review in this case, to consider evidence of Beckwith's criminal history. Though the conduct at issue may be similar to the conduct in the underlying case, this evidence is not relevant to our determination of whether Beckwith is actually innocent of menacing by stalking against Benson in 2011. Therefore, we decline to address the propriety of the trial court's denial of Beckwith's motion to strike.

{¶23} Because we find that Beckwith has failed to establish his innocence by a preponderance of the evidence, the state was entitled to summary judgment as a matter of law.

{¶24} The judgment of the trial court is affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

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TIM McCORMACK, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
LARRY A. JONES, SR., J., CONCUR