[Cite as *J.L. v. M.D.*, 2011-Ohio-6208.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

J.L.,	:	**O P I N I O N**
Petitioner-Appellee,	:	**CASE NO. 2011-L-042**
- vs -	:	
M.D.,	:	
Respondent-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 2010OT01921.

Judgment: Affirmed.

Kenneth A. Bossin and *William A. Watson*, 1392 S.O.M. Center Road, Mayfield Heights, OH 44124 (For Petitioner-Appellee).

Kenneth D. Myers, 6100 Oak Tree Boulevard, #200, Cleveland, OH 44131 (For Respondent-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, M.D., appeals from the judgment of the Lake County Court of Common Pleas, Juvenile Division, adopting the magistrate's decision granting appellee, J.L., a juvenile criminal protection order, pursuant to R.C. 2151.34. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} On October 28, 2010, appellee, a juvenile female with ADHD and an anxiety disorder, filed a petition for a protection order against appellant, a juvenile male with autism. The petition made the following allegations:

{¶3} "[Appellant] has physically assaulted [appellee] twice in the last three years, and of late has been following [appellee] around Mentor High School during school hours. He has also been harassing [appellee] on the school bus, which both ride several times/week. The school and Mentor Police have declined to take sufficient action and [appellee] is having anxiety attacks."

{¶4} The following day, the trial court granted a temporary ex parte protection order, requiring appellant to remain at least 200 feet away from appellee. On November 10, 2010, the matter proceeded to hearing. Appellee testified she and appellant "dated" briefly in the seventh grade. When, at a dance, appellant tried to kiss her, she became embarrassed and "broke-up" with him. After they entered high school, appellee testified appellant lunged at her, punched the ground, and yelled, "I'm gonna get you." Subsequent to this incident, appellee testified appellant follows her, "pops up" everywhere, and frequently peeps into her classroom and stares at her. Appellant also approached appellee and tried to shake her hand at a bus stop which caused her to have a "panic attack." Appellee testified that, as a result of appellant's obsessive and threatening behavior, appellant scares her and she believes he is trying to hurt her.

{¶5} Appellant testified that he did lunge at appellee, but he did so because he was angry after she "broke his heart." He testified, however, he was not trying to hurt appellee and, in fact, would never hurt a female. Appellant acknowledged that school officials had warned him to stay away from appellee. And appellant's mother testified

that, in order to underscore the importance of the potential problem, she told appellant he could be "arrested" if appellee reported him. Despite these warnings, appellant admitted he had difficulty staying away from appellee. Appellant further admitted that, upon seeing appellee walking in school, he has occasion to change his direction in order to go in the same direction as the girl. Notwithstanding this behavior, appellant denied following appellee. Appellant testified he was in love with appellee and still desires to be near her. He also indicated that, if there were no legal ramifications resulting from his behavior, he would likely persist in his attempts to approach appellee, despite her wishes to the contrary.

{¶6} Appellee's mother reiterated much of appellee's testimony regarding appellant's actions. She further testified that, after the lunging incident, her daughter's anxiety levels increased significantly and she has become "more withdrawn, more jumpy." Appellee's mother also indicated her daughter has been working with a therapist to help her address her increased anxiety relating to appellant's purported behavior. Appellee's mother also asserted she had asked the school to address appellant's conduct, but "nothing [was] done."

{¶7} Cristl Wolfe, the ninth grade principal for Mentor High School, testified that she received a call from appellee's mother after the charging incident. As a result of the call, she spoke with appellant and his parents, as well as appellee. According to Wolfe, appellant felt bad about what happened and wanted to apologize; Wolfe advised appellant, however, not to talk, approach, or even look at appellee at that time. In fact, Wolfe advised appellant to turn and walk the other way if he saw appellee. Also, Wolfe arranged for appellee to leave her last class five minutes early to decrease the

likelihood of the parties encountering one another. Wolfe testified she received several other calls from appellee's mother, who claimed appellant was still harassing appellee. Wolfe, however, maintained that appellant was ostensibly complying with her directives at school. And, notwithstanding the mother's concerns, Wolfe testified she did not believe appellant was a threat to appellee. On cross-examination, however, Wolfe testified that, assuming appellee's allegations were accurate, appellant's actions would have merited disciplinary action.

{¶8} Finally, Joseph Spiccia, Mentor High School's principal, testified he spoke with appellee's mother in March 2010. Appellee's mother related her concern about appellant seeing appellee due to their history. After the conversation, Spiccia spoke with appellant and asked him not to interact with appellee. According to Spiccia, appellant complied. In October 2010, appellee's mother contacted Spiccia and expressed further concerns about appellant interacting with appellee. As a result of this conversation, Spiccia realized that, although in separate rooms with separate teachers, appellant and appellee had biology class in rooms sharing the same hallway. In order to comply with the ex parte order which had been recently entered (requiring appellant to remain at least 200 feet away from appellee), Spiccia changed appellant's schedule and placed him in a different class in a different hallway. Notwithstanding appellee's mother's contentions and the ex parte order, Spiccia testified, he did not believe appellant was a threat to anyone.

{¶9} On December 6, 2010, the magistrate issued his decision. With respect to his factual findings, the magistrate determined that each juvenile is a sophomore at Mentor High School with certain disabilities; appellant has autism and appellee has

ADHD and an anxiety disorder. The magistrate found that, when the parties were in the ninth grade, appellant "angrily charged" appellee, came within one inch of her, and punched the ground, exclaiming, "I'm gonna get you." The magistrate further found that despite repeated attempts by school officials to keep appellant away from appellee, he continues to exhibit obsessive behavior toward appellee and admitted he "still loves her and wants to be around her." The magistrate found appellant, after both the charging incident and being admonished by school officials to leave appellee alone, had "followed" her before school and approached appellee at the school bus stop to offer his hand in a "truce."

{¶10} The magistrate additionally found appellant "*** has a temper when people intentionally push his buttons, but often he's not even aware such is going on." In relation to this point, the magistrate distinguished between whether appellant would hurt appellee and whether he would threaten, obsess about, and try to be around appellant. The magistrate observed:

{¶11} "No one can ever predict with certainty that another person will not carry out a threat. [Appellant] testified he would not hurt [appellee], but he also testified he cannot stay away from her. Why would a person who threatened another person continue to try to be around the victim of the threat despite heroic efforts by the school to keep the person away? The threat of harm is real."

{¶12} The magistrate therefore determined appellant's statement that he still loves appellee, she is in his heart forever, and his admission that he still wants to be near her, supported appellee's fears.

{¶13} The magistrate acknowledged that school officials made numerous attempts to keep appellant from encountering appellee. He also pointed out that each official was aware appellant desired to be around appellee. Although the officials testified they did not see appellant's behavior as particularly threatening, the magistrate pointed out that each official testified that, had they observed the charging incident, "school discipline would have been meted out."

{¶14} Based upon the foregoing points, the magistrate concluded, by a preponderance of the evidence, that appellant "engaged in menacing by stalking by engaging in a pattern of conduct knowingly causing [appellee] to believe [he] would cause physical harm to her or cause mental distress to her, in violation of Revised Code [Sec.] 2903.211."

{¶15} Appellant subsequently filed objections to the magistrate's decision. After considering the objections, however, the trial court adopted the magistrate's decision in full. Appellant now appeals and asserts three assignments of error for our consideration.

{¶16} Appellant's first assignment of error provides:

{¶17} "The trial court erred when it determined that the appellant engaged in menacing by stalking even though no evidence was presented to establish the legal elements necessary to make such a finding."

{¶18} A trial court's decision to adopt or reject a magistrate's decision is a discretionary matter. *In re Ratliff*, 11th Dist. Nos. 2001-P-0142 and 2001-P-0143, 2002-Ohio-6586, at ¶14. As such, we will only reverse the trial court's judgment for an abuse of discretion. An abuse of discretion is a term of art, connoting a judgment which fails to

comport with reason or the record. See, e.g., *Janecek v. Marshall*, 11th Dist. No. 2010-L-059, 2011-Ohio-2994, at ¶7.

{¶19} Under this assigned error, appellant contends there was insufficient evidence before the trial court to support its determination that he committed the crime of menacing by stalking by a preponderance of the evidence. In particular, appellant argues the evidence failed to demonstrate appellant engaged in a pattern of conduct knowing his actions would cause appellee to believe he would cause her physical harm or mental distress.

{¶20} Before addressing the merits of appellant's argument, we shall first set forth the statute governing the underlying action. Appellee filed a petition for protection order pursuant to R.C. 2151.34 (eff. June 17, 2010), the statute governing the methods for obtaining a "criminal protection order against [a] person under 18 years of age." Id. That statute provides, in relevant part:

{¶21} "(C)(2) The petition shall contain or state all of the following:

{¶22} "(a) An allegation that the respondent engaged in a violation of [R.C.] 2903.11 ***

{¶23} "***

{¶24} "(c) A request for relief under this section.

{¶25} "***

{¶26} "(E)(1)(a) After an ex parte or full hearing, the court may issue any protection order, with or without bond, that contains terms designed to ensure the safety and protection of the person to be protected by the protection order."

{¶27} Appellee properly petitioned the court as described above, a hearing was held, and the court determined, by a preponderance of the evidence, that appellant engaged in menacing by stalking in violation of R.C. 2903.211.

{¶28} R.C. 2903.211 provides, in relevant part:

{¶29} "(A)(1) 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 cause mental distress to the other person.

{¶30} "***

{¶31} "(D) As used in this section:

{¶32} "(1) 'Pattern of conduct' means 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.

{¶33} "(2) 'Mental distress' means any of the following:

{¶34} "(a) Any mental illness or condition that involves some temporary substantial incapacity;

{¶35} "(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."

{¶36} With respect to the "pattern of conduct" element, the evidence demonstrated that, while both parties were in ninth grade, appellant, in a fit of anger, charged appellee, came within one inch of her person, and punched the ground, exclaiming, "I'm gonna get you." After this incident, appellee's mother notified school

officials and appellant was directed to stay away from appellee. Subsequent to the charging incident and the school official's directive, the evidence also demonstrated appellant had followed appellee before school and on other occasions at school. And, appellant conceded that, on one occasion, during an encounter in the school hallway, appellant made a face which caused appellee to cry. Finally, although he claimed he did not follow appellee, appellant testified he has observed appellee walking in an opposite direction than himself and turned around to move in the same direction as the young woman.

{¶37} In addition to appellant's testimony, the evidence also demonstrated that recently, in passing appellee in the school hallway, appellant deliberately looks away from appellee but makes exclamations such as: "Oh I can't talk to you, I can't be seen with you." Appellee further testified appellant has peered into her classrooms and watched her. Finally, after being told to stay away from appellee, appellant had approached appellee at a school bus stop, with the ostensible purpose of calling "a truce." From this evidence, we hold the magistrate possessed adequate evidence to conclude appellee had established a pattern of conduct.

{¶38} Next, appellant asserts there was inadequate evidence that he "knowingly" caused appellee to believe he would cause her physical harm or mental distress.

{¶39} R.C. 2901.22(B) provides: "[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." With respect to the mens rea of a crime, "courts will generally presume a person intends the natural, reasonable, and

probable consequences of his or her voluntary acts." *State v. Nadock*, 11th Dist. No. 2009-L-0042, 2010-Ohio-1161, at ¶63.

{¶40} The evidence demonstrated that appellant, a much larger individual than appellee, charged and threatened the girl because he was "angry" that she "broke his heart." Although he testified he did not "try to hurt her," he acknowledged his behavior may have "scared" her. He further testified he was aware that he scared her when he made her cry in the school hallway. Finally, despite being warned by his mother and school officials to stay away from appellee, appellant still insisted on approaching appellee at school or off-campus.

{¶41} Furthermore, appellee testified that after the charging incident, she feared appellant would physically hurt her. As of the date of the hearing, she stated her fear had not subsided. Also, appellee's mother indicated that, as a result of the charging incident, as well as appellant's subsequent actions, appellee had been "in therapy" to alleviate her anxieties relating to her fears of appellant.

{¶42} Given these points, there was adequate evidence to support the magistrate's decision that appellant was aware that his actions would probably cause a specific result—namely, causing appellee to believe he would physically harm her or causing her mental distress. In this respect, the trial court did not abuse its discretion in adopting the magistrate's decision.

{¶43} Appellant's first assignment of error is overruled.

{¶44} Appellant's second assignment of error alleges:

{¶45} "The trial court erred when it determined that the appellee's allegations met the legal standards necessary to issue a juvenile order of protection pursuant to R.C. 2151.34(D)(1)."

{¶46} R.C. 2151.34(D)(1) provides:

{¶47} "If a person who files a petition pursuant to this section requests an ex parte order, the court shall hold an ex parte hearing as soon as possible after the petition is filed, but not later than the next day after the court is in session after the petition is filed. The court, for good cause shown at the ex parte hearing, may enter any temporary orders, with or without bond, that the court finds necessary for the safety and protection of the person to be protected by the order. Immediate and present danger to the person to be protected by the protection order constitutes good cause for purposes of this section. Immediate and present danger includes, but is not limited to, situations in which the respondent has threatened the person to be protected by the protection order with bodily harm or in which the respondent previously has been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing a violation of section 2903.11, 2903.12, 2903.13, 2903.21, 2903.211 [2903.21.1], 2903.22, or 2911.211 [2911.21.1] of the Revised Code, a sexually oriented offense, or a violation of any municipal ordinance that is substantially equivalent to any of those offenses against the person to be protected by the protection order."

{¶48} Appellant appears to assert that appellee was required to demonstrate she was in "immediate and present danger" to her person at the merit hearing. To wit, appellant contends R.C. 2151.34 is "silent" regarding the standard "for the continuation of an ex parte order[.]" As a result, appellant argues this court must assume that the

"evidentiary requirement remains the objective finding of a reasonable fear of immediate and present danger to the Petitioner." According to appellant, the evidence submitted at the full hearing failed to meet this standard. We do not agree with appellant's reading of the statute.

{¶49} A review of the procedures set forth under R.C. 2151.34 demonstrates that appellant's construction of the statute is erroneous. First, the statute requires a victim to file a petition and meet all requirements set forth under R.C. 2151.34(C)(1) and (2). If these requirements are met, the victim may seek and obtain an ex parte order after showing of good cause—namely, an immediate and present danger to the person to be protected by the order. R.C. 2151.34(D)(1). Once the ex parte order is issued, the court must schedule a full hearing within ten days of the ex parte hearing. R.C. 2903.214(D)(2)(a). The respondent must be given notice of and an opportunity to be heard at the full hearing. Id. At the full hearing, the petitioner must present evidence in support of the request for the order and the respondent must be given the opportunity to defend against that evidence. Once all evidence is heard and the court determines the petitioner has adequately shown the respondent has violated the crime upon which the petition is based, it may grant the protective order. R.C. 2151.34(E)(3)(d).

{¶50} The statute demonstrates that a petitioner must show an "immediate and present danger" only to obtain the initial ex parte order. Pursuant to R.C. 2151.34(D)(1), the ex parte order is merely a temporary order. Moreover, the statute requires a *full hearing* must occur within ten days of the issuance of the order; hence, the ex parte order which, by definition, is granted in the absence of the respondent, effectively terminates at the commencement of the full hearing. Of course, at the

conclusion of the full hearing, if the court determines the petitioner has met his or her burden of production, it can issue a protection order on the merits. Once this order is issued, however, it cannot be deemed a "continuation" of the original ex parte order as appellant suggests. If a protection order is ultimately issued after the full hearing, that order is a separate, final criminal protection order premised upon the alleged criminal conduct prompting the underlying petition.

{¶51} In this case, the petitioner was awarded a preliminary ex parte order; however, the information or evidence upon which the trial court relied to issue this order is not apparent from the record. And, even were the information available, as discussed supra, the ex parte order was a temporary, interlocutory order not subject to appeal. See *Palo v. Palo*, 11th Dist. Nos. 2003-A-0049 and 2003-A-0058, 2004-Ohio-5638, at ¶14. We therefore lack jurisdiction to review the trial court's preliminary determination that appellee was in "immediate and present danger" such that she was entitled to the ex parte order.

{¶52} With this in mind, the matter proceeded to a full hearing at which appellant was afforded all due process protections. During the hearing, appellee was required to establish appellant had engaged in conduct constituting menacing by stalking, in violation of R.C. 2903.211, and appellant was entitled to defend himself against the allegations. Menacing by stalking requires a petitioner to prove the respondent engaged in a pattern of conduct that knowingly caused the petitioner to believe that the respondent will cause physical harm to the petitioner or cause mental distress to the petitioner. Id. As discussed above, the magistrate heard adequate evidence to support his finding that appellant engaged in the conduct prohibited by R.C. 2903.211. Despite

appellant's challenge, therefore, we hold the proceedings were conducted consistent with R.C. 2151.34 and the evidence produced at the hearing sufficed to meet the requirements for issuing the order. Again, we hold the trial court did not err in adopting the magistrate's decision.

{¶53} Appellant's second assignment of error lacks merit.

{¶54} Appellant's final assignment of error provides:

{¶55} "The decision of the trial court that the appellant acted in a manner towards the appellee which would allow the issuance of a juvenile protective order was against the manifest weight of the evidence."

{¶56} Generally, an appellate court considering whether a trial court properly issued the civil protection order will review the record to determine whether there is some competent, credible evidence to support the trial court's determination. See, e.g., *Gaydash v. Gaydash*, 168 Ohio App.3d 418, 2006-Ohio-4080, at ¶9. Here, however, the magistrate presided over the hearing and, after considering the evidence, issued the protection order. The trial court subsequently overruled appellant's objections and adopted the magistrate's decision. Given the manner in which this case was processed in the lower court, therefore, we review the trial court's adoption for an abuse of discretion. See *Gaul*, supra.

{¶57} Under his final assignment of error, appellant again argues appellee was required to present evidence of a "reasonable fear of immediate and present danger" before the trial court could issue the order. As discussed under appellant's previous assignment of error, appellee was not required to make such a showing at the full hearing. To obtain the final criminal protection order, appellee was required to

demonstrate appellant, via his pattern of conduct, knowingly caused her to believe he would physically harm her or cause her mental distress: to wit, that appellant engaged in menacing by stalking. The magistrate, after considering the evidence, concluded that there was sufficient credible evidence to support each element of the crime. The evidence supports the magistrate's conclusion and, as a result, we hold the trial court did not abuse its discretion in adopting the magistrate's decision.

{¶58} Appellant's final assignment of error is overruled.

{¶59} For the reasons discussed above, appellant's three assigned errors lack merit and the judgment of the Lake County Court of Common Pleas, Juvenile Division, is affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.