

[Cite as *Jones v. Donaldson*, 2010-Ohio-3961.]

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

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| CHANTAY MARIE JONES,  | : | APPEAL NO. C-090872  |
|                       | : | TRIAL NO. SK-0900314 |
| Petitioner-Appellee,  | : |                      |
| vs.                   | : | <i>DECISION.</i>     |
| JACK A. DONALDSON,    | : |                      |
| Respondent-Appellant. | : |                      |

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed

Date of Judgment Entry on Appeal: August 25, 2010

*Chantay Marie Jones*, pro se,

*Patricia A. Baas*, for Respondent-Appellant.

Please note: This case has been removed from the accelerated calendar.

**J. HOWARD SUNDERMANN, Judge.**

{¶1} Respondent-appellant Jack Donaldson appeals from the civil stalking protection order (CSPO) entered against him by the Hamilton County Common Pleas Court. The CSPO prohibits him from being near petitioner-appellee Chantay Marie Jones for a five-year period. On appeal, Donaldson raises four assignments of error for our review. He argues that (1) the magistrate erred when he allowed the ex parte CSPO to remain in effect and continued the case for four months for a second full hearing on the CSPO, after he had already found that there was insufficient evidence to support the issuance of a CSPO following a full hearing; (2) the magistrate committed plain error at the April 23, 2009, and August 24, 2009, hearings when he failed to advise Donaldson of his due-process rights as articulated by this court in *Lindsay v. Jackson*;<sup>1</sup> (3) the magistrate erred at the August 24, 2009, hearing when he acted as a witness in developing, authenticating, and entering evidence in favor of Jones; and (4) the trial court erred in failing to conduct an independent review of the facts and conclusions contained in the magistrate's decision.

{¶2} Because we agree with Donaldson that the magistrate had no authority to extend the life of the ex parte CSPO in favor of Jones, once the magistrate had held a full hearing and determined that she had not presented sufficient evidence to warrant a permanent CSPO, we sustain Donaldson's first assignment of error and reverse the trial court's judgment granting Jones a full five-year civil protection order against him.

***I. The Temporary and Permanent CSPO***

{¶3} Jones filed a petition for a CSPO against Donaldson on April 9, 2009. After a brief ex parte hearing on the petition, the magistrate granted Jones a

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<sup>1</sup> (Sept. 8, 2000), 1st Dist. No. C-990786.

temporary CSPO. A full hearing was held before the same magistrate on April 23, 2009. Both parties appeared at the hearing and proceeded pro se. The magistrate determined that there was insufficient evidence to grant a permanent CSPO, but he sua sponte continued the case for four months and ordered that the temporary ex parte order remain in effect during that period.

{¶4} On August 23, 2009, Jones and Donaldson appeared pro se before the same magistrate for a second full hearing on the April 9 petition. At the conclusion of the hearing, the magistrate issued a five-year CSPO against Donaldson. Donaldson then secured counsel and filed timely objections to the magistrate's decision. The trial court overruled his objections and affirmed the magistrate's decision. This appeal followed.

***II. No Authority to Continue the Temporary Ex Parte CSPO***

{¶5} In his first assignment of error, Donaldson argues that the magistrate had no authority to continue the effect of the temporary ex parte CSPO for a second full hearing once he had determined that there was insufficient evidence to grant a permanent CSPO. Donaldson argues that once the magistrate had found that there was inadequate evidence to support a finding that he had engaged in conduct in violation of the civil stalking statute, the magistrate had no option but to vacate the temporary ex parte CSPO and dismiss Jones's petition. We agree.

{¶6} R.C. 2903.214(D)(2)(a)(i) through (iv) provide that a trial court may continue a full hearing on a CSPO for “\* \* \* a reasonable time \* \* \*” for the following four reasons: (1) to secure service on the respondent, (2) the parties agree to the continuance, (3) it is necessary for a party to secure counsel, or (4) “the continuance is needed for other good cause.” Nothing in the statute grants the court the authority to extend the life of an ex parte CSPO for an additional full hearing once a petitioner has been afforded an opportunity to put forth evidence and testimony at the first full

hearing, and the petitioner is unable to meet the burden of proof for granting a CSPO. As a result, the magistrate should have vacated the temporary ex parte CSPO and dismissed Jones's petition. We, therefore, sustain Donaldson's first assignment of error.

{¶7} Donaldson's second, third, and fourth assignments of error are overruled as moot based upon our disposition of his first assignment of error. We, therefore, reverse the judgment of the trial court granting Jones a five-year CSPO against Donaldson.

Judgment reversed.

**CUNNINGHAM, P.J., and DINKELACKER, J., concur.**

*Please Note:*

The court has recorded its own entry this date.