

[Cite as *Bryant v. Spear-Hardy*, 2010-Ohio-1903.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

JILL-ANN BRYANT	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23449
v.	:	T.C. NO. 08 CV 08664
LAVERNE SPEAR-HARDY	:	(Civil appeal from Common Pleas Court)
Defendant-Appellant	:	

OPINION

Rendered on the 30th day of April, 2010.

JILL-ANN BRYANT, 5319 Wood Dale Drive, Dayton, Ohio 45414
Plaintiff-Appellee

JOSEPH P. MOORE, Atty. Reg. No. 0014362, 400 Corporate Center Drive, Vandalia, Ohio 45377
Attorney for Defendant-Appellant

FROELICH, J.

{¶ 1} Laverne Speare-Hardy¹, also known as Laverne Daniels, appeals from a judgment of the Montgomery County Court of Common Pleas, which granted Jill-Ann

¹Although defendant’s name is spelled “Spear-Hardy” in the case caption, it appears that the correct spelling is “Speare-Hardy.”

Bryant's petition for a civil stalking protection order ("CSPO") against Speare-Hardy.

{¶ 2} Speare-Hardy claims that the trial court's judgment was not supported by sufficient evidence, that the court erred in admitting evidence of an anonymous letter and an anonymous phone call, and that the court erred in finding that a conversation between Speare-Hardy and a police officer was not hearsay. For the following reasons, the trial court's judgment will be affirmed.

I

{¶ 3} On August 1, 2008, Pastor Benjamin Speare-Hardy hired Bryant to be the organist and choir director for St. Margaret's Episcopal Church, where he had been pastor for eight years. Laverne Speare-Hardy was Pastor Speare-Hardy's wife. On August 8, 2008, the two separated after approximately 20 months of marriage; Pastor Speare-Hardy believed that his wife filed a dissolution proceeding.

{¶ 4} On September 22, 2008, Bryant filed a petition for civil stalking protection order against Laverne Speare-Hardy, alleging that, over a nine-day span, she (Bryant) received an anonymous telephone call asking about her whereabouts and indicating that the caller wanted to talk, that she received anonymous "hate mail" accusing her of having an affair with Pastor Speare-Hardy and telling her to leave the church, and that she had a face-to-face confrontation with Speare-Hardy at the church. Bryant had also learned that Speare-Hardy owned a gun. Following an ex parte hearing, the trial court issued an emergency CSPO and scheduled the matter for a full hearing.

{¶ 5} After a continuance to allow Speare-Hardy to take Bryant's deposition, a full hearing was held before a magistrate on November 17, 2008. At the hearing, Bryant

testified on her own behalf and called Pastor Speare-Hardy, Dayton Police Detective Carol Johnson, and three members of St. Margaret's Church – Lydia Davis, Catherine Yancey, and Arlana Daniel – as witnesses.²

{¶ 6} Bryant testified that, on September 10, 2008, she received a telephone call from a woman who would not give her name. The woman asked what she was doing and, when Bryant stated that she having supper with a friend, the woman asked if she was with “Benjamin.” Bryant stated that the woman wanted an in-depth conversation and the woman said that “she didn’t want to hurt me.” The two scheduled to talk again that night at 8:30 p.m. Bryant did not know whether the woman called back, because she did not answer the phone.

{¶ 7} Bryant further testified that she received an anonymous type-written letter, which she described as “hate mail,” at her home on September 17, 2008. The letter, which was purportedly from “concerned St. Margaret’s Members,” stated that they did not “want your white slutty ass in our church,” that they had run the pastor’s wife from the church, and that “we won’t stop until we run you out of our church, too.” The letter accused the pastor of being a sex addict and of Bryant’s being sexually involved with him. The author told Bryant to “get to stepping while the getting out is good.” Bryant showed the letter to Pastor Speare-Hardy. The pastor told Bryant that, when he and his wife had gotten married, they had received similar letters (which they kept) and that he believed that his wife had written

²Davis and Yancey had little information to offer about the issues before the court. Davis stated that Speare-Hardy had tried to talk to her about her (Speare-Hardy’s) difficulties with the pastor, but Davis did not want to get involved. Davis had not talked to Bryant about Speare-Hardy. Yancey knew that Bryant had filed a petition for a protection order against Speare-Hardy.

the letter to Bryant. Bryant testified that the pastor also told her that his wife had a gun.

{¶ 8} Bryant stated that two days later, Speare-Hardy came into the church while Bryant was having a conversation with Arlana Daniel. Speare-Hardy spoke with Daniel briefly, but turned around “very close to my [Bryant’s] face” and said, “so you get a name with the face. I am Mrs. Benjamin Speare-Hardy.” Speare-Hardy said those statements twice. Bryant responded that she knew who Speare-Hardy was. When Speare-Hardy asked how she knew, as they had never been introduced, Bryant responded that there was a church directory. Bryant walked into the choir room, turned around, and said, “I don’t know why you’ve come to see me. I’m only the music director of the church.” Speare-Hardy told her, “Oh, you are much more than that.” Speare-Hardy turned around and left. Daniel also testified that the two women were standing in close proximity “like two people standing in a doorway,” and she heard Speare-Hardy say, “Now you can put a name with the face; I do exist.” Daniel stated that it was not a “friendly hi, how-you-doing conversation at all,” and she left because the conversation was “obviously personal.” The following day, Bryant filed a police report.

{¶ 9} During his testimony, the pastor confirmed that he had told Bryant that he thought the anonymous letter was from Speare-Hardy and that his wife had a gun. Pastor Speare-Hardy stated that he had asked his attorney in his divorce action to get him a restraining order against his wife. During cross-examination, Speare-Hardy’s attorney showed the pastor the restraining order, which was issued on October 30, 2008, after the events at issue.

{¶ 10} Detective Johnson testified that she had received complaints from several

women that Speare-Hardy had harassed them. Because these women did not fall under the Dayton police department's jurisdiction, Johnson had not filed reports, but she had handwritten notes from these conversations. Johnson testified that, after noticing that Bryant had filed a complaint, she called Bryant and told her about these similar situations. Johnson also stated that she called Speare-Hardy in late September to advise her of the consequences of her actions; Speare-Hardy had thanked Johnson for calling and said, "I promise you I will stop." Bryant submitted as exhibits the anonymous letter that she had received and the envelope in which it had come.

{¶ 11} Speare-Hardy did not testify or offer any witnesses on her behalf; however, she submitted two exhibits: (1) the restraining order issued on October 30, 2008, in the domestic relations case in favor of Pastor Speare-Hardy against Speare-Hardy, and (2) the handwritten notes from Detective Johnson.

{¶ 12} Upon consideration of the evidence, the magistrate found that Speare-Hardy had engaged in a pattern of conduct that caused Bryant to reasonably fear physical harm, and he granted the petition for a CSPO. Speare-Hardy filed objections to the magistrate's decision. She argued that Johnson's testimony regarding her conversations with Bryant, other complainants, and Speare-Hardy, as well as Johnson's handwritten notes (which Speare-Hardy had offered as an exhibit), were inadmissible hearsay and unreliable. Speare-Hardy further claimed that Pastor Speare-Hardy's testimony was not credible and that the anonymous letter was hearsay and should not have been admitted. Speare-Hardy further argued that, without the letter, there was no evidence that she had engaged in a pattern of conduct.

{¶ 13} The trial court overruled Speare-Hardy’s objections. The court found that, while much of Johnson’s testimony was hearsay, the magistrate’s decision was proper even absent the inadmissible portion of Johnson’s testimony. The court further found that the magistrate properly admitted the letter and that the evidence supported the magistrate’s conclusion that Speare-Hardy had sent the letter to Bryant. In addition, the court found that the preponderance of the evidence supported the conclusion that Speare-Hardy had engaged in a pattern of conduct and that the issuance of the CSPO was warranted.

{¶ 14} Speare-Hardy appeals from the trial court’s judgment, raising three assignments of error.

II

{¶ 15} Speare-Hardy’s first assignment of error states:

{¶ 16} “THE TRIAL COURT ERRED AS A MATTER OF LAW AND WAS AN ABUSE OF DISCRETION BECAUSE IT UPHELD THE MAGISTRATE’S DECISION GRANTING A PROTECTION ORDER WHEN THE EVIDENCE PRESENTED WAS NOT SUFFICIENT TO GRANT A PROTECTION ORDER.”

{¶ 17} In her first assignment of error, Speare-Hardy claims that there were insufficient facts to support the issuance of the CSPO against her.

{¶ 18} We set forth the standard for the issuance of a CSPO in *Walker v. Edgington*, Clark App. No. 07-CA-75, 2008-Ohio-3478, as follows:

{¶ 19} “R.C. 2903.214, which governs the filing of a petition for a CSPO, provides that a petitioner seeking a CSPO must demonstrate that the respondent engaged in the offense of menacing by stalking, in violation of R.C. 2903.211. The menacing by stalking

statute, R.C. 2903.211, provides that, '[n]o 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.' R.C. 2903.211(A)(1).

{¶ 20} "'Pattern of conduct' is defined as 'two or more actions or incidents closely related in time ***.' R.C. 2903.211(D)(1). 'Mental distress' means 'any mental illness or condition that involves some temporary substantial incapacity *** or any mental illness or condition that would normally require *** treatment *** whether or not' treatment is sought.

R.C. 2903.211(D)(2). 'Mental distress need not be incapacitating or debilitating *** [and] expert testimony is not required to find mental distress.' *Perry v. Joseph*, Franklin App. Nos. 07AP-359, 07AP-360, 07AP-361, 2008-Ohio-1107, ¶8. 'A trial court is permitted to rely on its knowledge and experience in determining whether mental distress has been caused.' *Id.*

{¶ 21} "The culpable mental state of menacing by stalking is 'knowingly,' which is defined in R.C. 2901.22(B) as follows: '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.'

{¶ 22} "Thus, in order to merit a civil protection order, the petitioner need not prove that the respondent intended to cause actual harm to the other person; instead, the evidence must show that the respondent knowingly engaged in a pattern of conduct that caused the other person to believe that the respondent will cause physical harm or that caused mental distress to the other person. *Perry v. Joseph*, *supra*, ¶7.

{¶ 23} ““The decision whether or not to grant a civil protection order is well within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion.’ *Bucksbaum v. Mitchell*, Richland App. No.2003-CA-0070, 2004-Ohio-2233, at ¶14. An abuse of discretion occurs when the decision of a court is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. ‘Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.’ *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus. A preponderance of the evidence is all that is required to support a civil protection order. *Jenkins v. Jenkins*, Franklin App. No. 06AP-652, 2007-Ohio-422, ¶17. Further, ‘the weight to be given to the evidence and the credibility of the witnesses is primarily a matter for the trier of fact.’ *Id.* at ¶14. ‘This is because the trier of fact is in the best position to view the witnesses and consider their demeanor and truthfulness.’ *Id.* ‘An “appellate court may not simply substitute its judgment for that of the trial court so long as there is some competent, credible evidence to support the lower court findings.”’ *Id.*, quoting *State ex rel. Celebrezze v. Environmental Enterprises, Inc.* (1990), 53 Ohio St.3d 147, 154.” *Walker* at ¶20-24.

{¶ 24} Speare-Hardy argues that Bryant failed to establish that Speare-Hardy’s actions caused her mental distress. In this case, Bryant was not required to demonstrate that Speare-Hardy had caused her mental distress since, as stated above, Bryant could meet the requirements of R.C. 2903.211 by establishing *either* that Speare-Hardy engaged in conduct that would reasonably cause Bryant to believe that she (Speare-Hardy) would cause physical harm *or* that Speare-Hardy caused her mental distress. The magistrate and the trial court

both found that Speare-Hardy had engaged in a pattern of conduct that caused Bryant to reasonably fear physical harm.

{¶ 25} Speare-Hardy emphasizes that she never made any direct threats against Bryant and never had any physical contact with her and, thus, Bryant did not prove that she reasonably believed that Speare-Hardy would cause her physical harm. We disagree.

{¶ 26} During the September 10, 2008, telephone call, Speare-Hardy told Bryant that she “didn’t want to hurt” Bryant, just talk. Although Speare-Hardy made no express threat that she would harm Bryant and this statement is subject to various interpretations, given the nature of the telephone call, Speare-Hardy’s statement reasonably suggested that she might resort to violence against Bryant in the future. In addition, Bryant testified that she felt physically threatened by Speare-Hardy when they spoke at the church nine days later due to “the look in her eyes” and Speare-Hardy’s proximity to her face. Bryant stated that Speare-Hardy stood “very close” to Bryant’s face while repeating that she was “Mrs. Benjamin Speare-Hardy.” Based on the evidence, the trial court reasonably concluded that Speare-Hardy knowingly caused Bryant to believe that she would cause physical harm to Bryant.

{¶ 27} Moreover, based on the telephone call, the letter and the confrontation at the church, the trial court reasonably concluded that Speare-Hardy knowingly engaged in a pattern of conduct that caused Bryant to believe that Speare-Hardy would cause her physical harm. As discussed, *infra*, although neither the caller nor the author of the letter identified herself, the trial court reasonably found that Speare-Hardy was the caller on September 10, and the author of the anonymous letter. Speare-Hardy implicitly acknowledged that she had

engaged in harassing conduct when, after discussing the complaints with Johnson, she promised Johnson that she would stop.

{¶ 28} In summary, there was sufficient evidence for the trial court to conclude, by a preponderance of the evidence, that Speare-Hardy had engaged in menacing by stalking. Accordingly, the trial court did not abuse its discretion in granting the CSPO.

{¶ 29} The first assignment of error is overruled.

III

{¶ 30} Speare-Hardy's second and third assignments of error will be addressed together. They state:

{¶ 31} "THE TRIAL COURT ERRED AS A MATTER OF LAW BY UPHOLDING THE MAGISTRATE'S DECISION WHEN BOTH THE TRIAL COURT AND THE MAGISTRATE ALLOWED AN ANONYMOUS LETTER AND AN ANONYMOUS TELEPHONE CALL TO BE ADMITTED WHEN IT WAS UNRELIABLE AND BASED ON HEARSAY."

{¶ 32} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT THE ALLEGED TELEPHONE CONVERSATION BETWEEN APPELLANT AND DETECTIVE JOHNSON WAS NOT HEARSAY AND THAT FURTHER SAID ALLEGED CONVERSATION DID NOT HAVE ANY IMPACT ON THE COURT'S DECISION."

{¶ 33} In her second assignment of error, Speare-Hardy asserts that the trial court should not have considered the anonymous letter and the anonymous telephone call, because both are based on hearsay and are unreliable. Speare-Hardy's third assignment of error

claims that Johnson's testimony regarding her conversation with Speare-Hardy also should have been excluded as hearsay.

{¶ 34} Evid.R. 801(C) defines hearsay as a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." A "statement," as included in the definition of hearsay, is an oral or written assertion or nonverbal conduct of a person if that conduct is intended by him as an assertion. Evid.R. 801(A). Certain statements are excluded from the definition of hearsay, including statements of a party-opponent where the statement is offered against that party. Evid. R. 801(D)(2)(a).

{¶ 35} Speare-Hardy does not clearly articulate how the telephone call and the letter violate the hearsay rule.

{¶ 36} We construe her argument as stating that there was insufficient evidence for the trial court to conclude that Speare-Hardy, rather than another individual, made the telephone call and sent the letter. She also contends that the telephone call was not threatening.

{¶ 37} As an initial matter, the letter was not offered to prove the truth of the statements contained in the letter, nor was the testimony regarding the telephone call offered to prove the truth of the statements spoken by the caller. "A statement is not hearsay if it is admitted to prove that the declarant made it, rather than to prove the truth of its contents." *State v. Williams* (1988), 38 Ohio St.3d 346, 348. The anonymous letter to Bryant and the telephone call were "verbal acts," which were offered to establish that accusations and threats were made, not that the statements were true. See *State v. Lamb*, Butler App. Nos.

CA2002-07-171, CA2002-08-192, 2003-Ohio-3870, ¶79.

{¶ 38} Speare-Hardy notes that the anonymous letter to Bryant was similar to and used the same language as letters sent to Speare-Hardy when she and the pastor first married.

Speare-Hardy asserts that the evidence indicates that someone other than Speare-Hardy sent the anonymous letter to Bryant and, accordingly, the letter should not have been admitted.

{¶ 39} Pastor Speare-Hardy testified that he and Speare-Hardy received three or four similar letters when the two got married; those letters were kept in a file at the house. When Bryant showed the pastor the letter she had received on September 17, he told her that the letter included the same language as in the prior letters. The pastor believed that his wife had sent the anonymous letter, because Bryant received the letter shortly after Speare-Hardy had accused her husband of having a sexual relationship with Bryant. Speare-Hardy had told the pastor that she had heard that Bryant was his mistress, and she was upset about it.

{¶ 40} Although the evidence did not conclusively establish that Speare-Hardy was the author of the letter, there was no evidence to suggest that any person connected with Pastor Speare-Hardy or St. Margaret's Church, other than Speare-Hardy, had a motivation for sending the letter to Bryant. The content of the letter was consistent with Speare-Hardy's implication at the church that Bryant was having an affair with the pastor. Moreover, when faced with an accusation by Johnson that she was engaged in harassing conduct, Speare-Hardy stated that she would "stop," thus implicitly acknowledging that she had, in fact, engaged in such conduct. Bryant testified that "everything stopped" since the temporary CSPO was issued. In short, although the court could have found otherwise, the

court did not err in finding that “the greater weight of the evidence supports the conclusion Ms. Speare-Hardy sent the letter to Ms. Bryant.” Based on that finding, the letter was admissible as statement of a party-opponent under Evid.R. 801(D)(2)(a).

{¶ 41} The trial court also reasonably concluded that Speare-Hardy made the telephone call to Bryant. During the telephone call, the caller questioned whether Bryant was having dinner with “Benjamin,” and wanted to have an in-depth conversation with Bryant. Considering that Bryant was new to St. Margaret’s church and was “trying to get to know people,” Bryant concluded that the caller was referring to Paster Speare-Hardy. There was no evidence that Bryant was associated with anyone else named Benjamin. Moreover, as with the letter, there was no evidence to suggest that any person other than Speare-Hardy would be concerned about Bryant’s having dinner with the pastor. Although the caller did not identify herself, the trial court reasonably found that Speare-Hardy made the telephone call.

{¶ 42} As for Johnson’s testimony, much of that testimony focused on conversations that Johnson had with other women who had complained of harassment by Speare-Hardy. Over Speare-Hardy’s objections, Johnson described some of the other complaints and the advice that she had given to those individuals, who needed to file reports with other police departments. Johnson stated that she learned of Bryant’s complaint, contacted Bryant, and asked about her situation. The detective testified that she spoke with Speare-Hardy about the complaints in late September. Johnson spoke to the pastor before calling Speare-Hardy.

{¶ 43} In its decision, the trial court concluded that much of Johnson’s testimony was inadmissible hearsay. However, the court found that Johnson’s conversation with

Speare-Hardy, during which Speare-Hardy promised to “stop,” fell under Evid.R. 801(D)(2)(a), which excludes statements of a party-opponent from the hearsay rule. We agree with that assessment, and we see no indication that the trial court’s decision to grant the CSPO was based on any hearsay testimony by Johnson.

{¶ 44} In her reply brief, Speare-Hardy asserts that Bryant’s reaction to Speare-Hardy was based on information about Speare-Hardy that Bryant heard from other people. She claims that this fact supports the argument that the trial court admitted inadmissible hearsay. The record demonstrates that Bryant did receive information about Speare-Hardy from Pastor Speare-Hardy and others. For example, Bryant testified that she heard from Pastor Speare-Hardy that Speare-Hardy had received similar letters, that Speare-Hardy had a gun, that the pastor had filed for dissolution of the marriage, and that the pastor had gotten a restraining order against his wife. Bryant also acknowledged that she had talked with two women at the church about Speare-Hardy and heard information about Speare-Hardy making phone calls. Johnson testified that she had told Bryant that there had been other complaints against Speare-Hardy. Nevertheless, nothing in the trial court’s decision suggests that the court relied upon rumor or innuendo about Speare-Hardy. To the contrary, the trial court issued the CSPO based on the September 10, telephone call, the letter, and the September 19, encounter between Speare-Hardy and Bryant.

{¶ 45} The second and third assignments of error are overruled.

IV

{¶ 46} The trial court’s judgment will be affirmed.

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BROGAN, J. and GRADY, J., concur.

Copies mailed to:

Jill-Ann Bryant

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Hon. Michael L. Tucker