

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

PAMELA K. SOMAN,	:	APPEAL NO. C-100292
Plaintiff-Appellee,	:	TRIAL NO. SK1000012
vs.	:	<i>JUDGMENT ENTRY.</i>
ANDREW S. CWIK,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.<sup>1</sup>

Defendant-appellant Andrew S. Cwik appeals the trial court’s entry overruling his objections to and adopting a magistrate’s decision granting the petition of his ex-wife, plaintiff-appellee Pamela K. Soman, made under R.C. 2903.214, for a five-year civil stalking protection order (“CSPO”) against Cwik.

In her petition, Soman alleged that Cwik had verbally accosted her on numerous occasions, including making frequent appearances at her workplace. She also contended that Cwik had threatened her immediately after a domestic-relations court appearance and during her visit to the Cincinnati Zoo with their two children. She asserted that Cwik’s pattern of behavior had made her fearful for her safety.

The magistrate held a full hearing on Soman’s petition, including receiving testimony from Cwik, Soman, her employer’s security officer, and the social worker

---

<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

assigned to supervise Cwik's visitation with the children. The magistrate found that Cwik had engaged in a persistent pattern of harassing behavior, that Cwik's behavior was "escalating," that Soman's employer had had to take additional measures to protect her at work, and that Cwik's behavior had caused Soman mental distress and to fear for her safety. Cwik filed objections to the magistrate's decision. Without receiving additional evidence, the trial court overruled the objections and adopted the magistrate's decision.<sup>2</sup>

In two interrelated assignments of error, Cwik now argues that the weight of the evidence adduced at the hearing did not support the magistrate's and the trial court's conclusions. He argues that he had not "knowingly" done anything that would have caused Soman mental distress, and that Soman's employer had not taken additional security measures in response to his behavior.

For the trial court to grant a CSPO, the petitioner must show, by a preponderance of the evidence, that the complained-of conduct violates the menacing-by-stalking statute, R.C. 2903.211.<sup>3</sup> The evidence must show that the offender engaged in a pattern of conduct for the purpose of causing the petitioner to believe that the offender would cause physical harm to the petitioner, or cause mental distress to the petitioner.<sup>4</sup>

To determine whether Soman was entitled to a CSPO in this case, the weight to be given the evidence and the credibility of the witnesses were primarily for the triers of fact—the magistrate and the trial court—to determine.<sup>5</sup> We review a trial court's entry overruling objections to a magistrate's decision and adopting the magistrate's granting of a

---

<sup>2</sup> See Civ.R. 53(D)(4)(d) and 53(D)(4)(i).

<sup>3</sup> See *Lindsay v. Jackson* (Sept. 8, 2000), 1st Dist. No. C-990786, citing *Felton v. Felton*, 79 Ohio St.3d 34, 1997-Ohio-302, 679 N.E.2d 672.

<sup>4</sup> See R.C. 2903.211 and 2903.214.

<sup>5</sup> See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

CSPO petition under an abuse-of-discretion standard.<sup>6</sup> Reversal is warranted only when the trial court's decision was unreasonable, arbitrary, or unconscionable.<sup>7</sup>

After reviewing the transcript of the hearing and the supporting exhibits, we reject Cwik's arguments. The magistrate correctly identified the legal and factual predicates for issuing a CSPO.<sup>8</sup> The magistrate's determinations that Cwik had knowingly engaged in a pattern of activity that had caused Soman mental distress was amply supported by the record. The trial court did not abuse its discretion in overruling the objections and in adopting the magistrate's decision to grant Soman the protection of a CSPO. As a result, we overrule Cwik's assignments of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on May 18, 2011

per order of the Court \_\_\_\_\_  
Presiding Judge

---

<sup>6</sup> See *Davis v. Haller* (May 26, 2010), 1st Dist. No. C-090551; *Baranack v. Rose*, 5th Dist. Nos. 2010-AP-010004 and 2010-AP-020006, 2010-Ohio-2754, ¶7; but, see, *Abuhamda-Sliman v. Sliman*, 161 Ohio App.3d 541, 2005-Ohio-2836, 831 N.E.2d 453, ¶9-10 (noting the lack of uniformity among the appellate districts with regard to the proper standard of review in appeals from CSPOs).

<sup>7</sup> See *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597.

<sup>8</sup> See *Lindsay v. Jackson*.