

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Pearl M. Felty,	:	
	:	
Petitioner-Appellee,	:	
	:	No. 08AP-738
v.	:	(C.P.C. No. 08CVH05-6615)
	:	
Ronald P. Harper,	:	(REGULAR CALENDAR)
	:	
Respondent-Appellant.	:	

DECISION

Rendered on June 16, 2009

Pearl M. Felty, pro se.

Ronald P. Harper, pro se.

APPEAL from the Franklin County Court of Common Pleas.

CONNOR, J.

{¶1} Appellant, Ronald P. Harper, appeals the trial court's issuance of a stalking civil protection order ("SCPO") to appellee, Pearl M. Felty, on July 24, 2008. For the following reasons, we affirm the judgment of the trial court.

{¶2} On May 5, 2008, the trial court issued an ex parte order of protection for appellee in accordance with R.C. 2903.214. The ex parte order prohibited appellant from initiating or having any direct or indirect contact with appellee, regardless of whether appellee granted permission for such contact. The matter then came before Magistrate

Pamela Erdy for a full evidentiary hearing on May 19, 2008. During the hearing and at the request of the parties, Magistrate Erdy continued the hearing to July 23, 2008. However, during the period of time constituting the continuance, the ex parte order of protection remained in full force and effect.

{¶3} On July 23, 2008, Magistrate Christine Lippe presided over the evidentiary hearing. Appellee testified that prior to the issuance of the ex parte order, appellant "called [appellee] excessively, sent [appellee] an excessive amount of letters, and stopped by [appellee's] home uninvited." (Magistrate's Order, July 24, 2008, at 2.) Furthermore, since the issuance of the ex parte order, appellee and a witness, Richard Michelhaugh, testified that appellant had contacted, or had attempted to contact, appellee. Based upon this testimony, in addition to appellant's demeanor and his persistent requests to maintain contact with appellee, Magistrate Lippe granted the SCPO on July 24, 2008. It is from this order that appellant appeals and raises the following assignment of error:

The [appellee's] claim of the original complaint (08CVH-6615) was based on very weak evidence of mostly "one-time" incidents. But mainly on the fact of the second [magistrate] totally reversing the line of judicial thoughts of the first magistrate.

The Appellant contends that his actions were not sinister or predatory in nature, but an exaggeration and overreaction by the Appellee.

{¶4} It is well-settled that a trial court's decision to grant a SCPO is a matter within its sound discretion. *Szymanski v. Trendel*, 6th Dist. No. L-08-1110, 2009-Ohio-992, ¶7, citing *Olenik v. Huff*, 5th Dist. No. 02-COA-058, 2003-Ohio-4621, ¶21. Therefore, an appellate court will not reverse that decision absent an abuse of discretion.

Id. "The term 'abuse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157-58, citing *Steiner v. Custer* (1940), 137 Ohio St. 448; *Conner v. Conner* (1959), 170 Ohio St. 85; *Chester Twp. v. Geauga Cty. Budget Comm.* (1976), 48 Ohio St.2d 372.

{¶5} Here, appellant disputes the evidentiary support underlying the trial court's issuance of the SCPO. Additionally, based upon alleged representations made by Magistrate Erdy during the May 19, 2008 hearing, appellant was apparently under the impression that the July 23, 2008 hearing would likely result in a dismissal of this matter, rather than an issuance of a SCPO.

{¶6} The record clearly indicates that both the May 19, 2008 and July 23, 2008 hearings were audio-recorded. This is consistent with appellant's recollection and explanation during the oral argument before this court on April 1, 2009. However, the transcripts of these hearings were never made a part of the record before this court.

{¶7} It is the appellant's burden to take the steps required to have the transcript prepared for inclusion in the record on appeal and to ensure that the record contains all that is necessary for the reviewing court to determine the appeal. *Rose Chevrolet, Inc. v. Adams* (1988), 36 Ohio St.3d 17, 19. Indeed, this court has previously held:

[I]f an appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence, is contrary to the weight of the evidence, that there was error in the trial court's charge to the jury, or some other similar issue, it is necessary for him to provide the court with either a complete or partial verbatim transcript of the testimony, as required by Appellate Rule 9(B), or a narrative statement of the proceedings, as provided for in Appellate Rule 9(C), or an agreed statement as provided for in Appellate Rule 9(D).

Clark v. Johnson (May 21, 1998), 10th Dist. No. 97APG10-1313, quoting *Conway v. Ford Motor Co.* (1976), 48 Ohio App.2d 233, 236-37. In the absence of such transcripts or statements, "the appellate court 'has no choice but to presume the validity of the lower court's proceedings, and affirm.' " *Clark*, quoting *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197.

{¶8} Here, appellant disputes the evidentiary support underlying the trial court's judgment. In the absence of transcripts of the trial court's proceedings, we must presume the validity of those proceedings and affirm. *Id.*; see also *Corbin v. Dailey*, 10th Dist. No. 08AP-802, 2009-Ohio-881, ¶6.

{¶9} Nevertheless, according to appellant's brief, Magistrate Erdy indicated that "if there are no infractions of the original order * * * she would probably dismiss the complaint and all charges." (Appellant's Brief, at 4.) Even if we reach this argument,¹ the testimony demonstrated that appellant violated the original order by attempting to contact appellee during the no contact period. Therefore, any reliance upon the alleged representations of Magistrate Erdy was misplaced.

{¶10} Based upon the foregoing, we cannot find that the trial court abused its discretion in issuing the SCPO. Accordingly, appellant's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

FRENCH, P.J., and McGRATH, J., concur.

¹ This is not to suggest that one magistrate's oral representations as to his/her inclination would actually bind the subsequent, formal adjudication of the merits of the matter.