

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

CASE NO. 06-1689

Plaintiff-Appellee,

On Appeal from the
Montgomery County
Court of Appeals,
Second Appellate District

vs.

JEFFREY L. PRICE

Court of Appeals
Case No. CA 21370

Defendant-Appellant.

MEMORANDUM IN RESPONSE

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

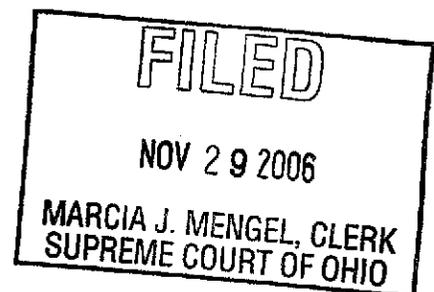
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**WHY THIS CASE DOES NOT INVOLVE A SUBSTANTIAL
CONSTITUTIONAL QUESTION OR A QUESTION OF PUBLIC OR GREAT
GENERAL INTEREST**

This case is fact-specific, and there can be no bright-line rule in Ohio as to whether a divorce decree granting visitation at a mother's discretion will supercede a previously issued protection order with a no contact clause. The fact that a divorce decree grants visitation does not necessarily mean that the no contact clause of a protection order is no longer in effect for all other purposes. This is what the Second District Appellate Court ("appellate court") decided in a split decision. The appellate court's decision rests solely on the fact that the contact made was not for the purposes of visitation at all. There are no new issues or rules of law invoked or applied. Thus, this case does not involve a substantial constitutional question or a question of public or great general interest. Accordingly, there is no need for this Court to accept jurisdiction in this matter.

STATEMENT OF THE CASE

On May 9, 2005, Appellant Jeffrey L. Price was charged by indictment with one count of violating a protection order in violation of R.C. 2919.26 or 3113.31. On September 9, 2005, a jury trial was held. On September 13, 2005, the jury found Price guilty of the charged offense and also found that Price had a prior conviction of violating a protection order. On October 19, 2005, the trial court sentenced Price to five years of community control sanctions. A direct appeal followed. On July 28, 2006, the appellate court affirmed Price's conviction and sentence. *State v. Price*, 2nd Dist. No. 21370, 2006-Ohio-3856. This appeal followed.

STATEMENT OF THE FACTS

Price contacted his ex-wife, Catherine Price, by telephone, and left several messages on her digital answering machine. The messages were: "Check your front door." "I love you,

Justin, talk to you later.” “I love you, Justin.” And “Justin, I love you. I’ll see you on your birthday.” Justin is the couple’s seven-year-old son. After checking the front door, Ms. Price found an Easter Basket for Justin. Ms. Price called the police and reported that Price had violated a civil protection order by contacting her. Ms. Price explained to the police and to the jury that she considered this contact to be harassment due to the history of domestic violence in their household and, specifically, because there were no plans for Price to see Justin on his birthday.

Ms. Price and Price were married in 1998. The Civil Protection Order (CPO) was issued on September 21, 2000, and prohibited telephone, fax, e-mail, and voice mail contact with both Ms. Price and their son, Justin. Price’s visitation was suspended at the time, and the CPO specifically indicated that “Visitation orders do not permit respondent to violate the terms of this order.” Finally, the CPO specifically stated that the terms of the CPO were to remain in full force and effect for five years unless modified, vacated or extended by the same Court, except with regard to parental responsibilities, such as support and visitation orders.

On April 20, 2001, the Final Judgment and Decree of Divorce (Divorce Decree) issued, which stated that “Visitation shall be at the Mother’s discretion” until Price completed the Court’s parenting seminar, which he failed to do. Nevertheless, Ms. Price allowed Price to visit with his son throughout the years following their divorce. However, Ms. Price cut-off the visitations when Justin began exhibiting violent tendencies after visits with Price and had to be hospitalized twice. Price had no visitation with his son for nearly four months preceding this incident.

ARGUMENT

Price's First Proposition of Law: "A divorce decree grant of visitation between a father and child "at the Mother's discretion" condones and necessitates communication that should not be held to violate a prior civil protection order."

In his first proposition of law, Price asks this Court to condone *all* communication between parties to a CPO when there is a subsequent divorce decree that grants visitation at the discretion of one of those parties, even if the communication does not have anything to do with arranging visitation. This proposition goes against the value of a CPO and is in direct conflict with its very language. A close look at both documents reveals that they can coexist, allowing for *limited* contact to perform certain parental responsibilities.

The CPO specifically indicated that "Visitation orders do not permit respondent to violate the terms of this order." And, the CPO specifically stated that the terms of the CPO were to remain in full force and effect for five years unless modified, vacated or extended by the same Court, except with regard to parental responsibilities, such as support and visitation orders. The Divorce Decree stated that "Visitation shall be at the Mother's discretion." Therefore, the plain language of the documents demonstrates that the only contact the parties can have with one another is that concerning visitation.

While Judge Donovan correctly noted in her dissent that arranging visitation always involves some form of communication, the converse is not always true – that communication will always pertain to visitation. Albeit, as noted by Judge Donovan, Price's actions appeared to be "sentiments of love." However, from the perspective of the person protected by the CPO, Ms. Price, these sentiments of love were nothing but threatening. Especially in light of the family history and the fact that Price told their son he would see him on his birthday when there were no such plans made.

As a result, allowing *all* contact between parties to a CPO when visitation is granted in a subsequent divorce decree will nullify a CPO's protective effect. Therefore, there is no merit in Price's proposition of law in Ohio.

Price's Second Proposition of Law: "Limited messages left at the residence of a subject of a prior-issued civil protection order, when necessitated by a later divorce decree, do not violation (sic) the prior protection order when such messages are directed at a non-protected party and the protected party admits that such messages are not harassing."

In his second proposition of law, Price asks this Court to find that a protected person of a CPO can not bring an action for a violation of a CPO when non-harassing contact is directed toward her child, a non-protected party. Importantly, Price's request is not supported by the facts in his case. First, Justin is indeed a protected party of the CPO. Second, the substance of Ms. Price's testimony was that Price's words and actions were harassing to her in light of the domestic violence in the family. Furthermore, these messages were left one after another within the course of a couple days. To a domestic violence victim, any contact could be portrayed as threatening.

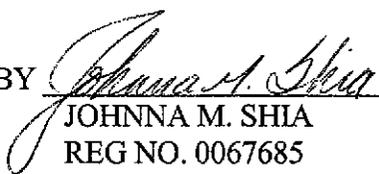
Sure, we do not know whether or not Justin in particular was "harassed" by these phone messages and an Easter basket at the door from his father. But, a mother can protect her child from what the child may not understand. In fact, Justin, age seven, does not have the capacity to bring such an action, testify against his father, and may not even know how to protect himself. To find as a proposition of law that a mother has no standing to protect her children under a CPO is ridiculous.

CONCLUSION

For the reasons stated above, this case does not present a substantial constitutional question or is it of the caliber of public or great general interest, and this Court should decline to accept jurisdiction in this matter.

Respectfully submitted,

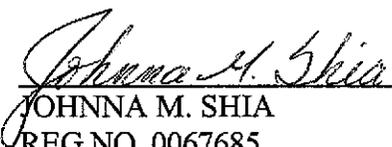
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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum in Response was sent by first class mail on this 28th day of November, 2006 to: Michael B. Miller, Counsel for Appellant, 2233 Miamisburg-Centerville Road, Dayton, Ohio 45459.

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