[Cite as *Nguyen v. Chaffee*, 2009-Ohio-3352.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

KATHLEEN NGUYEN	)	CASE NO. 08 CO 35
	)	
PETITIONER-APPELLANT	)	
	)	
VS.	)	OPINION
	)	
HELEN CHAFFEE	)	
	)	
RESPONDENT-APPELLEE	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Columbiana County, Ohio Case No. 08 CV 658

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellant:

Kathleen Nguyen, Pro se
P.O. Box 464
East Liverpool, Ohio 43920

For Defendant-Appellee:

Helen Chaffee, Pro se
335 N. Shady Lane, #135
East Liverpool, Ohio 43920

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: June 30, 2009

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WAITE, J.

{¶1} Appellant Kathleen Nguyen has appealed the dismissal of the petition she filed against Appellee Helen Chaffee for a civil stalking protection order (CSPO) in the Columbiana County Court of Common Pleas. The parties lived in the same apartment building, and Appellant accused Appellee of conspiring to have her evicted from the building, verbally abusing her, stealing her flowers, leaving garbage on her doorstep, and vandalizing her car. A temporary protection order was granted and the case went to trial on September 5, 2008. Appellant was represented by counsel at trial; Appellee appeared pro se. Appellant testified on her own behalf. Appellee presented two witnesses and also testified. The court concluded that the testimony of both parties was based on conjecture because neither had seen the other do any of the things they accused each other of doing. The court dismissed the petition for a CSPO. After a thorough review of the record in this case, we find no error in the trial court's judgment and affirm the judgment in full.

{¶2} The parties in this case are neighbors in an apartment building. Appellant lives on the first floor, and Appellee lives on the second floor. Appellant filed her petition for CSPO on June 25, 2008. The court issued temporary orders the same day, effective until December 25, 2008, pending full hearing. Final hearing was delayed so that Appellee could obtain counsel, but she failed to do so. The final hearing took place on September 5, 2008. Appellant testified on her own behalf. Appellee presented two witnesses and also testified on her own behalf. Jeff Bigelow, another tenant in the apartment, testified that Appellee was a "[v]ery nice lady" who is "harmless to anyone." (Tr., p. 54.) He testified that he had never seen the two

women talk to each other, although he was aware that they did not like each other. He also testified that he had unsuccessfully attempted to have a restraining order issued against Appellant. Another witness, Marlene Raymond, testified that she was the property manager of the apartment building and was not aware of any attempt by Appellee to remove Appellant from the building. She was aware of complaints filed by both parties against each other, but she stated that nothing came of the complaints and that neither of the women were cited for noncompliance with apartment rules. (Tr., p. 44.)

{¶3} The trial court filed its judgment on September 8, 2008. The court, in a one page opinion, dismissed Appellant's petition for a CSPO. This appeal followed on September 24, 2008.

ASSIGNMENT OF ERROR

{¶4} "The Trial Court abused its discretion in denying a stalking civil protection order based on the manifest weight of the evidence and/or medical evidence, because the Appellant proved by preponderance of the evidence that Appellee engaged in a pattern of conduct that knowingly caused the Appellant to believe that the Appellee would caused [sic] physical harm or caused mental distress to the Appellant."

{¶5} The issuance of a civil stalking protection order is governed by R.C. 2903.214. Under this section, a person may seek civil relief for themselves, or on behalf of a family member, against an alleged stalker by filing a petition that alleges, "that the respondent engaged in a violation of section 2903.211 of the Revised Code

against the person to be protected by the protection order." R.C. 2903.214(C)(1). R.C. 2903.211, Ohio's menacing by stalking statute, states 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). A pattern of conduct is defined as, "two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents." R.C. 2903.211(D)(1). There must be more than one incident to establish a "pattern of conduct" under the statute. *Goldfuss v. Traxler*, 3rd Dist. No. 16-08-12, 2008-Ohio-6186, ¶9.

{¶6} The statute does not define the term "closely related in time." This fact is determined by the trial court in the context of all circumstances of the case. *Middletown v. Jones*, 167 Ohio App.3d 679, 2006-Ohio-3465.

{¶7} A court of appeals reviews a trial court's decision to grant a civil protection order under an abuse of discretion standard. *Bucksbaum v. Mitchell*, 5th Dist. No. 2003-CA-0070, 2004-Ohio-2233, at ¶14. An abuse of discretion suggests the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶8} The trial court applies a preponderance of the evidence standard in a determination of whether to grant a stalking civil protection order. *Davis v. DiNunzio*, 11th Dist. No.2004-L-106, 2005-Ohio-2883, ¶15. "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, 376 N.E.2d 578, syllabus. Furthermore, "[t]he weight to be given to the evidence and the credibility of the witnesses is primarily a matter for the trier of fact." *Jenkins v. Jenkins*, 10th Dist. No. 06AP-652, 2007-Ohio-422, ¶14. "This is because the trier of fact is in the best position to view the witnesses and consider their demeanor and truthfulness." Id. A reviewing 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." *State ex rel. Celebrezze v. Environmental Enterprises, Inc.* (1990), 53 Ohio St.3d 147, 154, 559 N.E.2d 1335.

{¶9} The trial judge in this case simply did not believe the accusations being made by Appellant, and thus, did not grant the protection order. The judge concluded that this was a neighborhood dispute that should not have been brought to court, and that Appellant had not actually seen Appellee doing the things she accused her of doing. (Tr., p. 75.)

{¶10} The hearing transcript contains the following example from Appellant's testimony regarding a supposed threatening comment made by Appellee:

{¶11} "Q. * * * What sort of things does she [Appellee] say?

{¶12} "A. She said, 'I should go home to where I belong, I should not [be] allowed in this apartment, it's all for American, not for Asian.' Every day." (Tr., p. 15.)

{¶13} Appellee, on the other hand, testified that she never threatened Appellant and never said any of the things that she was accused of saying. (Tr., p.

68.) She denied vandalizing Appellant's car. (Tr., p. 63.) She denied tampering with Appellant's flowers. (Tr., p. 67.) She testified that she had not spoken to Appellant in five years. (Tr., p. 68.) The witnesses testifying on Appellee's behalf corroborated her statements. Mr. Bigelow stated that Appellant and Appellee do not have contact with each other, that Appellee is a nice woman, and that she never spoke a foul word about anyone. Regarding any controversy regarding flowers in the apartment building, Ms. Raymond testified that Appellee had received permission to decorate the building with flowers, and she was not aware of any complaints about the flowers.

{¶14} The trial court could have believed Appellee's testimony and concluded that she had not engaged in menacing by stalking, and therefore, there was no basis for issuing a civil protection order. For this reason, Appellant's assignment of error is overruled and the judgment of the trial court affirmed. We note that Appellant raised a question regarding reimbursement for attorney fees during oral argument, but the record contains no mention of any request for attorney fees and the matter is not properly before us.

Donofrio, J., concurs.

Vukovich, P.J., concurs.