

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

EMILY LEHN, : **CASE NO. 2012 CVP 00143**
Petitioner, : **Judge McBride**
vs. :
CHRISTIAN BUCHOLTZ, : **DECISION/ENTRY**
Respondent. :

Edwin Vardiman, Attorney for Petitioner Emily Lehn, 7416 Jager Court, Cincinnati, Ohio 45230.

Mitchell W. Allen, Attorney for Respondent Christian Bucholtz, 5947 Deerfield Boulevard, Suite 201, Mason, Ohio 45040.

This cause is before the court for consideration of objections to the magistrate's report filed by the respondent Christian Bucholtz. The court scheduled a hearing on the objections on May 8, 2012. The respondent, his counsel, and the the petitioner's counsel appeared at the hearing. At the conclusion of the hearing, the court took the issues raised by the objections under advisement.

Upon consideration of the objections, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of the parties, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE

The petitioner Emily S. Lehn filed a petition for civil stalking or sexually oriented offense protection order against respondent Christian Bucholtz on January 26, 2012. After a hearing, an *ex parte* order of protection was granted on January 27, 2012.

A full hearing was conducted on the matter on February 7, 2012, before magistrate Casey Lane, at which time the magistrate granted a civil protection order against the respondent. This protection order will be in effect until February 7, 2014.

The magistrate filed written findings of fact and conclusions of law on February 24, 2012. On that same date, the respondent filed a transcript of the full hearing on the petition for civil stalking protection order pursuant to Civil Rule 53(D)(3)(b)(iii).

On March 9, 2012, the respondent filed his objections to the magistrate's report. The respondent specifically objected to the magistrate's finding that the petitioner had suffered mental distress as a result of the respondent's actions where the petitioner presented no evidence of mental illness or incapacity.¹

In reviewing this objection to the magistrate's report, this court must "undertake an independent review as to the objected matters to ascertain [whether] the magistrate has properly determined the factual issues and appropriately applied the law."² The independent review requirement "however, does not prohibit this court from deferring to the magistrate's resolution of credibility because the magistrate retains a superior

¹ Findings of Fact and Conclusions of Law, p. 5.

² Civ.R. 53(D)(4)(d),

position, as the trier of fact, to consider the demeanor of witnesses and evaluate their credibility.”³

LEGAL ANALYSIS

For a petitioner to receive protection under R. C. 2903.214, she must prove, by a preponderance of the evidence, that the respondent knowingly engaged in a pattern of conduct that caused the petitioner to believe that the offender will cause physical harm or cause mental distress to the other person.⁴ “Pattern of conduct” means two or more actions or incidents closely related in time.⁵ Mental distress is defined by R.C.

2903.211(D)(2) as:

- “(a) Any mental illness or condition that involves some temporary substantial incapacity;
- (b) Any mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services, whether or not any person requested or received psychiatric treatment, psychological treatment, or other mental health services.”

R.C. 2903.211(E) provides that:

“(E) The state does not need to prove in a prosecution under this section that a person requested or received psychiatric treatment, psychological treatment, or other mental health services in order to show that the person was caused mental distress as described in division (D)(2)(b) of this section.”

³ *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009 -Ohio- 3139, at ¶ 14, citing *Henneke v. Glisson*, 2nd Dist. No. CA2008-03-034, 2008-Ohio-6759, at ¶ 29.

⁴ R. C. § 2903.211.

⁵ *Id.*

The trier of fact does not need expert testimony on this issue.⁶ Instead, the trier of fact may rely on its knowledge and experience in determining whether mental distress has been caused.⁷

At the full hearing, the petitioner testified that she ended a romantic relationship with the respondent on December 14, 2011. On December 17, 2011, the parties agreed to meet so that the petitioner could return personal property and give a check to the respondent to reconcile a debt between the two of them. The petitioner testified that, after this meeting, the respondent continued to contact the petitioner seeking to resume their romantic relationship.

On December 19, 2011, the petitioner asked her father to call the respondent to ask him to cease contact. Despite her father's call, the respondent continued to contact the petitioner. In response, the petitioner sent the respondent text messages on December 24 and 30, 2011 asking him to stop contacting her. No contact occurred between December 30, 2011 and January 3, 2012.

On January 3, 2012, the respondent again texted and called the petitioner. The petitioner asked her father to contact the respondent again to ask the respondent to desist. The petitioner's father, Joseph Shields, testified at the full hearing that, as time passed, he viewed the respondent as a danger to his daughter. The petitioner also asked a police officer to contact the respondent on January 3, 2012 to ask him to cease contact with the petitioner. The respondent admitted that he received a phone call from someone who identified himself as a police officer, but that he could not verify whether the caller was actually a police officer. On January 12, 2012, the respondent sent

⁶ *Noah v. Brillhart*, Wayne App. No. 02CA0050, 2003-Ohio-2421, 2003 WL 21078077, at ¶ 16; *State v. Scott*, Summit App. No. 20834, 2002-Ohio-3199, 2002 WL 1371070, at ¶ 14.

⁷ *Id.*

photos to the petitioner of her children. On this date, the petitioner again asked a police officer to contact the respondent.

The petitioner further testified that the respondent came to the door of her apartment and banged on it for an hour while texting that he could continue to do so “all night.” On another occasion, the respondent left groceries outside of the petitioner’s apartment door. The petitioner also testified that she received text messages on January 16, 2012 and daily emails from January 16, 2012 through January 23, 2012. On January 23, 2012, the petitioner told the respondent that she intended to pursue a legal route to cause the respondent to stop contacting her. After this message, the respondent forwarded some of the petitioner’s personal emails to her father to demonstrate that the petitioner was “not a good person.” The petitioner testified that the respondent continued to text her through January 26, 2012. The respondent stopped contacting the petitioner after she filed her petition.

In civil stalking protection order matters, the Twelfth District Court of Appeals has held that the “state need only show that a defendant knowingly caused the victim to *believe* that he would cause her mental distress or physical harm.”⁸ Therefore, “neither actual physical harm nor actual mental distress is required.”⁹

In reviewing the respondent’s objection to the magistrate’s report, this court conducted a thorough review of the transcripts provided by the respondent pursuant to Civ.R. 53(D)(3)(b)(iii) and carefully examined the evidence before the magistrate.¹⁰ Based upon this review, the Court finds that respondent knowingly engaged in a pattern

⁸ *State v. Bradford*, Warren App. No. CA2010–04–032, 2010 -Ohio- 6429, ¶ 23, quoting *State v. Hart*, Warren App. No. CA2008–06–079, 2009–Ohio–997, ¶ 31.

⁹ *Id.*, quoting *State v. Horsley*, Franklin App. No. 05AP–350, 2006–Ohio–1208, ¶ 45.

¹⁰ *Tabatabai*, at ¶ 14.

of conduct that caused the petitioner to believe that he would cause her mental distress. The petitioner clearly demonstrated that the respondent knowingly and repeatedly contacted her over several weeks despite many requests that he cease doing so. At the hearing on this matter, the respondent admitted that the petitioner's father had contacted him and that he had received at least one telephone call from someone who identified himself as a police officer asking the respondent to cease contact with the petitioner. The respondent did nothing to modify his behavior in response to these requests. Instead, the respondent engaged in more disturbing behavior by sending some of the petitioner's personal emails to the petitioner's father to prove that the petitioner was "not a good person."

Although the petitioner did not state that she had suffered mental distress, there was evidence that she believed that he would cause her mental distress, and she testified that she believed she was in danger. The petitioner stated that she was fearful when the respondent arrived at her apartment and knocked on the door for an hour while texting that he had no intention of leaving. The petitioner further testified that she contacted the respondent on January 23, 2012 to state that she intended to pursue a legal avenue to prevent the respondent from contacting her. The respondent did not stop contact, so the petitioner filed the petition with this court.

From a review of the record itself, it is clear that the respondent's increasingly disturbing and continuous actions in stalking the petitioner, coupled with his persistence in stalking her despite her attempts to get him to desist, put the petitioner "at wit's end" as to what to do. The petitioner filed her action in this case as a last resort. Her increasingly desperate actions in seeking help from third parties are indicative of

someone who believed that the respondent would not desist, absent some outside intervention, until he caused mental distress to her. Additionally, the respondent's actions are indicative of someone who was aware that his conduct would cause her mental distress. Specifically, the respondent persisted in his attempts to overwhelm her and to make her believe that she was incapable of ending their relationship and their contacts with one another. Furthermore, the respondent did not desist until after the petition was filed. Based upon the evidence presented during the hearing, it was reasonable for the magistrate, who also had the benefit of observing the demeanor of both parties, to conclude that Mr. Bucholtz engaged in a pattern of conduct that knowingly caused Ms. Lehn to believe that he would cause mental distress to her. Accordingly, the court finds after an independent analysis of the record that the magistrate has properly determined the factual issues and appropriately applied the law.

CONCLUSION

The respondent's objections to the magistrate's decision are not well taken and shall be overruled and the magistrate's decision is hereby adopted.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent via Facsimile/E-Mail/Regular U.S. Mail this 4th day of June 2012 to all counsel of record and unrepresented parties.

Assistant to Judge McBride