In The
Supreme Court of Virginia

RECORD NO. 131780

JEFFREY STEPHENS,

Appellant,

v.

SHELLIE REA ROSE,

***Appellee*.**

BRIEF OF APPELLEE

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IN THE SUPREME COURT OF VIRGINIA

JEFFREY STEPHENS,	)	
	)	
Appellant,	)	
	)	
v.	)	Record No.: 131780
	)	
SHELLIE RAE ROSE,	)	
	)	
Appellee.	)	

BRIEF OF APPELLEE

I. STATEMENT OF MATERIAL PROCEEDINGS IN THE TRIAL COURT

On January 9, 2013, Ms. Rose filed a Petition for Protective Order ("Petition") under Virginia Code Sections 19.2-152.9 and 19.2-152.10 in the Fairfax General District Court, whereby she requested that the General District Court (a) grant her a preliminary protective order prior to a full hearing; (b) prohibit Mr. Stephens from committing acts of violence, force or threat or criminal offenses that may result in injury to person or to property; (c) prohibit such other contact with Ms. Rose as the judge deems necessary for the health and safety of Petitioner, (d) prohibiting such other contact with Ms. Rose's family or household members. (App. 202). The Fairfax General District Court granted Ms. Rose's Petition and Mr. Stephens appealed that decision to the Fairfax Circuit Court. (App. 3). On

April 10, 2013, the Fairfax Circuit Court granted Ms. Rose's Petition for a Protective Order and prohibited Mr. Stephens from committing acts of violence, force, or threat or criminal offenses which may result in injury to the person or property, that he not have any contact, of any kind, with Ms. Rose, and that he not gather or disseminate personal information regarding Ms. Rose or her family or her boyfriend on the internet or any other social or information network. (App. 208).

II. ASSIGNMENT OF ERROR

The Trial Court did not err in issuing a Protective Order pursuant to Virginia Code Section 19.2-152.10.

III. STANDARD OF REVIEW

The trial court's findings must be accorded great deference. The judgment will not be disturbed on appeal unless plainly wrong or without evidence to support it. Keyser v. Keyser, 7 Va. App. 405, 409, 274 S.E.2d 698, 701 (1988).

On appeal, the court must view the evidence and all reasonable inferences in the light most favorable to the prevailing party below. Jenkins v. Winchester Dep't of Soc. Servs., 12 Va. App. 1178, 1180, 409 S.E.2d 16, 18 (1991) (citing Martin v. Pittsylvania Cnty. Dep't of Social Servs., 3 Va. App. 15, 20, 348 S.E.2d 13, 16 (1986)).

IV. STATEMENT OF THE FACTS

1. Shellie Rose and Jeffery Stephens were in a dating relationship that ended in 2007. (App. 45).
2. From Ms. Rose's perspective the relationship became difficult because Mr. Stephens became moody, had problems with anger management and she did not know what triggers would cause him to get angry. (App. 47). As a result of his behavior, Ms. Rose ended the relationship. (App. 47).
3. That shortly after the parties, broke up, Mr. Stephens left a voice-mail message on Ms. Rose's parents home phone saying vulgar things about Ms. Rose and stating that Mr. and Mrs. Rose ruined his life. (App. 33).
4. That after the parties broke up, Ms. Rose requested, by e-mail, that Mr. Stephens not contact her by phone. (App. pp. 48, 135).
5. That between late 2007, early 2008 to December 2012, Mr. Stephens sent approximately twelve (12) e-mails to Ms. Rose to which Ms. Rose did not respond to any of them. (App. pp. 51, 211-220).

6. That on May 11, 2010, Mr. Stephens sent an e-mail to Ms. Rose whereby he acknowledged that she was fed up with him, that he will do anything to get her back, that it hurts really bad that she hates him, will not talk to him and wants him out of her life and that he got confused and did not feel like himself in a long time. (App. pp. 51-53, 220).

7. That on May 12, 2010, Mr. Stephens sent another e-mail to Mr. Rose stating that he did not want to upset her, that she is punishing him by never talking to him, and that he really wanted her forever. He further stated that he would not get upset with her and would love her no matter what she did and that he needed her. (App. pp. 51-53, 220).

8. That during the same time period, Mr. Stephens attempted to contact Ms. Rose through Facebook and Linkedin, to which Ms. Rose did not respond. (App. 56). As a result of the contact, Ms. Rose deleted her Facebook account. (App. 56).

9. That on January 2, 2013, at approximately 6:20 a.m., Mr. Stephens showed up at Ms. Rose's parents' home in Canton, Ohio. (App. 31). At the time, Ms. Rose was not living with her parents. Mr. Stephens approached Mr. Gary Rose, Ms. Rose's

father, and asked him if he knew who he was, apologized for the rude phone message about Ms. Rose and hoped that he could forgive Mr. Stephens. (App. 31, 35). Mr. Rose indicated that he did not hold a grudge but that Mr. Stephens needed to find some other endeavor, needed to go on with his life and not bother his daughter. (App. 31, 35).

10. That on January 2, 2013, Mr. Rose specifically told Mr. Stephens that he did not want Mr. Stephens seeing Ms. Rose or coming to his house again. (App. 35).

11. That as a result of Mr. Stephens showing up at his home, Mr. Rose called 911 to report the incident. (App. 37).

12. That on January 2, 2013, Mr. Rose contacted his daughter by telephone to let her know about Mr. Stephens showing up at his house. (App. 39).

13. That as a result of that telephone call with her father, Ms. Rose became upset and was crying, scared and an emotional wreck. (App. 57, 91).

14. When Ms. Rose returned home to Virginia from the holiday break, she brought her boyfriend back with her as she was scared to be by herself. (App. 57).

15. That between January 5-9, 2013, forty (40) phone calls were made from Mr. Stephens's phone to Ms. Rose's phone and to her work number. (App. 109). At times the calls would be at 2:30 a.m. or at 3:00 a.m. (App. 97).

16. Mr. Stephens attempted to reach Ms. Rose at her place of employment. He was told that she did not work there and that they did not know who she was. (App. 162).

17. That on January 5, 2013, Mr. Stephens ordered flowers from FTD for Ms. Rose and had them delivered to her place of employment. (App. 111). He attached a note that stated "Happy New Year! I think you are the greatest person I ever met! You're beautiful and so smart. I miss and love you so much! I am really better and I hope you make me so happy and you're perfect? Love Jeff." (App. 111).

18. Ms. Rose sent the flowers back. (App. 67).

19. That on January 6, 2013, Ms. Rose's boyfriend answered two telephone calls from Mr. Stephens. That during one of the telephone calls, the boyfriend told Mr. Stephens to stop calling the number and that any additional calls would be considered phone harassment and the authorities would be contacted.

(App. 94-96). That despite that warning, Mr. Stephens called back to Ms. Rose's phone the following day beginning at approximately 2:30 a.m. (App. 94-96).

20. On January 9, 2013, Ms. Rose received several phone messages from Mr. Stephens beginning at about 2:30 a.m. (App. 97).

21. Mr. Stephens showed up at Ms. Rose's home, with flowers, on January 9, 2013 at approximately 7:00 a.m. (App. pp. 65, 97).

22. Police were called to Ms. Rose's home as a result of Mr. Stephens showing up at the home because Ms. Rose was scared by his presence. (App. pp. 65, 67).

23. Mr. Stephens was not at Ms. Rose's residence when the police arrived on the scene; however, Mr. Stephens was found in his car and circling the parking lot of Ms. Rose's residence while the police were at her home. (App. 84).

24. That while the police were inside Ms. Rose's home on January 9, 2013, Mr. Stephens left another message on her phone. (App. 86).

25. That the police listened to all of the voice mail messages left by Mr. Stephens. (App. 86).

26. That on January 9, 2013, Mr. Stephens was taken into police custody. (App. 88).

27. According to Mr. Stephens, he called Ms. Rose forty (40) times between January 5-9, 2013, because he thought that she wanted to see him or talk to him. (App. 156).

28. That despite believing that Ms. Rose wanted to talk to him or see him, Mr. Stephens blocked his number every time when he called her. (App. 159).

29. That as a result of Mr. Stephen's showing up at Ms. Rose's residence, she stopped residing at that location. (App. 77).

V. ARGUMENT

The Trial Court Did Not Err in Issuing a Protective Order Pursuant to Virginia Code Section 19.2-152.10.

The trial court's findings must be accorded great deference. The judgment will not be disturbed on appeal unless plainly wrong or without evidence to support it. Keyser v. Keyser, 7 Va. App. 405, 409, 274 S.E.2d 698, 701 (1988). Pursuant to Virginia Code § 19.2-152.9, at a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10 if the court finds that the petitioner has proven the allegation that the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat by a preponderance of the evidence.

Virginia Code § 19.2-152.7:1 defines act of violence, force, or threat as any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

Under Virginia Code § 18.2-60.3 stalking is defined as any person who on more than one occasion engages in conduct directed at another person with the intent to place, or when he knows or reasonably should know that the conduct places that other person in reasonable fear of death, criminal sexual assault, or bodily injury to that other person or to that other person's family or household member. Mr. Stephens' actions constitute stalking.

The three elements of stalking are: (a) proving that defendant engaged in multiple instances of conduct directed at a person, (b) that the conduct caused the person to experience reasonable fear of death, criminal sexual assault, or bodily injury, and (c) that the defendant either intended to cause this fear or knew that it would result from his conduct. Parker v. Commonwealth, 24 Va. App. 681, 685, 485 S.E.2d 150, 152 (1997). Ms.

Rose proved all three elements by a preponderance of the evidence as required by Virginia Code § 19.2-152.9.

Mr. Stephens engaged in multiple instances of conduct directed at Ms. Rose. On January 2, 2013, he showed up at approximately 6:20 a.m. at Ms. Rose's parents' home in Canton, Ohio. (App. pp. 31, 35). Mr. Gary Rose, Ms. Rose's father, indicated that he did not hold a grudge but that Mr. Stephens needed to find some other endeavor, needed to go on with his life and not bother his daughter. (App. 35). The sheriff in Canton, Ohio was called to Mr. Rose's home as a result of Mr. Stephens' visit and Mr. Stephens was stopped by the sheriff while he was leaving the Rose's home. (App. pp. 37, 149).

Between January 5-9, 2013, forty (40) phone calls were made from Mr. Stephens's phone to Ms. Rose's phone of which two were to her work number. (App. 107-108). That on January 6, 2013, Ms. Rose's boyfriend answered two telephone calls from Mr. Stephens. (App. 92). That during one of the telephone calls, the boyfriend told Mr. Stephens to stop calling the number and that any additional calls would be considered phone harassment and the authorities would be contacted. (App. 94). Despite that warning, Mr. Stephens called back to Ms. Rose's phone the following

day, beginning at 2:30 a.m. and continued calling until his arrest on January 9, 2013. (App. pp. 88, 94-97).

Mr. Stephens attempted to reach Ms. Rose at her place of employment. He was told that she did not work there and that they did not know who she was. (App. 162). On January 5, 2013, Mr. Stephens ordered flowers from FTD for Ms. Rose and had them delivered to her place of employment. (App. 111). He attached a note with that stated "Happy New Year! I think you are the greatest person I ever met! You're beautiful and so smart. I miss and love you so much! I am really better and I hope you make me so happy and you're perfect? Love Jeff." (App. 111). Ms. Rose sent the flowers back. (App. 67).

Mr. Stephens showed up at Ms. Rose's home on January 9, 2013 at approximately 7:00 a.m. with flowers. (App. 65). Police were called to Ms. Rose's home as a result of Mr. Stephens showing up at the home because Ms. Rose was scared by his presence. (App. pp. 65, 67). Although Mr. Stephens was not at Mr. Rose's residence when the police arrived on the scene; he was found in his car circling the parking lot of Ms. Rose's residence while the police were at her home. (App. 84). While inside Ms. Rose's home, the arresting officer heard Mr. Stephens leaving a message for Ms. Rose on her home phone. (App. 86).

Mr. Stephens' conduct caused Ms. Rose to experience reasonable fear bodily injury. Ms. Rose testified that upon learning Mr. Stephens' visit to her parent's home in Ohio, she was scared. (App. 57). Her boyfriend testified that Ms. Rose became quite visibly as well as emotionally upset on January 2, 2013 after receiving the call from her father. (App. 91). He further testified that she was worried about the situation with Mr. Stephens coming back into her life and trying to find her. (App. 91). Ms. Rose also testified that she did not stay at her residence after January 9, 2013 when Mr. Stephens showed up at her residence, which further shows how scared she was of Mr. Stephens. (App. 77).

It is true that Mr. Stephens did not hit or physically abuse Ms. Rose in any way nor did he threaten to abuse Ms. Rose or her family members during the course of their relationship. (App. 76-77). However, Mr. Stephens did exhibit behaviors during their relationship that were of concern to Ms. Rose. (App. 47). Mr. Stephens became unpredictable and would get angry out of the blue. (App. 47). She did not know what triggers would cause him to get angry. (App. 47). As a result of Mr. Stephens' unpredictable behavior and anger management issues, she ended the relationship with him in 2007. (App. 47). Aside from one e-mail after the

parties, broke up, whereby Ms. Rose asked Mr. Stephens not to call her, she had no contact with him. (App. 48).

Against this background, in January 2013 Ms. Rose was subjected to a barrage of unwelcomed phone calls at her home and place of employment, flowers at her place of employment with a note that stated in part, “I miss and love you so much! I am really better and I hope you make me so happy and you’re perfect? Love Jeff,” and visits by Mr. Stephens at her parents’ home and her home. Based on these facts, this Court cannot say that the trial court lacked evidentiary support to conclude that Mr. Stephen’s conduct caused her to experience a reasonable fear of bodily harm.

Mr. Stephens either intended to cause this fear in Ms. Rose or knew that it would result from his conduct. The parties broke up in 2007. (App. 45). After the parties’ break-up, Ms. Rose specifically requested that Mr. Stephens not call her anymore. (App. 48). Mr. Stephens acknowledges that Ms. Rose made that request of him. (App. 135). Between 2008 and 2012, Mr. Stephens sent Ms. Rose approximately twelve (12) emails which Ms. Rose never answered. (App. pp. 51, 211-220). Mr. Stephens, by his own e-mail that he sent to Ms. Rose on May 11, 2010, knew that Ms. Rose did not want to have contact with him when he acknowledged that he knew

she was fed up with him and that it hurt really bad that she hated him, would not talk to him and wanted him out of her life. (App. p. 220). The trial court did not receive any evidence to indicate that Ms. Rose's desire to not have any contact with Mr. Stephens changed.

On January 2, 2013, Mr. Rose, reiterated that same sentiment of no contact when he told Mr. Stephens that he needed to go on with his life and not bother his daughter and that he did not want Mr. Stephens seeing his daughter. (App. 31, 35). That same message was also conveyed on January 6, 2013, by Ms. Rose's boyfriend who answered two telephone calls from Mr. Stephens. (App. 94) That during one of the telephone calls, the boyfriend told Mr. Stephens to stop calling the number and that any additional calls would be considered phone harassment and the authorities would be contacted. (App. 94-96).

Despite being told not to contact Ms. Rose and being told that she did not work at the location that he called, Mr. Stephens sent flowers to Ms. Rose's place of employment with a note stating in part, "I miss and love you so much! I am really better and I hope you make me so happy and you're perfect? Love Jeff." (App. 111). The flowers were sent back. (App. 67).

Mr. Stephens was party to the relationship between himself and Ms. Rose. He knew that she did not want to talk to him, did not want to have

contact with him and wanted him out of her life. (App. p. 220). Ms. Rose did not respond to any e-mail correspondence sent by him or any attempts to contact her by social media links. Her lack of response to those attempts of contact as well as her refusal to accept his calls or flowers, were all clear signs that his attempts to reconnect with her were not welcomed. Parker v. Commonwealth, 24 Va. App. 681, 485 S.E.2d 150 (1997).

Mr. Stephens testified that during the relationship, Ms. Rose would get emotional over nothing and would be prone to sudden outburst of odd behavior and would start shaking. (App. 138). As such, Mr. Stephens should have known that his conduct placed Ms. Rose in a reasonable fear of bodily injury.

On appeal, the court must view the evidence and all reasonable inferences in the light most favorable to the prevailing party below. Jenkins v. Winchester Dep't of Soc. Servs., 12 Va. App. 1178 1180, 409 S.E.2d 16, 18 (1991) (citing Martin v. Pittsylvania Cnty. Dep't of Social Servs., 3 Va. App. 15, 20, 348 S.E.2d 13, 16 (1986)). The credibility of witnesses and the weight accorded the evidence are matters solely for the fact finder who has the opportunity to see and hear the evidence as it is presented. Schneider v. Commonwealth, 230 Va. 379, 382, 337 S.E.2d 735, 736-37

(1985). This Court gives deference to the fact finder who, having seen and heard the witnesses, assesses their credibility and weighs their testimony. Saunders v. Commonwealth, 242 Va. 107, 113, 406 S.E.2d 39, 42 (1991). In this matter, the trial court did not find Mr. Stephens to be credible and neither should this Court.

Mr. Stephens testified that he called Ms. Rose 40 times because he had an urgent matter back at school and he had to get his research done within a certain time frame. (App. 156-157). However, all of his calls to Ms. Rose were from a blocked number and at no time did he ever leave a message to that effect. (App. 162). Furthermore, he testified that he thought that she wanted to see him or talk to him. (App. 156) However, there was no evidence or testimony to support Mr. Stephens' thought, especially since in his 2010 email he acknowledged that Ms. Rose wanted him out of her life. (App. pp. 51, 220).

Mr. Stephens's reasoning for coming the D.C. Metropolitan area was not credible. He testified that after spending time at his parent's home in Connecticut that his reason for coming to Washington D.C. was to start his trip cross country to go back to school in Vancouver, British Columbia, to do some genealogical research about his family in the National Archives, and to do some sightseeing. (App. pp. 143, 149, 150-151). However, he

also testified that he had an urgent matter at school that he had to get back to because he was on a deadline. (App. 151). Given his urgent school matter and his deadline, it does not make any sense that he would stop off for some sightseeing, in the opposite direction of his school in Vancouver, British Columbia, and genealogical research. Furthermore, it is very clear from the analysis from his cell phone, that Mr. Stephens had performed Google searches for Gary Rose, Ms. Rose's father; public records search on Bing verify.com; searches for Ms. Rose's former employer and residence in Pittsburg; and the Army Corps of Engineers as well as FTD. (App. 110). Additionally, he had Ms. Rose's Virginia home address, along with a map of that address in his phone's maps folder. (App. 110-111). Mr. Stephens also performed various searches for Shellie Rose using his cell phone. (App. 110-111). All of the data on Mr. Stephens' phone, as well as the forty (40) blocked calls to Ms. Rose, show that Mr. Stephens was not coming to the Washington, D.C. area for sightseeing and genealogical research. He came to this area to stalk Shellie Rose.

The trial court did not err when entering a protective order against Mr. Stephens pursuant to Virginia Code § 19.2-152.10. Ms. Rose met her burden of proof, which is a preponderance of the evidence, that she was subjected to an act of violence, force, or threat, by Mr. Stephens.

Specifically, Mr. Stephens stalked Ms. Rose. His forty (40) telephone calls between January 5-9, 2013; sending flowers with a note saying "I miss and love you so much! I am really better and I hope you make me so happy and you're perfect? Love Jeff;" showing up to her residence at approximately 7:00 a.m. with flowers and showing up at her parent's residence at approximately 6:20 a.m. was conduct specifically directed at Ms. Rose. Mr. Stephens' actions scared Ms. Rose causing her to fear bodily injury by Mr. Stephens. Mr. Stephen's knew that Ms Rose did not want any contact from him and that any such conduct would cause her fear.

Aside from being factually and legally inaccurate, Mr. Stephens' appeal should also be dismissed as he failed to state his objection to the protective order being entered as required in Supreme Court Rule 5A:18. Mr. Stephens' counsel signed the order as seen and objected to as to the issuance of an order of protection. (App. 210). Although counsel cited other objections dealing with the admissibility of evidence, testimony and case law as well as the withholding of the boyfriend's name, Mr. Stephens did not go forward with his appeal on those issues. Rule 5A:18 is not complied with merely by objecting generally to an order. Lee v. Lee, 12 Va. App. 512, 404 S.E.2d 736 (1999). Since the rule provides that a mere statement that the judgment or award is contrary to the law and the

evidence is not sufficient, it follows that a statement that an order is "seen and objected to" must also be insufficient. Lee v. Lee, 12 Va. App. 512, 515, 404 S.E.2d 736, 738 (1999). The endorsement was insufficient to preserve the question Mr. Stephens now raises on appeal.

IV. CONCLUSION

The decisions of the Trial Court are legally well founded, are supported by the record, do not constitute error, and should be summarily affirmed by this Court.

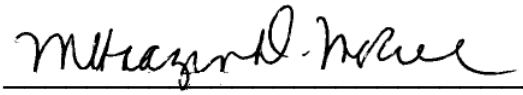
Accordingly, the Appellee respectfully requests that this Court:

1. Dismiss the Appellant's appeal; and

2. Grant the Appellee an award of her counsel fees and costs incurred in defending this appeal.

Respectfully submitted,

SHELLIE RAE ROSE
By Counsel



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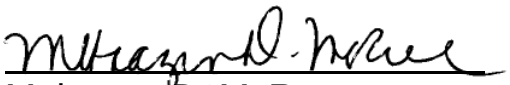
RULE 5:26(h) CERTIFICATE

I do hereby certify that the provisions of Rule 5:26(h) of the Supreme Court of Virginia (2010) have been complied with, in that fifteen (15) bound copies of the Opening Brief of the Appellee, with one (1) electronic copy on CD, have been hand-filed with the Clerk of this Court, and three (3) bound copies and one (1) electronic copy of the same have been served, via UPS Ground Transportation, to opposing counsel, Peter M. Fitzner., Matthews, Snider & Fitzner, 4161 Chain Bridge Road, Fairfax, Virginia 22030, this 22nd day of April, 2014.

Counsel for Appellee does not desire to waive oral argument in this appeal.

The total number of words in the foregoing Opening Brief of Appellee, excluding cover page, table of contents, table of authorities and certificate is 4,030.



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