

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-11-1053

Appellee

Trial Court No. CRB-10-11663-0101

v.

Clyde L. Coley

DECISION AND JUDGMENT

Appellant

Decided: October 26, 2012

* * * * *

Christopher S. Clark, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Clyde L. Coley, appeals the February 10, 2011 judgment of the Toledo Municipal Court which, following a bench trial, convicted appellant of violation of a protection order and sentenced him to one year of probation.

{¶ 2} We first note that appointed counsel has submitted a request to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). In

a brief filed on appellant's behalf, appointed counsel sets forth one proposed assignment of error asserting a manifest weight of the evidence argument. In support of the request to withdraw, counsel for appellant states that based on the trial court record, he was unable to find any meritorious errors for appeal. Appellant was also notified of his right to file a brief in the matter; no pro se brief was filed.

{¶ 3} Accordingly, this court shall proceed with an examination of the sole potential assignment of error proposed by counsel for appellant and the record from below in order to determine if this appeal lacks merit and is, therefore, wholly frivolous.

{¶ 4} Counsel for appellant sets forth the following proposed assignment of error:

The trial court's guilty verdict was against the manifest weight of the evidence.

{¶ 5} On July 19, 2010, a complaint was filed alleging that appellant violated a temporary protection order, in violation of Toledo Municipal Code 537.20. Specifically, the complaint alleged that appellant was at the residence of his wife; the residence was listed in the protection order and his wife was listed as the protected person.

{¶ 6} A trial to the court commenced on November 2, 2010, and appellant appeared pro se. The protection order was admitted into evidence. Toledo Police officer, Garry Rabbitt, testified that on July 19, 2010, he responded to a call made by appellant on Norwood Street in Toledo, Ohio. Upon arrival appellant told Rabbitt that he had an argument with his wife and that he believed she needed mental health treatment. Officer

Rabbitt stated that the wife was present and that she stated that she lived at the house.

Rabbitt was not sure if the wife was present when they first arrived at the house.

{¶ 7} Toledo Police officer, Jim Brown, testified that on July 19, 2010, he and Officer Rabbitt responded to a domestic dispute on Norwood Street. The parties were in dispute about the wife's mental condition and need for treatment. Officer Brown testified that he checked the parties for warrants and discovered that a temporary protection order had been issued against appellant for that address with his wife as the protected person.

{¶ 8} Defense witness, Lois Brown, testified that she is the wife's mother and lives at the Norwood address. Brown stated that on the day of the incident her daughter kept calling the house and stated that she was coming home. Brown testified that she and appellant repeatedly told her not to but that she "showed up" at the house anyway. Brown stated that her daughter telephoned the police from a different location and then arrived shortly after the police.

{¶ 9} During cross-examination, Brown denied that her daughter lived at the Norwood address but admitted that appellant lived there. Brown admitted that she was aware of the protection order.

{¶ 10} Following the testimony, the case was continued in order for appellant to produce documentation which he believed would demonstrate his right to be on the property. On February 8, 2011, the matter reconvened and appellant's attorney in the domestic relations matter was present. The attorney stated that appellant was allowed on the property if arrangements were made to "keep the peace." In other words, if a police

officer was present. It is undisputed that no officer was present. Thereafter, the court found appellant guilty of violating the temporary protection order and sentenced him to a six-month suspended sentence with one year of probation.

{¶ 11} Appellant's appointed counsel's sole proposed assignment of error is that the evidence presented at trial was against the manifest weight of the evidence. An appellate court will not reverse a judgment in a bench trial as being against the manifest weight of the evidence where the trial court could reasonably conclude from substantial evidence that the state has proved the offense beyond a reasonable doubt. *State v. Billman*, 7th Dist. No. 09-MO-10, 2010-Ohio-4852, ¶ 14, citing *State v. Eskridge*, 38 Ohio St.3d 56, 59, 526 N.E.2d 304 (1988).

{¶ 12} Here, the court convicted appellant of a violation of Toledo Municipal Code 537.20 which provides that “[n]o person shall recklessly enter or remain on the land or premises which is the subject of a temporary protection order * * * when such temporary protection order excludes the person from said land or premises.”

{¶ 13} At the bench trial held on November 2, 2010, and February 8, 2011, it is undisputed that on July 19, 2010, appellant was at the address which was prohibited by the January 30, 2009 protection order, effective until January 27, 2011. Based on the testimony of the officers who responded to the scene and the protection order itself, we find that the court's judgment was not against the weight of the evidence. Accordingly, appellant's counsel's proposed assignment of error is not well-taken.

{¶ 14} After careful review of the record in this appeal, we find no meritorious appellate issues. Appellant’s counsel’s motion to withdraw is granted.

{¶ 15} On consideration whereof, we find that substantial justice has been done the party complaining and the judgment of the Toledo Municipal Court is affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

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