BUTLER COUNTY COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

ISAAC ADI	**Case No. CP 2023 08 0403**
Petitioner	**Judge J Gregory Howard**
vs.	**Magistrate Harold Reed**
DARBI BODDY	**RESPONDENT'S MOTION TO TERMINATE CIVIL PROTECTIVE ORDER AS IMPROVIDENTLY GRANTED AND AS EXTRAJURISDICTIONAL**
Respondent	**ORAL ARGUMENT REQUESTED**

Respondent, Darbi Boddy, hereby presents her Motion to Terminate the Protective Order for the reasons set forth in the accompanying Memorandum. Inter alia, the Order was originally granted on matters in which the Court did not have jurisdiction, an issue which can be raised at any time.

Respectfully submitted,

/s/ Robert F. Croskery
Robert F. Croskery (0064802)
Trial Attorney for Plaintiff
Croskery Law Offices
P.O. Box 184
Fayetteville, Ohio 45118
Phone: (513) 232-LAWS (5297)
Fax: (513) 426-7372
rcroskery@croskerylaw.com

MEMORANDUM IN SUPPORT

I. INTRODUCTION

This Court should terminate the Protective Order granted against Respondent Darbi Boddy. Originally, Respondent appealed the matter immediately to the Twelfth Circuit Court of Appeals, which ruled, in a decision entered on November 13, 2023 that it did not have jurisdiction as the Appeal was filed prior to the filing of Objections to the Magistrate's decision.

Subsequent to the filing of the appeal, however, the 12th Circuit expressly granted jurisdiction to the trial Court to hear the issue of modifying the stay in order for Respondent to attend School Board meetings. In the briefing addressing those issues, this Court modified the stay to allow Respondent to attend School Board meetings. Moreover, during the briefing addressing the modification, Respondent expressly and timely raised three issues while the trial court unquestionably had jurisdiction. These issues have not yet been heard upon the merits, in spite of their having been raised (and, incidentally, not refuted by Petitioner) at a time when the trial court clearly had jurisdiction. This Court granted a Motion to dismiss hearing these issues while they were before the Court of Appeals; now that the Court of Appeals has stated it no longer can exercise jurisdiction, and as the issues have not yet been heard on the merits in spite of being raised to the trial court during a time when it expressly held jurisdiction, it is proper to raise them in this Motion to Terminate the Protective Order, especially in light of recent events, in which it is clear that Petitioner is using the Order as a sword, not a shield, in an attempt to punish Darbi Boddy in her efforts to do her job as a school Board member. The issues raised to this Court on September 29, 2023 were as follows:

1) The Magistrate granting the petition clearly exceeded his jurisdiction by applying Ohio law to Florida actions and ignoring the strongest political protections accorded political speech, mischaracterizing political criticism as "bullying" and ignoring the long time periods between the alleged "bullying" and the distress, making the Court's acceptance of the Petitioner's lay testimony of his long-delayed medical response unacceptable. 2) The Magistrate improperly and unconstitutionally treated political speech as "stalking." 3) The Magistrate improperly accepted lay testimony on medical causation when the time gap made such testimony inherently suspect and against the manifest weight of evidence.

Now that the appeal has been dismissed Respondent Darbi Boddy files her Motion to Terminate the Civil Protective Order. The Order was granted using actions which took place out of state (in Florida) where the State of Ohio has no jurisdiction. The Order, on its face, is given based entirely upon three incidents of Ms. Boddy's publicly criticizing Mr. Adi 1) in late April, 2023 at a conservative conference in Florida, 2) a supposed public Facebook posting in late June, 2023, and 3) the aftermath of a school Committee meeting on August 18 when Ms. Boddy is found to have "followed him too close" and a cell phone "was in Mr. Adi's face" attempting to get him to repeat what he had ostensibly said earlier. If this recitation of offensive activity seems pretty thin for a "stalking" case, it is, in fact, because the activity (consisting entirely of political speech and Ms. Boddy's attempts to fulfill her responsibility to her constituents) is so thin as to be practically invisible. Moreover, the Florida incidents fall underneath a completely different statute. Even if the Magistrate had jurisdiction over the actions in Florida (he does not) they would fall under the Florida menacing statute, with completely different (and stricter) requirements.

Finally, yesterday, on November 13, 2023, Petitioner's counsel sent to Respondent's

counsel a "Motion to hold Respondent in contempt"[1] because "Darbi Boddy was attending a conference" (the OSBA conference in Columbus, in which School Board members receive training paid for by taxpayers) "that is also being attended by Mr. Adi" in spite of Ms. Bobby's requesting guidance from school Board attorneys about whether she could attend, and in spite of Mr. Adi's presumed ability to also seek such advice. Ms. Boddy has not been in the same sessions as Mr. Adi, but at one point he sought her out and followed her, forcing her to immediately vacate a public area under terms of the order (which she did) and then having his attorney send Respondent's attorney a Motion for contempt. This improper scenario will undoubtedly continue to play out in the future until the problems with the Magistrate's decision, which Respondent has continually and timely raised since the decision, are addressed on the merits. According to established case law precedent, a Civil Protection Order may be terminated by a trial Court if "original circumstances have changed and it is no longer equitable for the order to continue". ***Jones v. Hunter***, 11th Dist. Portage No. 2008-P-0015, 2009-Ohio-917, ¶ 12. Here, the original circumstance that has changed is that the trial court was divested of jurisdiction by the filing of the notice of appeal. It now has jurisdiction (which has been made clear by the 12th District's dismissal of the appeal. It is not equitable for the order to continue as it was improperly granted in the first place, and every day it is in effect continues this inequity.

Furthermore, as this Court knows, matters questioning the subject matter jurisdiction of a Court may be raised at any time. ***State v. Wogenstahl***, 150 Ohio St.3d 571, 2017-Ohio-6873, 84 N.E.3d 1008.

Finally, the use of the Order as a sword to harm the Respondent rather than as a shield to protect the Petitioner is clear, as at a meeting to train school Board members in Columbus, he

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1 The Motion has not yet been filed, probably because of the 12th District Ruling, but it illustrates the continuing difficulties inherent in one school board member being granted a protective order against another/

followed her, thus forcing her to leave a public area, an action completely inconsistent with his supposed fear of her, and then had his lawyer send to Respondent's counsel a Motion to hold Respondent in Contempt for the two being at the same meeting at the same time, a meeting held to train school board members, paid for by taxpayers, and in her constituent's best interest that she attend..

II. ARGUMENT

A. The Transcript Supports the Respondent's Objection that the Magistrate Improperly Assumed Subject Matter Jurisdiction over Florida matters and Applied Ohio law

Respondent's claim that three of the five incidents that the Magistrate used in deciding that a "pattern of conduct existed", and, indeed, the only ones "closely related in time" (April 21-22) took place at a Florida Conference in Sarasota. The other incidents mentioned by the Court mentioned two cell phone uses, one on June 13, 2023 and one on August 18, 2023, clearly not "closely related in time". The Court clearly treated the Florida incidents as key in its findings (see Order at page 8, finding three separate incidents in Florida, and noting the location.)

See Transcript at p. 18, lines 17-16 (incidents at a conference in Sarasota), page 20 line 23, and page 90, line 4 (incidents were in Florida).

The Opinion, astoundingly, accepts the Petition stating that the episodes were in Sarasota, Florida without bothering to explain how in the world it has jurisdiction over the Florida episodes and why an Ohio law should apply to Florida conduct. The Florida menacing statute is quite different from that in Ohio and would clearly apply to the conduct in question. A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in Florida Revised Statute § 775.082 or Florida Revised Statute §775.083. That statute has far different, and stricter requirements than its rather amorphous Ohio counterpart, in its express

requirements for willfulness and malice.

The Opinion and order does not explain where it obtains its jurisdiction over the Florida actions, much less even analyze them under the applicable Florida law, and the entire Order should be terminated for lack of subject matter jurisdiction over the central incidents giving rise to the Order.

B. The Transcript Supports the Respondent's Objection that the Magistrate Improperly and Unconstitutionally treated protected Political speech as having Mens rea to support stalking.

In Respondent's Motion filed September 27, she makes the following Objection to the Magistrate's Order: "The Opinion and Order's findings specifically attribute another motive to Ms. Boddy than inflicting mental distress on Isaac Adi in her public criticism of him, stating that her speech at a public conservative forum (in which she accused Mr. Adi of not being a conservative and of supporting a pedophile, the only legally permissible genesis of this order) was done so as to 'exert undue pressure on ...[Mr. Adi] to conform to her beliefs or punish [Adi] for not changing his beliefs. In other words, Ms. Boddy (a politician) was engaging in public, protected political free speech, in an effort to "exert pressure" on another politician to support her, which is a far different (and proper) motive as opposed to the motives typically ascribed in "stalking cases."

Respondent further analyzed the only case used by the Magistrate below to deal with mental distress, ***Mather v. Hilfinger,*** 12th dist. No. CA2020-12-083, 2021-Ohio2812, pointing out the level of malice in that activity far exceeded political speech. Respondent in that case came to Petitioner's house at night, shone bright lights at the Petitioner through the window while Petitioner was sleeping, and punched a car fob continually to make loud sounds. That is clearly activity solely designed to harass, annoy, and injure, a sharp contrast from political

speech that may embarrass a public figure, who, as a public figure, has ample recourse to refute such speech.

Respondent further already pointed out that the Florida Statute under which the first three incidents must be analyzed, assuming, arguendo, that an Ohio Court has jurisdiction at all, is the Florida statute requiring willful and malicious activity, as opposed to simple "knowing" activity. But the Court gave away the impropriety of the ruling in other ways: by admitting evidence of Darbi Boddy's position, unpopularity, and allowing, over objection, exploration of activities having nothing to do with stalking allegations by Mr. Adi; allegations that she went into a school to take pictures about what she saw for the parents, allegations that a School Resource officer served her with "trespass" paperwork, allegations that she was often the lone dissenting vote, speculation that because she had a CCW permit, she might be a "danger" to the school; and more. See transcript at pp. 10-17.

The Magistrate went on to find that she had "disenfranchised" herself by her activity criticizing Adi, and her attempts to record him expressing his views on subjects of public interest. (order, p. 8).

The Order should be terminated because speech critical of another public official is at the very height of First Amendment protection. The First Amendment was "fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people," ***Roth v. United States***, 354 U.S. 476, 484, The First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for political office." ***Monitor Patriot Co.* v. *Roy***, 401 U. S. 265, 272, 91 S. Ct. 621, 28 L. Ed. 2D 35 (1971). "Of course, any criticism of the manner in which a public official performs his duties will tend to affect his

private, as well as his public, reputation. The *New York Times*[2] rule is not rendered inapplicable merely because an official's private reputation, as well as his public reputation, is harmed. The public-official rule protects the paramount public interest in a free flow of information to the people concerning public officials, their servants. To this end, anything which might touch on an official's fitness for office is relevant. Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character." ***Garrison v. Louisiana***, (1964) 379 U.S. 64, 76-77. The outgrowth of these cases is that Ms. Boddy's criticism of Mr. Adi is simple political speech, which is absolutely protected from being quelled under the guise of a civil stalking order. As Mr. Adi candidly admits in the hearing, as a public official he can expect harsh criticism, even criticism that he believes to be untrue. (See testimony of Isaac Adi, pp 116-117.)

The Magistrate's finding that Ms. Boddy's efforts were made for a political purpose (to change beliefs through embarrassment of Mr. Adi) is not without precedent on a national scene. The misuse of judicial resources to quash political dissension is a very, very dangerous possibility here, and a grave danger to the public interest. The finding, indeed, is directly opposite to a finding that Ms. Boddy sought to injure Mr. Adi; "changing beliefs" through public speech is what politicians do. Mr. Adi had the same forum for response, whether he "thought it appropriate" to use or not (See Opinion and Order at Page 12).

The case used by the Magistrate below to deal with mental distress, ***Mather v. Hilfinger,*** 12th dist. No. CA2020-12-083, 2021-Ohio2812, is particularly instructive on this very point. In that case, the Respondent's activities were to come to the Petitioner's house at night, shine bright lights at them through the window while Petitioner was sleeping, and punch a car fob continually

2 ***New York Times v. Sullivan*** , 376 U.S. 254 (1964)

to make loud sounds. That is clearly activity solely designed to harass, annoy, and injure, a sharp contrast from political speech that may embarrass a public figure, who, as a public figure, has ample recourse to refute such speech. The purpose of seeking to change beliefs through opinion and argument is perfectly permissible about a public figure if the opinion is honestly held, even if expression of such opinion may case embarrassment; the same cannot be said to be true of the activities that generally result in orders under the civil stalking statute. Similarly, attempting to record the opinions of other public figures with a cell phone serves the public interest and is protected investigative activity, and, indeed, activity that a public figure such as Mr. Adi must accept, just as Ms. Boddy must. Granting this protective order not only sets a dangerous precedent, it is legally unsupportable.

C. The Transcript Supports the Respondent's Objection that the Magistrate improperly accepted lay testimony on medical causation when the time gap made such testimony inherently suspect and against the manifest weight of evidence.

The Respondent's Objection to the magistrate's decision as noted on September 27 was as follows: "Mr. Adi's first hospitalization for a blood pressure incident ***took place a full two and a half months*** following her episodes of public criticism of Mr. Adi in a conservative seminar, and three weeks after his slapping at her cell phone."

The cases where a Petitioner has been able to testify about his distress were cases where he or she testified about feelings immediately after an episode of bullying activity. As pointed out, Ms. Boddy's efforts—including the cell phone videos trying to video a fellow politician's views—are clearly protected political activity under the First Amendment, activity that Ms. Boddy could not possibly believe to be off limits; as a political figure, she is subjected to the same criticism herself, much of which came out in the hearing.

But the biggest problem with the largest issue—hospitalization on July 1-3—is that it is

far too distant in time to take lay witness testimony as to the cause of his "high blood pressure and dehydration", nor does Mr. Adi even attempt to explain the mechanism of a facebook posting that was several days old, or an attempted recording two and a half weeks before (transcript p, 126), or criticism in a conference two and a half months before, (transcript p. 90 line 4) caused his issues.

Under cross examination, Mr. Adi stated as follows:

"A Before I went to Nigeria, I was hospitalized. ... July 1st, 2nd, and 3rd. I had already planned this trip long time ago. That -- what caused me that distress -- was all the buzz in the media and everywhere about something that is not true."

"Q So all this interaction that you've been telling us about between you and Darbi Boddy was not the actual mechanism that caused you go to the hospital. Rather, it was the fact you didn't like that -- what came up on social media?"

"A It was what she did. Lying. And most of what she said are not true. I can prove it that they are not true." Testimony Isaac Adi, transcript

So Mr. Adi's real claim is not "stalking", it is public criticism that he believes to be untrue, in other words, defamation.

But the time gap is troublesome, and the symptoms he testified about—"high blood pressure" and "dehydration" (transcript p. 137) are certainly not "garden variety emotional distress" about which a lay person can give useful testimony. Even the one incident where another lay person witnessed him in distress (after he filed the CPO petition, and had not informed Respondent about it, on Aug 18) his initial reaction to Ms. Boddy was to "chuckle". Transcript p. 49, lines 13-14.

The Opinion and Order makes no finding that Darbi Boddy knowingly was attempting to inflict mental distress on Isaac Adi; in fact, it is bereft of a single finding that Ms. Boddy was aware that Mr. Adi suffered any mental distress whatsoever. (Ms. Boddy was never questioned on that critical element, and the Opinion and Order is silent upon it).

While the Order makes a finding that Mr. Adi was "embarrassed" by Ms. Boddy's remarks at a Florida conference[3], it makes no finding that Mr. Adi ever informed Ms. Boddy that he was "embarrassed" and in fact places the burden of talking to him about it completely on her. "Rather than try to work through their differences, or respect Petitioner's change of beliefs, Respondent took every opportunity to exert pressure, bully, and at times, punish Petitioner by embarrassing him in front of others". See Opinion and Order at page 12. The Magistrate's statement on this matter is naive at best. Politics is not for the faint of heart. People, including other Board members, consistently seek to ridicule and embarrass Darbi Boddy. She is often (as the Opinion notes on the same page) the sole vote against certain issues. She is routinely criticized. Yet to silence her in the School Board forum because she offers her genuine and critical opinions of others in the process of supporting her constituents in the guise of a "civil stalking order" is both violative of her First Amendment rights and of her substantive due process rights in supporting her constituents.

Mr. Adi's first hospitalization for a blood pressure incident *took place a full two and a half months* following her episodes of public criticism of Mr. Adi in a conservative seminar, and three weeks after the two even saw each other.

The Opinion and Order finds that "Petitioner testifies that in early July, 2023 the stress of being on the Board and interacting with Respondent caused him to be hospitalized for three days". He makes no finding that Ms. Boddy was aware of this (she was not) or that Mr. Adi told Boddy about the stress she was allegedly causing him (he did not). But on its face, it defies logic to say that three episodes of public criticism eleven weeks before, or a disputed episode that took place three weeks before on June 13, are sufficient "causation" to meet a lay witness testimony

3 Had Mr. Adi truly experienced such distress as to require an order against Darby Boddy, Florida was clearly the place to get it. It is astounding that this Court even exercises jurisdiction over those alleged incidents as part of a pattern of "conduct" but what really took place was critical political speech.

as the medical cause of his hospitalization.[4] It is one thing for a Petitioner to testify as to the cause of mental distress immediately after an episode; it is clearly quite another to accept the word of a lay witness that things that happened weeks earlier had a delayed medical effect.

CONCLUSION

Every episode referenced by the Magistrate hearing the case consists of one of two things: 1) Darbi Boddy publicly criticizing Mr. Adi's views, or 2) Darbi using her cell phone to take video of Mr. Adi, a fellow public figure. Moreover, the only episodes "close in time" required by the Ohio statute indisputably occurred in Florida. While Ms. Boddy (and her counsel) believe that the "Protective Order" argument borders on the frivolous and should never have been granted[5], she is perfectly willing to have it analyzed under a stricter Florida statute even if the Court magically had jurisdiction over them (it does not).

Circumstances have changed, in that this Court now has jurisdiction to hear the specific objections that were timely raised to the trial court by Respondent, and have never been substantively answered by the Petitioner. One of those arguments is the lack of subject matter jurisdiction of the Magistrate to rule on incidents when both petitioners were in Florida and not subject to Ohio's Civil Stalking statute, a glaring error which divested the Court of subject matter jurisdiction, an issue that may be raised at any point in the proceedings (and, indeed, has been consistently raised by Respondent). This Civil Protection Order should be immediately terminated.

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4 Here, as in many places, the Order is remarkably vague. The admitted exhibits will show a date of July 7 on medication, but will not contain a diagnosis or any medical records supporting Mr. Adi's lay opinion as to his elevated blood pressure, and the long passage of time makes the Court's acceptance of his lay opinion as unprecedented and remarkable.

5 One interesting circumstance in this case is that the attorney for the Petitioner in this case, Robert Lyons, serves as a Judge in an Area Court in Butler County and is hence technically a superior to the Magistrate hearing the case. While the Disciplinary Counsel allows this rather questionable activity, the circumstance clearly invites colorable accusations of bias and undue influence on its face, and Respondent views it with considerable distaste.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on Robert H. Lyons, 8310 Princeton-Glendale Rd., West Chester, Ohio 45069, attorney for Petitioner, this 14th day of November 2023.

/s/ Robert F. Croskery
Robert F. Croskery