STATE OF MICHIGAN

COURT OF APPEALS

JANETTE H. KILBOURN, Petitioner-Appellee,	UNPUBLISHED June 20, 2006
V	No. 267211 Oakland Circuit Court Family Division
DONALD A. MORRISON, Respondent-Appellant.	LC No. 05-712655-PP

Before: Cavanagh, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

Respondent appeals as of right an order of the court granting a personal protection order ("PPO") to petitioner and an order denying respondent's motion to terminate the first order. Because the trial court did not abuse its discretion in granting the PPO, we affirm.

The parties in this matter dated for a few months toward the end of 2003. After their break-up, petitioner alleged that respondent engaged in harassing and intimidating behavior and subsequently sought a PPO. After a hearing at which several witnesses testified, the trial court granted petitioner's request for a PPO.

Respondent first objects to the court's failure to give written reasons explaining its order granting the PPO. However, respondent has alleged no prejudice other than stating that written reasons would have aided in the presentation of his case. Furthermore, respondent has made no argument concerning what remedy should be available if the court rules were violated. He may not simply announce his position on appeal and leave it to this Court to rationalize his claim, if any, under the court rules. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). His failure to properly address the merits of his assertions of error constitutes abandonment of the issue. *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Respondent next argues that the court deprived him of a hearing when he attempted to challenge the PPO. According to the relevant court rule:

> (a) The petitioner may file a motion to modify or terminate the personal protection order and request a hearing at any time after the personal protection order is issued.

> (b) The respondent may file a motion to modify or terminate the personal protection order and request a hearing within 14 days after being served with, or receiving actual notice of, the order unless good cause is shown for filing the motion after the 14 days have elapsed. [MCR 3.707(A)(1).]
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> * * *
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> The court must schedule and hold a hearing on a motion to modify or terminate a personal protection order within 14 days of the filing of the motion . . . . [MCR 3.707(A)(2).]

The court refused to grant respondent another hearing to challenge the PPO and to present witnesses.

There is a paucity of case law interpreting this court rule. Interpretation of a court rule is subject to the same basic principles that govern statutory interpretation. *St George Greek Orthodox Church v Laupmanis Assoc,* 204 Mich App 278, 282; 514 NW2d 516 (1994). A court rule should be construed in accordance with the ordinary and approved usage of the language and in light of its purpose and the object to be accomplished by its operation. *Id.* Statutory interpretation is a question of law subject to de novo review on appeal. *Id.* By analogy, interpretation of court rules is also subject to de novo review on appeal. *Id.*

It is clear from the expansive and mandatory language of the court rule that respondent was entitled to request modification or termination of a personal protection order within 14 days and that the court "*must* schedule and hold a hearing on a motion to modify or terminate a personal protection order." MCR 3.707(A)(2) (emphasis added).[1] The court therefore erred when it skirted the rule by styling respondent's motion as a motion for reconsideration. While the motion no doubt sought reconsideration, it sought reconsideration in the form of an order terminating the original PPO, which makes the motion a motion to terminate. It is also clear that respondent did not receive a hearing because the court did not allow him to present witnesses, stating that he already had an opportunity at the original hearing and that the only difference was that at the second court date he had an attorney. Based upon the unambiguous language of the court rule, this Court would ordinarily remand to the trial court for a hearing on defendant's motion to terminate the PPO. However, the PPO having already terminated by its own terms, this issue is moot.

We therefore reach respondent's fourth issue, which challenges the merits of the court's grant of a PPO. A PPO is an injunctive order. *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002). An order granting or denying injunctive relief is reviewed for an abuse of discretion. *Id.* "An abuse of discretion is found only if an unprejudiced person, considering

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[1] Similarly, the word "shall" – a synonym of must – is generally used to designate a mandatory provision. *Roberts v Mecosta County General Hospital*, 466 Mich 57, 65; 642 NW2d 663, on rem 252 Mich App 664; 653 NW2d 441 (2002), rev'd 470 Mich 679 (2004).

the facts on which the trial court acted, would say there is no justification or excuse for the ruling made." *Id.* at 700-701 (quotation, citation omitted).

The burden of proof in obtaining the PPO, as well as the burden of justifying continuance of the order, is on the applicant for the restraining order. *Kampf v Kampf,* 237 Mich App 377; 385-386; 603 NW2d 295 (1999); MCR 3.310(B)(5). By assuming the truth of petitioner's evidence, this Court recognizes that the trial court, while not infallible, is in a better position to weigh evidence and evaluate witness credibility. *Fletcher v Fletcher*, 229 Mich App 19, 28-29; 581 NW2d 11 (1998).

Pursuant to MCL 600.2950(4), the court shall order a PPO if it determines there is "reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more" of a specified list of acts. Those acts include the following:

> (a) Entering onto premises.
>
> (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
>
> (c) Threatening to kill or physically injure a named individual.
>
> . . .
>
> (j) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence. [MCL 600.2950(1)]

Additionally, if an individual has been stalked, as defined in MCL 750.411h, the individual may petition the court for a PPO to restrain the stalker from continuing the harassing conduct. MCL 600.2950a(1). Under MCL 750.411h(1)(d), stalking is defined as "a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested." The phrase "course of conduct" is defined as "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411h(1)(a). "Harassment" means "conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress." MCL 750.411h(1)(c).

Respondent contends the trial court erred in issuing the personal protection order against him, as there was no reasonable cause to believe he may commit any of the acts listed in MCL 600.2950. However, the testimony of witnesses at the hearing suggests otherwise.

Petitioner testified that respondent recently began attending the AA meetings she attends. While petitioner indicated that respondent never physically assaulted her and made no direct threat to her safety, petitioner also related several recent incidents that frightened her. For

example, petitioner stated that in September, 2005, respondent came into an AA meeting she was attending, sat next to her and, when they went into the parking lot, handed her a book entitled "The Verbally Abusive Relationship" and became agitated. Petitioner also stated that respondent engages in subtle intimidation during meetings and recently drove into a neighbor's driveway by her new home, although she did not tell respondent where she lived. Petitioner also testified that respondent's behavior and rage toward her are escalating.

Cathy Hannis testified that since the parties stopped dating, respondent would not have interaction with petitioner for periods of time, then would come back in the picture, wanting to be involved with petitioner again. Ms. Hannis testified that every time respondent comes back into petitioner's life, he becomes angrier and his behavior is escalating. Ms. Hannis testified that during the past six months, she has observed respondent in the parking lot raising his voice, raising his hands, and moving toward petitioner on one occasion, observed him go to areas he knew petitioner would be and sit next to her, and observed respondent make "loser" sign toward petition then turn his fingers to look like a gun. Ms. Hannis indicated that respondent's behavior is becoming more frequent and intense with each interaction he has with petitioner.

Jack Thurbeck testified respondent continuously tries to intimidate petitioner at meetings. Mr. Thurbeck further testified he has seen respondent cruise through parking lots of meetings, finding out where petitioner is, and has observed respondent sitting across the street from petitioner's house. Mr. Thurbeck testified that while respondent may claim an AA member he sponsors resides in petitioner's neighborhood, the claim is untrue. Mr. Thurbeck testified that petitioner has left meetings because of respondent's harassing behavior in sitting next to her and playing "mental games."

The trial court apparently found the witness statements regarding respondent's behavior credible despite respondent's testimony that he was doing nothing to petitioner. Moreover, respondent's actions in attending the same AA meetings as petitioner and sitting next to her, driving to her petitioner's neighborhood and cruising parking lots of AA meetings to see where petitioner is could be considered harassing conduct that may well fall into the category of stalking.

Considering the facts upon which the trial court acted, and applying appropriate deference to the trial court's responsibility as the closest examiner of witness credibility, we cannot say there is no justification or excuse for the ruling made.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

JANETTE H. KILBOURN,

Petitioner-Appellee,

v

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Oakland Circuit Court
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Before: Cavanagh, P.J., and Fort Hood and Servitto, JJ.

CAVANAGH, J. (*dissenting*).

I respectfully dissent from the majority opinion. I would reverse the trial court's grant of a PPO in this matter as an abuse of discretion.

Petitioner filed a petition requesting a domestic PPO against respondent, indicating that she feared violence or interference with her freedom because (1) respondent gave her a book entitled "The Verbally Abusive Relationship," (2) after an AA meeting she approached respondent about what he expected from her and he became angry, and (3) one time respondent drove into a parking lot where she was standing with friends and a friend told her that respondent made a hand gesture in her direction as he drove out of the lot. At the hearing on the petition, petitioner testified that after their dating relationship ended they tried to be friends but were unsuccessful. She testified that respondent never threatened her or made physical contact with her but that at an AA meeting respondent walked up to a group that she was in and addressed everyone but her. Petitioner also saw respondent's vehicle in a neighbor's driveway after she moved to a new house without telling respondent.[1] When challenged by the trial judge as to what specifically respondent did that scared her, petitioner could only offer vague statements like "there's several things that he did that frightened me," "subtle intimidation at meetings," and "I've seen a rage in him that scares me."

Two witnesses testified on petitioner's behalf but they provided little support of the petition. Cathy Hannis' testimony included that respondent made the "loser sign" behind petitioner's back while they were standing in a parking lot, respondent would ignore petitioner in a group of people, and he would walk into an area where he knew petitioner would be and sit next to her. During this testimony, the trial judge indicated: "I've got to tell you, you haven't

[1] Respondent testified that the neighbor was also in AA and respondent was his sponsor.

really explained to me what you're frightened of. He's engaging in antisocial behavior, maybe, but –." Jack Thurbeck's testimony included that "I've continuously seen him at meetings trying to intimidate her, whether he's sitting next to her intimidating her or he's tried to intimidate her through friends." Thurbeck also indicated that he saw "respondent driving through parking lots, cruising meetings, finding out where she was at." Thurbeck's speculative testimony gave no specific examples or details. Without explanation, contrary to the clear mandate of MCR 3.705(B)(6), the trial court granted the petition. On reconsideration, and upon specific request by respondent for articulation of the reasons for granting the PPO, the trial court indicated that it granted the petition "based on the testimony of her witnesses."

MCL 600.2950 provides for the issuance of a PPO when there is reasonable cause to believe that a respondent would commit violent or threatening acts against a petitioner, including assault, attack, threaten to kill or injure, or engage in any other conduct that "imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence." See, also, *Kampf v Kampf*, 237 Mich App 377, 385; 603 NW2d 295 (1999). Here, I would hold that petitioner failed to carry her burden of demonstrating reasonable cause to believe that respondent would commit any violent or threatening acts against her. There was no evidence that respondent verbally threatened petitioner, physically touched her, behaved aggressively toward her, approached her when she was alone, went to her place of employment or her home, called her, wrote her letters, emailed her, talked to her children, or otherwise imposed upon or interfered with petitioner's personal liberty. At most, as the trial court indicated, respondent engaged in antisocial behavior toward petitioner, while in a public place, where there were several people present. Although the trial court was in a better position to weigh the evidence and evaluate witness credibility, the requirement of sufficient evidence to support the holding remains. Vague, generalized, speculative, and subjective claims like those made here are not enough. Any alleged fear petitioner may have experienced under these circumstances was unreasonable and the trial court abused its discretion in issuing the PPO, i.e., there was no justification for the ruling.[2] See *Pickering v Pickering*, 253 Mich App 694, 700-701; 659 NW2d 649 (2002).

The issuance of a PPO is a very serious matter. Associated with it is potential criminal consequences, as well as possible professional, personal, and social ramifications. Therefore, such judicial intervention must be warranted by circumstances that clearly demonstrate its necessity. Review of case law involving the issuance of a PPO reveals the types of violent and threatening behaviors this exceptional remedy was designed to thwart. In *Kampf*, *supra*, for example, the petitioner articulated several specific and detailed instances of emotional, verbal, and physical abuse of significant magnitude, including calling her degrading names, fondling her in front of children, dragging her through the house, sexually assaulting her, yanking her out of bed, pushing her, etc. *Id*. at 379-380. The incident in *Pickering*, *supra*, was that the respondent threatened to break down a door that petitioner was behind, which was braced shut with a chair, and he continued to shout, shove on the door, and attempt to dislodge the chair. *Id*. at 701-702.

[2] I also note that, despite her purported fear, petitioner continued to attend the same AA meeting that she knew respondent attended—and had attended for several years—even approaching respondent on occasion.

The *Pickering* case illustrates that even one incident that is reasonably violent or threatening under the circumstances presented is sufficient to support the issuance of a PPO. In other words, one does not have to wait, like the petitioner in *Kampf*, for several instances of abuse to occur before seeking a PPO. On the other hand, a PPO is not a weapon to stop someone from being rude or to keep someone from a place they have a legal right to be. In this case, it appears to me that the PPO was unjustly issued for these inappropriate purposes. Such a situation has the potential to create the very problems that the device was designed to prevent and, thus, I would vacate the order granting the petition.

/s/ Mark J. Cavanagh