STATE OF MICHIGAN

COURT OF APPEALS

JULIE SABUDA, Petitioner-Appellee,	UNPUBLISHED August 17, 2006
v	No. 260495 Oakland Circuit Court
YOUNG AH KIM, Respondent-Appellant.	LC No. 2004-701732-PH

Before: Saad, P.J., and Jansen and White, JJ.

PER CURIAM.

Following a hearing, the trial court issued a personal protection order (PPO) prohibiting respondent from stalking petitioner. Respondent appeals as of right.[1] We affirm.

Respondent argues that the trial court erred by failing to appoint an interpreter for her at the PPO hearing in this case.[2] We disagree. We review for an abuse of discretion a trial court's decision regarding whether to appoint an interpreter. *People v Warren (After Remand),* 200 Mich App 586, 591; 504 NW2d 907 (1993); see also MCR 2.507(D).

At the beginning of the PPO hearing, the trial court asked respondent if she spoke English. Respondent's attorney informed the court that respondent understood English, but that if respondent needed clarification, counsel was willing to help her. The court then specifically asked if respondent required an interpreter. Respondent's attorney informed the court that no interpreter was available to translate between Korean and English. However, respondent's attorney stated that she would be able to act as an interpreter for respondent. The court would not allow respondent's attorney to act as an interpreter and therefore inquired whether

[1] Petitioner asserts that this appeal is moot. Although the PPO was effective only until April 5, 2005, because respondent was subsequently charged with violating the PPO, we are not persuaded that this appeal, in which respondent challenges whether the PPO was properly issued, is moot.

[2] Respondent incorrectly suggests that the appointment of an interpreter in this case is controlled by the federal court interpreters act, 28 USC 1827. However, that act applies only to proceedings in federal court. 28 USC 1827(j).

respondent understood English well enough to proceed with the hearing. At that point, respondent's attorney informed the court that respondent understood English well enough to proceed.

This Court addressed the necessity of appointing an interpreter for non-English speaking defendants in *People v Atsilis*, 60 Mich App 738, 739; 231 NW2d 534 (1975):

> Whenever it appears that a defendant is incapable of understanding the nature of, or of defending himself in, the proceedings against him because he is unable to understand the English language, an interpreter should be appointed in his behalf. But a trial judge is not under a duty to affirmatively establish a defendant's proficiency in the English language when no evidence is presented to him that could put the issue in doubt.

In this case, respondent's attorney advised the trial court that respondent knew enough English to participate in the hearing. Moreover, the trial court subsequently swore respondent as a witness, which enabled it to observe and evaluate respondent's ability to communicate in English. Under the circumstances of this case, the trial court sufficiently fulfilled its obligation to establish that respondent understood English well enough to proceed without an interpreter.

This case is distinguishable from *People v Sepulveda*, 412 Mich 889; 313 NW2d 283 (1981), in which our Supreme Court determined that the trial court erred in failing to appoint an interpreter. There, the record clearly showed "that the defendant spoke no English whatsoever." *Id*. In contrast, respondent's attorney in the present case informed the trial court that respondent understood English well enough to proceed without an interpreter. Accordingly, the instant record certainly does not establish that respondent "spoke no English whatsoever."

Although respondent requested an interpreter before the hearing, her counsel subsequently agreed to proceed without an interpreter. Respondent may not now argue on appeal that it was improper for the trial court to continue the hearing without granting her request for an interpreter. "Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter,* 222 Mich App 513, 537; 564 NW2d 532 (1997).

The trial court properly refused to allow respondent's attorney to act as respondent's official interpreter. It would have been improper for counsel to function as both a court interpreter and as respondent's attorney during the hearing. Additionally, the court's ruling did not prohibit respondent's attorney from otherwise communicating with respondent or clarifying any matter for respondent. We also note that, at the conclusion of the hearing, respondent's attorney asked the trial court if she could speak on respondent's behalf and the court permitted her to do so. Respondent cannot now complain that this was improper or that she was effectively prevented from testifying by this arrangement. *Hilgendorf v St John Hosp & Med Ctr Corp*, 245 Mich App 670, 683; 630 NW2d 356 (2001) (a party may not assign as error on appeal something which his or her own counsel deemed proper at trial because to do so would allow the party to harbor error as an appellate parachute).

Respondent additionally argues that the trial court's failure to appoint an interpreter, or allow her attorney to act as her interpreter, deprived her of her constitutional rights to

confrontation and due process. Because respondent did not allege a constitutional violation in the trial court, this issue is not preserved. Therefore, respondent must show that a plain error affected her substantial rights. *Kern v Blethen-Coluni,* 240 Mich App 333, 336; 612 NW2d 838 (2000).

The failure to appoint an interpreter when a criminal defendant does not understand and speak English can violate the constitutional rights of confrontation and due process. *People v Cunningham*, 215 Mich App 652, 657; 546 NW2d 715 (1996). Because the present case is civil in nature, the constitutional right to confrontation does not apply. However, respondent can arguably assert a due-process right to an interpreter.

Both the federal constitution and the state constitution preclude state actors from depriving a person of life, liberty, or property without due process of law. US Const, Amdt XIV; Const 1963, art 1, § 17; *Hinky Dinky Supermarket, Inc v Dep't of Community Health,* 261 Mich App 604, 605-606; 683 NW2d 759 (2004). Due process is a flexible concept, the essence of which guarantees fundamental fairness. *Reed v Reed,* 265 Mich App 131, 159; 693 NW2d 825 (2005).

> "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker. The opportunity to be heard does not mean a full trial-like proceeding, but it does require a hearing to allow a party the chance to know and respond to the evidence." [*Hinky Dinky, supra* at 606, quoting *Cummings v Wayne Co,* 210 Mich App 249, 253; 533 NW2d 13 (1995).]

Thus, in order to establish a due-process violation, respondent must show that she was deprived of the opportunity to meaningfully participate in the hearing due to an inability to understand and respond to the evidence presented against her.

Although respondent did not testify, there is no indication that she was unable to respond to the evidence or to petitioner's testimony. Respondent's attorney was bilingual. Moreover, the record discloses that the trial court was sensitive to the issue of respondent's ability to speak and understand English. Indeed, the trial court specifically permitted counsel to speak on respondent's behalf. Finally, as already noted, respondent's attorney specifically informed the court that respondent could proceed without an interpreter. Under the circumstances, we cannot conclude that respondent's right to due process was violated. See *Esteves v Esteves*, 680 A2d 398, 405-406 (DC App, 1996); see also *Gonzales-Perez v Harper*, 241 F3d 633, 637-638 (CA 8, 2001); *United States v Carrion*, 488 F2d 12, 14-15 (CA 1, 1973).

Respondent briefly suggests that her right to equal protection was violated as well. However, respondent does not explain how this right was violated and fails to support her position with citation to appropriate authority.[3] A party may not simply announce a position and

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[3] Respondent relies on *Mariscal v State*, 687 NE2d 378 (Ind App, 1997), as support for her equal protection argument, but that case only discusses the right to due process, not the right to equal
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leave it to this Court to discover and rationalize the basis for her claim. *Badiee v Brighton Area Schools,* 265 Mich App 343, 357; 695 NW2d 521 (2005). Insofar as respondent raises this as a separate issue on appeal, it has been abandoned.

Finally, respondent argues that the evidence presented was insufficient to show that she was stalking petitioner. Therefore, respondent contends that the trial court erred in issuing the PPO. We disagree.

We review a trial court's decision to issue a PPO for an abuse of discretion. *Pickering v Pickering,* 253 Mich App 694, 700-701; 659 NW2d 649 (2002). MCL 600.2950a(1) permits a court to enter a PPO to restrain an individual from engaging in stalking, MCL 750.411h, or aggravated stalking, MCL 750.411i. *Pobursky v Gee,* 249 Mich App 44, 46; 640 NW2d 597 (2001).

"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." MCL 750.411h(1)(d). "Harassment" is defined as

> 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. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose. [MCL 750.411h(1)(c).]

Further, "[u]nconsented contact" is defined as

> any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. [MCL 750.411h(1)(e).]

"Unconsented contact" includes, but is not limited to: (1) following or appearing within the sight of the victim; (2) approaching or confronting the victim in a public place or on private property; (3) appearing at the victim's workplace or residence; (4) entering onto or remaining on property owned, leased, or occupied by the victim; (5) contacting the victim by telephone; (6) sending mail or electronic communications to the victim; and (7) placing an object on, or delivering an object to, property owned, leased, or occupied by the victim. MCL 750.411h(1)(e)(*i*)-(*vii*). The stalking statute further defines "[c]ourse of conduct" 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).

In order to find a person guilty of stalking, there must be evidence of two or more acts of unconsented contact that actually caused emotional distress to the victim that would also cause a

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protection.

reasonable person such distress. *Nastal v Henderson & Assoc Investigations, Inc,* 471 Mich 712, 723; 691 NW2d 1 (2005). However, conduct that is constitutionally protected or serves a legitimate purpose cannot constitute harassment and, hence, stalking. *Id*. "[T]he phrase 'conduct that serves a legitimate purpose' means conduct that contributes to a valid purpose that would otherwise be within the law irrespective of the criminal stalking statute." *Id*.

Respondent argues that there was no evidence of a credible threat. However, a credible threat is not an element of stalking, MCL 750.411h, but only an element of aggravated stalking, MCL 750.411i. See *People v White*, 212 Mich App 298, 310-311; 536 NW2d 876 (1995). Because MCL 600.2950a permits a court to issue a PPO for stalking, in addition to aggravated stalking, the trial court was not required to find evidence of a credible threat before it could issue the PPO in this case.

Petitioner testified that she began receiving threats from respondent in approximately October 2004. Respondent accused petitioner of being involved in a conspiracy to ruin her life, and respondent in fact threatened to ruin petitioner's life. Petitioner testified that she received multiple telephone calls from respondent at her home. Petitioner also explained that she felt threatened and scared in December 2004, when she observed respondent following her to church.[4] This evidence was sufficient to establish a pattern of conduct involving two or more separate and noncontinuous acts, evidencing a continuity of purpose. MCL 750.411h(1)(a); *Pobursky, supra* at 47-48. The evidence was also sufficient to show that respondent made or attempted repeated, unconsented contacts, which included following respondent and contacting respondent by telephone. MCL 750.411h(1)(e)(*i*), (*v*). This conduct constituted harassment within the meaning of the stalking statute. MCL 750.411(1)(c). Lastly, the evidence established that petitioner felt threatened and harassed by respondent's conduct, and that a reasonable person would likely have felt harassed and threatened as well. MCL 750.411h(1)(d). The evidence in this case sufficiently established stalking under MCL 750.411h.

We note that under MCL 750.411h(4), if a person continues to engage in repeated unconsented contact even after being asked by the victim to refrain from contact, a rebuttable presumption arises that the person's conduct "caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested." Here, there was evidence that petitioner asked respondent not to call her home, but the calls nonetheless continued.

Respondent asserts that she had a legitimate reason to contact petitioner because petitioner had helped respondent acquire insurance through her company. But even if respondent had a legitimate reason to contact petitioner at her office about insurance, the trial court was entitled to conclude from the evidence that respondent was not acting for a legitimate purpose during her multiple telephone calls to petitioner's home or when following petitioner to church.

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[4] Petitioner explained that she was late going to church that day, and therefore did not believe that respondent was also on her way to the same church. Moreover, petitioner had never before seen respondent attend her church.

Because there was sufficient evidence to prove the elements of stalking under MCL 750.411h, the trial court did not abuse its discretion in issuing the PPO.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Helene N. White