

STATE OF MICHIGAN
COURT OF APPEALS

KATHY ANN PERRETT,
Plaintiff-Appellee,

UNPUBLISHED
March 27, 2007

v

KURT LOUIS RHODE,
Defendant-Appellant.

No. 267649
Calhoun Circuit Court
LC No. 05-004259-PP

Before: Zahra, P.J. and Bandstra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's issuance of a personal protection order (PPO) prohibiting him from contacting or communicating with plaintiff. We affirm.

Plaintiff and defendant dated one another from August of 2002 until plaintiff ended the relationship in May of 2005. Since that time, plaintiff alleges that defendant has repeatedly attempted to call her, sent her numerous emails at her place of employment, left gifts for her children with their daycare provider and routinely went to her house when she was at work to drop off notes, coupons he clipped from the newspaper, and treats for her dog. Plaintiff filed an ex parte petition for a PPO in November of 2005. The trial court initially denied the petition but, following a hearing on the matter, found that defendant had harassed plaintiff and issued a PPO.

On appeal, defendant asserts the trial court abused its discretion by failing to clearly articulate the basis for its decision to grant the PPO. He argues that, in essence, the court failed to determine on the record that there was reasonable cause to believe that a PPO should be issued.

A PPO constitutes an injunctive order. *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002); MCL 600.2950(30)(c). The granting of injunctive relief, and specifically the issuance of a PPO, lies "within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." *Pickering, supra*. The abuse of discretion standard recognizes that there may be no single correct outcome in certain situations; instead, there may be more than one reasonable and principled outcome. When the trial court selects one of these principled outcomes, it has not abused its discretion and so the reviewing court should defer to the trial court's judgment. An abuse of discretion occurs when the trial court chooses an outcome falling outside the principled range of outcomes. *Maldonado v Ford Motor Co*, 476

Mich 372, 388; 719 NW2d 809 (2006); *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003); *Dykema Gossett, PLLC v Ajluni*, ___ Mich App ___; ___ NW2d ___ (Docket No. 259218; released November 16, 2006), slip op, p 7.

In enacting MCL 600.2950, the statute pertaining to PPOs, the Legislature has granted courts the authority to restrain individuals from doing various acts. *Brandt v Brandt*, 250 Mich App 68, 70; 645 NW2d 327 (2002). Under MCL 600.2950(4), a trial court must issue a PPO if it finds “reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in [MCL 600.2950(1)].” *Pickering, supra*, 701. The party seeking the protective order bears the burden of providing evidence establishing the existence of reasonable cause. *Kampf v Kampf*, 237 Mich App 377, 385; 603 NW2d 295 (1999). In determining whether such cause exists, the court must consider:

- (a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.
- (b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1). [MCL 600.2950(4).]

Among the acts listed in MCL 600.2950(1) is “[e]ngaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.” MCL 600.2950(1)(i).

MCL 750.411h(2) prohibits the crime of stalking. *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).]

The statute further states:

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

An “unconsented contact” is defined as:

[A]ny 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. Unconsented contact includes, but is not limited to, any of the following:

- (i) Following or appearing within the sight of that individual.
- (ii) Approaching or confronting that individual in a public place or on private property.
- (iii) Appearing at that individual's workplace or residence.
- (iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
- (v) Contacting that individual by telephone.
- (vi) Sending mail or electronic communications to that individual.
- (vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual. [MCL 750.411h(1)(e).]

In the instant case, plaintiff testified that, without her consent and in direct disregard of her expressed desire that the contact be discontinued, defendant repeatedly contacted her by telephone and email, entered onto her property, and delivered items to her property. The trial court held, based on the preponderance of the evidence presented, that this "unconsented contact" constituted harassment under MCL 750.411h(1)(c). Thus, it found that defendant had engaged in stalking as prohibited by MCL 750.411h(2).

Under MCL 600.2950(4), the trial court was required to issue a PPO if it found reasonable cause to believe that defendant might commit one of the acts listed in MCL 600.2950(1), including stalking. In making this decision, the court had to consider both plaintiff's testimony and the fact that defendant previously committed the act of stalking. MCL 600.2950(4)(a) and (b). Although not expressly stated on the record, the trial court clearly found that reasonable cause existed. Based on the information before it, the trial court's decision to issue the PPO was within the principled range of outcomes. Consequently, we find that the trial court did not abuse its discretion in issuing the PPO that restrains defendant from contacting or communicating with plaintiff.

We affirm.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens