

STATE OF MICHIGAN  
COURT OF APPEALS

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DONALD RICHARD BACHAND,

Petitioner-Appellee,

v

BARRY WERTHMANN,

Respondent-Appellant.

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UNPUBLISHED

June 14, 2007

No. 270161

Oakland Circuit Court

LC No. 2006-719087-PH

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right from a personal protection order (PPO) that was entered against him, asserting that there was insufficient evidence to justify a PPO. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In *Pickering v Pickering*, 253 Mich App 694, 700-701; 659 NW2d 649 (2002), this Court explained that

[a] PPO is an injunctive order. MCL 600.2950(30)(c). The granting of injunctive relief is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. *Kernen v Homestead Dev Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1998). “An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made.” *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999).

“A person may file an independent action in the family division of the circuit court to seek the entry of a PPO to restrain another person ‘from engaging in conduct that is prohibited under section 411h [stalking]<sup>1</sup> or 411i [aggravated stalking]<sup>2</sup> of the Michigan penal code . . . .’ MCL 600.2950a(1).” *Pobursky v Gee*, 249 Mich App 44, 46; 640 NW2d 597 (2001). “Relief

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<sup>1</sup> MCL 750.411h.

<sup>2</sup> MCL 750.411i.

shall not be granted unless the petition alleges facts that constitute stalking as defined in section 411h or 411i . . . .” MCL 600.2950a(1).

“Stalking” is defined in MCL 750.411h(1)(d) as follows:

“Stalking” means 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.

“Harassment” is defined in MCL 750.411h(1)(c) as follows:

“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)(e) provides that “unconsented contact”

means 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. 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.

The statute further defines “course 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). “Thus, there must be two or more acts of unconsented contact that actually cause emotional distress to the victim and would also cause a reasonable person such distress.” *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 723; 691 NW2d 1 (2005) (footnote omitted).

Respondent argues that there was no evidence “of 2 or more separate noncontinuous acts evidencing a continuity of purpose” because the first alleged act occurred in July 2003, and the second alleged act occurred in March 2006. We disagree. MCL 750.411h(1)(a) does not define “course of conduct” by how close in time separate acts occurred, but rather by whether there is a continuity of purpose. Despite the lapse of over two years between the alleged acts, they may constitute stalking if there is a continuity of purpose between the acts. See *Pobursky, supra* at 47-48, and cases cited therein (“two or more separate noncontinuous acts are acts distinct from one another that are not connected in time and space”).

In the case at bar, petitioner presented evidence that in July 2003, respondent threatened to “pound” petitioner’s head into the ground. At the time, petitioner, an attorney, represented a client in litigation in which respondent was an opposing party. Petitioner presented evidence that he was confronted by respondent at a school function in March 2006, at which time respondent made reference to prior threats against petitioner and told petitioner that he would keep his promise. The trial court did not err in finding that these separate threats reflected a continuity of purpose and, therefore, established a course of conduct by respondent. The threats were made at two separate times, providing evidence of two separate noncontinuous acts. Furthermore, because respondent made similar threats and referred to his prior threats in the 2006 encounter, there was evidence of a continuity of purpose.

Moreover, petitioner’s testimony alone, which the trial court found was credible, was sufficient to allow the court to issue the PPO. The fact that a police report was not produced does not establish that the PPO was erroneously issued. Furthermore, respondent’s prior conviction for assault and battery and need for anger management counseling was properly considered by the court because petitioner was aware of this evidence and it was probative of petitioner’s claim of actual emotional distress caused by respondent’s threats.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio