

STATE OF MICHIGAN
COURT OF APPEALS

SUZANNE K. HILGENDORF,

Petitioner-Appellee,

v

MARY CLARE LEE,

Respondent-Appellant.

UNPUBLISHED

June 14, 2007

No. 270335

Wayne Circuit Court

LC No. 06-610614-PH

Before: Fitzgerald, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

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

Petitioner, a professor at Wayne State University, filed a petition for a PPO against respondent, a student in one of her classes. Petitioner alleged that respondent sent inappropriate emails of a sexual nature and also left a magazine at petitioner's office that contained an article about love and on which a photograph of petitioner was pasted. Additionally, the envelope in which the magazine was delivered contained disturbing remarks about a relationship with petitioner. Petitioner asserted that she told respondent not to contact her, but respondent continued to call petitioner and visited her office at least twice.

Petitioner learned of a similar incident at the University of Michigan-Dearborn where respondent had enrolled in courses and had harassed and stalked an instructor there. Petitioner felt that there was a similar pattern of conduct in this case. Petitioner denied that she sought the PPO because of that other incident, but rather because she felt threatened by respondent's conduct toward her. Campus police conducted a background check on respondent and discovered that three prior PPOs had been issued against her.

Respondent admitted sending the inappropriate emails and the magazine to petitioner, but denied stalking or harassing petitioner. She claimed that she went to petitioner's office on two occasions in order to retrieve the magazine, even though she had been warned by a school dean at the university not to have any contact with petitioner.

During the hearing on the petition, the trial court took judicial notice of the files in the previous PPO matters and considered the testimony about the similar incident at the University of Michigan-Dearborn in deciding whether to grant the PPO.

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]¹ or 411i [aggravated stalking]² of the Michigan penal code . . . ’ MCL 600.2950a(1).” *Pobursky v Gee*, 249 Mich App 44, 46; 640 NW2d 597 (2001). “Relief 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

¹ MCL 750.411h.

² MCL 750.411i.

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). Therefore, in order to find a person guilty of stalking, there must be evidence of two or more acts of unconsented contact that actually causes 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).

Respondent argues that the trial court erroneously considered evidence of the other PPOs issued against her, because this evidence was not admissible under MRE 404(a) or (b). Generally, this Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). However, preliminary questions of law, such as whether a rule of evidence precludes admissibility of the evidence, are reviewed de novo. *Id.*

Although we agree that none of the four grounds discussed in MRE 404(a)(1) - (4) apply in this case, the record does not disclose that the trial court relied on those grounds as a basis for admission. Rather, it is apparent from the trial court's comments that it considered this evidence only under MRE 404(b).

MRE 404(b)(1) provides that

[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

The logic behind this rule is that a jury must find against a party on the facts of the case, not because that party is a bad person. *People v Crawford*, 458 Mich 376, 384; 582 NW2d 785 (1998). But

[e]vidence of other crimes, wrongs or acts is admissible under MRE 404(b) if the evidence is (1) offered for a proper purpose and not to prove the defendant's character or propensity to commit the crime, (2) relevant to an issue or fact of consequence at trial, and (3) sufficiently probative to outweigh the danger of unfair prejudice, MRE 403. *People v Ho*, 231 Mich App 178, 185; 585 NW2d 357 (1998).

In this case, respondent offered an innocent explanation for her continued contact with petitioner, her professor, and denied that she was stalking her. Evidence that respondent was subject to prior PPOs under very similar circumstances was relevant to show a scheme or plan of engaging in unconsented conduct amounting to harassment against college instructors, thereby rebutting respondent's innocent explanations for her conduct. Thus, the evidence was properly considered under MRE 404(b).

Even if the evidence of the other PPOs was inadmissible, however, reversal is not required. The trial court indicated that the facts of this case alone supported a PPO. There was evidence that respondent committed at least two acts of unconsented contact that caused emotional distress to petitioner, and those acts would also cause distress to a reasonable person. *Nastal, supra*. Respondent initially sent inappropriate emails to petitioner. After respondent was told to stop, she sent a magazine that contained an article about love with petitioner's photograph pasted on it, and then twice tried to retrieve it after she was warned not to have further contact with petitioner. Respondent also wrote disturbing comments on the envelope in which the magazine was delivered, and those comments would cause a reasonable person to become emotionally distressed. Because these facts alone support the PPO, without regard to the evidence of the prior PPOs, any error was harmless.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ David H. Sawyer
/s/ Peter D. O'Connell