# STATE OF MICHIGAN

# COURT OF APPEALS

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BRIAN TIMOTHY DOOLEY,

Petitioner-Appellee,

v

DUANE HARTSELL,

Respondent-Appellant.

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UNPUBLISHED
December 23, 2008

No. 280833
Livingston Circuit Court
LC No. 07-039248-PH

Before: Murray, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order denying his motion to terminate an ex parte personal protection order against him. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(E).

As an initial matter, we note that the PPO at issue has expired, and therefore this appeal may be moot. "Mootness precludes adjudication of a claim where the actual controversy no longer exists . . . ." *Michigan Chiropractic Council v Comm'r of Office of Financial & Ins Services*, 475 Mich 363, 371 n 15; 716 NW2d 561 (2006). An issue becomes moot when an event occurs that renders it impossible for the reviewing court to provide a remedy. *Attorney General v Pub Service Comm*, 269 Mich App 473, 485; 713 NW2d 290 (2005). However, a question may not be moot if it will continue to have collateral legal consequences. *Mead v Batchlor*, 435 Mich 480, 486; 460 NW2d 493 (1990).

In this case, even though the order restraining respondent's liberties has expired, respondent suggests that it may remain entered in the Law Enforcement Information Network (LEIN), upon which the police rely, because there is no statutory provision for the removal of an expired PPO. See MCL 600.2950a(12), (14), and (16). However, if this Court were to vacate the PPO, the LEIN should then be updated to reflect the order has been rescinded, terminated, or modified. See MCL 600.2950a(16). Because it is possible for this Court to provide some remedy, we deem this appeal justiciable.

Respondent contends that the PPO should not have been issued ex parte because petitioner misrepresented to the trial court that petitioner was in fear of immediate and irreparable injury from respondent. We disagree.

A PPO is an injunctive order. MCL 600.2950a(29)(c). The grant of an injunctive order "is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002); *Kern v Homestead Dev Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1998). The trial court abuses its discretion when its decision results in an outcome falling outside the principled range of outcomes. *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (2006); *Herald Co v Eastern Michigan Univ Bd of Regents*, 475 Mich 463, 467; 719 NW2d 19 (2006). "[T]he burden of justifying continuation of a PPO granted ex parte is on the applicant for the restraining order." *Pickering*, *supra* at 699, citing MCR 3.310(B)(5).

A PPO may be issued ex parte only where "it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will precipitate adverse action before a personal protection order can be issued." MCL 600.2950a(9); see also MCR 3.703(G) and MCR 3.705(A)(2). Failure to serve an order does not affect its validity or effectiveness. MCR 3.706(D).

Petitioner provided the trial court with specific and uncontroverted factual assertions satisfying the requirements of MCL 600.2950a(9) and allowing for the grant of an ex parte PPO. In the questionnaire attached to his petition, petitioner specifically reported that, on March 10, 2007, respondent attempted to run petitioner off the road. Petitioner also testified that twice during that month, he and his wife were in the car when respondent started driving his car toward them in an "aggressive" manner. Not only was petitioner's physical well being threatened when respondent attempted to run him off the road, and drove at petitioner and his wife, but that behavior also threatened the loss of, or damage to, petitioner's automobile. Additionally, while respondent had been belligerent toward petitioner for years, the increase in respondent's threats and hostility during March 2007 allowed the trial to court to find that any delay resulting from effectuating notice on respondent would have placed petitioner in danger of immediate and irreparable injury, loss, or damage. Therefore, the finding that the PPO was properly issued in the first instance was clearly not a decision lying outside a principled range of outcomes.

Respondent attempts to show that the PPO was invalid because petitioner waited three months before seeking to protect himself by serving it on respondent. More specifically, respondent argues that this delay indicates that petitioner did not have the fear of immediate and irreparable injury required by statute for a PPO. This argument lacks merit. MCR 3.705(A)(4) and MCR 3.706(D) explicitly provide that failure to serve a PPO does not affect the validity of the order. The PPO was in fact enforceable against respondent from the moment it was signed by the judge, regardless of service. See MCL 600.2950a(6). Therefore, petitioner did not need to serve respondent in order to protect himself, and his delay in doing so should not be deemed evidence that petitioner did not satisfy the requirements of MCL 600.2950a(9). Additionally, respondent has misstated the applicable standard. MCL 600.2950a(9) requires an objective showing of specific facts—a standard that petitioner has clearly satisfied—and not a subjective showing of fear.

Lastly, respondent contends the trial court abused its discretion when it showed deference to the predecessor judge who had originally issued the PPO. We disagree. The record clearly indicates that the successor judge was deferential to his fellow judge only in regard to the latter's decision to enter the order without a hearing, not in regard to the issuance of the order itself.

For these reasons, respondent has not shown abuse of discretion in this matter.

Affirmed.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Kurtis T. Wilder