

STATE OF MICHIGAN
COURT OF APPEALS

NANCY SUE LOLL,

Petitioner-Appellee,

v

CYNTHIA LOUISE DECATOR,

Respondent-Appellant.

UNPUBLISHED

June 25, 2009

No. 282823

Mecosta Circuit Court

LC No. 07-018306-PH

KENNETH ALAN LOLL,

Petitioner-Appellee,

v

CYNTHIA LOUISE DECATOR,

Respondent-Appellant.

No. 282824

Mecosta Circuit Court

LC No. 07-018307-PH

Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

PER CURIAM.

In this consolidated case, respondent appeals as of right from the trial court's orders modifying two ex parte personal protection orders ("PPOs") previously entered against her. Respondent had moved to terminate the PPOs, but the trial court instead modified the PPOs to restrain respondent from confronting, communicating or approaching petitioners. We affirm.

We first address respondent's claims that the trial court clearly erred in finding that respondent harassed petitioners and respondent's actions caused petitioners to suffer significant emotional distress.

I. Standard of Review

A PPO is an injunctive order. Therefore, this Court reviews a trial court's decision regarding the termination of a PPO for an abuse of discretion. *Pickering v Pickering*, 253 Mich App 694, 700-701; 659 NW2d 649 (2002); MCL 600.2950(30)(c). An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled

outcomes. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). This Court reviews a trial court's findings of fact for clear error. *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006). Factual findings are clearly erroneous if there was no evidentiary support for them or the reviewing court is left with a definite and firm conviction that the trial court made a mistake. *Hill v City of Warren*, 276 Mich App 299, 305; 740 NW2d 706 (2007). Great deference is generally afforded to the trial court, which is in a better position to examine the facts. *Id.* The issuance of PPOs is governed by statute. Questions of statutory interpretation are reviewed de novo. *State Farm Fire & Casualty Co v Corby Energy Services, Inc.*, 271 Mich App 480, 483; 722 NW2d 906 (2006).

II. Legal Analysis

Under MCL 600.2950(4), the trial court must issue a PPO if it finds that “there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1).” The relevant acts include “[e]ngaging in conduct that is prohibited under section 411h [stalking] or 411i [aggravated stalking] of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.” MCL 600.2950(1)(i). The petitioner bears the burden of establishing reasonable cause for issuance of a PPO. *Kampf v Kampf*, 237 Mich App 377, 385-386; 603 NW2d 295 (1999). The same burden applies to the petitioner for establishing a justification for the continuance of a PPO at a hearing on a motion to terminate the PPO. *Pickering, supra* at 699; MCR 3.310(B)(5). The trial court must consider the testimony, documents, and other evidence proffered and whether the respondent had previously engaged in the listed acts. MCL 600.2950(4)(a) and (b). For both petitioners, Nancy Loll and Kenneth Loll, the trial court found that the complained of conduct fell under MCL 750.411h.

MCL 750.411h(1)(d) defines stalking 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.” “‘Course of conduct’ means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.” MCL 411h(1)(a).

The trial court concluded both petitioners had been harassed. MCL 750.411h(1)(c) provides:

“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.

As provided in MCL 750.411h(1)(e):

“Unconsented 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. 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.

Petitioners have lived next next-door to respondent since approximately 1996. Petitioners testified that they experienced problems with respondent the entire time. The problems ranged from trivial fence disputes to allegations that respondent repeatedly filed false police reports against petitioners. The trial court primarily declined to terminate the PPOs based on the four instances in which respondent contacted the police and falsely accused petitioners of committing crimes. First, respondent accused Kenneth Loll of damaging her car. Next, she accused him of peeking in her windows and breaking into her house. On another occasion, respondent claimed Nancy Loll trespassed on her property when, while mowing an elderly neighbor's yard, she strayed onto respondent's lawn. Finally, respondent accused both petitioners of stealing a fascia board while her roof was being redone. The un rebutted testimony of petitioners, which the trial court clearly found credible, established that on each of these occasions respondent's calls to the police were baseless and targeted to falsely accuse petitioners of crimes. *Pickering, supra* at 702. Given these findings, we cannot conclude the trial court erred in finding that respondent initiated unconsented contact with the petitioners by falsely accusing them of crimes.

We also conclude that the trial court could rationally conclude that petitioners suffered emotional distress.

“‘Emotional distress’ means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.” MCL 750.411h(1)(b). Further, there is not requirement that the distress must “manifest itself as fear.” *Hayford v Hayford*, 279 Mich App 324, 331-332; 760 NW2d 503 (2008).

We cannot conclude the trial court erred in finding that respondent suffered emotional distress from respondent repeatedly accusing them of crimes they did not commit. Petitioners, acting in pro per, both testified at the hearing to terminate the PPO and related their respective accounts of respondent's actions to the trial court. The trial court questioned petitioners at length and found their testimony credible. During the hearing, petitioners testified that they were disturbed by respondent's action and that they were scared that respondent would retaliate against them. Although neither petitioner parroted the phrase, “significant emotional distress”

we conclude the trial court could reasonably glean from their testimony that respondent's actions caused petitioners to suffer significant emotional distress. As previously stated, the trial court was in a superior position to evaluate whether petitioners suffered significant emotional distress. Therefore, we conclude that the trial court did not clearly err in finding respondent's conduct actually caused petitioners to suffer emotional distress as defined by the statute.

Respondent last argues that the trial court erred in concluding that respondent's behavior did not constitute a constitutionally protected activity or serve a legitimate purpose. As provided in MCL 750.411h(1)(c), "[h]arassment does not include constitutionally protected activity or conduct that serves a legitimate purpose." It is that safe harbor of "conduct that serves a legitimate purpose" that is the basis of respondent's argument.

MCL 750.411h does not itself define "conduct that serves a legitimate purpose." Conduct that is constitutionally protected or that serves a legitimate purpose does not constitute "unconsented contact," and thus, cannot amount to harassment. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 723; 691 NW2d 1 (2005); MCL 750.411h(1)(c). The Michigan Supreme Court has interpreted the phrase "conduct that serves a legitimate purpose" to mean "conduct that contributes to a valid purpose that would otherwise be within the law irrespective of the criminal stalking statute." *Id.*

Respondent's conduct essentially consisted of calling the police and making false accusations. Defendant supplies no authority to suggest that filing false police reports is a constitutionally protected activity. When "a party fails to cite any supporting legal authority for its position, the issue is deemed abandoned." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999); see also *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (stating that an appellant may not merely announce her position and leave it to this Court to discover and rationalize the basis for her claims, nor may she give issues cursory treatment with little or no citation to supporting authority).

Also, there is no evidence that respondent's conduct served a legitimate purpose. The unrebutted evidence established that the reports to the police by respondent were baseless. Respondent presented no evidence to support her accusations and there is no evidence that any charges resulted from these accusations. Kenneth Loll denied breaking in respondent's house, peeking in her windows, or damaging her car. Both petitioners denied stealing the fascia board from respondent and testified that an officer looked in their garage for it. Making false accusations to the police and filing a false police report is not within the law and does not contribute a valid purpose. See *Nastal, supra*, at 723. Although respondent has never been

prosecuted for filing a false police report, the trial court made a finding based on petitioners' unrebutted testimony that respondent's conduct amounted to filing false police reports. Therefore, we conclude that the trial court properly found that respondent's conduct did not serve a legitimate purpose.

Affirmed.

/s/ Brian K. Zahra
/s/ William C. Whitbeck
/s/ Michael J. Kelly