

STATE OF MICHIGAN
COURT OF APPEALS

BRAD H. NIVA,

Petitioner-Appellee,

v

ANDREA NAJER,

Respondent-Appellant.

UNPUBLISHED

March 18, 2010

No. 287806

Oakland Circuit Court

LC No. 2008-747593-PH

LAURA MACLENNAN,

Petitioner-Appellee,

v

NELSON NAJER,

Respondent-Appellant.

No. 287807

Oakland Circuit Court

LC No. 2008-747594-PH

Before: Davis, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

In these consolidated cases, respondents appeal as of right from the trial court's entry of personal protection orders (PPOs). We vacate the PPOs.

Petitioners alleged that their neighbors, respondents, were unnecessarily driving by petitioners' home and making inappropriate comments and gestures. During the testimony given by petitioners, counsel for respondents raised an objection. The trial judge instructed counsel to allow petitioners to tell their "side of the story," then commented that "PPO hearings are the worst thing that has ever come [sic] before the justice system in the United States of America." Counsel for respondents argued that there was a long running dispute between petitioners and the residents of the neighborhood. Therefore, thirteen residents from the neighborhood had appeared to give testimony. Additionally, due to the dispute, it was alleged that residents had placed video cameras on their homes to record the harassment and abuse by petitioners. The trial court stated that it would not hear testimony from thirteen witnesses on a PPO case, and would examine very little of the videotape, commenting that "[t]hese PPOs do not deserve the dignity of a full-blown trial hearing, and they're not getting it from me."

Before respondents were allowed to testify, the trial court stated that “there’s so much animosity in this situation, that somebody does need personal protection orders.” Counsel for respondents asked for the opportunity to present their case. However, the trial court had signed the order before allowing both respondents to testify. Additionally, the trial court advised respondents that they should seek to file requests for PPOs against petitioners. When counsel for respondents inquired about the basis for the entry of the PPOs, the trial court stated that “animosity” was the reason for the PPOs. Respondent Andrea Najer denied any harassment of petitioners and cited videotape to prove that no harassment occurred on the dates alleged by petitioners. The trial judge stated, “They took an oath to tell the truth, you took an oath to tell the truth and who am I supposed to believe?” Counsel for respondents offered the videotape as proof of which party should be believed, but the trial court refused to watch the videotape and declined the opportunity to assess the credibility of the witnesses. Rather, the trial court repeatedly stated that the “animosity” was the reason for the PPOs and encouraged respondents to file their own petition. The trial court then declared that the hearing was over. Respondents appeal as of right.

Respondents allege that the trial court deprived them of due process of law when it refused to allow them the opportunity to present a meaningful defense. We agree. Due process enforces the rights enumerated in the Bill of Rights and includes both substantive and procedural due process. *Kampf v Kampf*, 237 Mich App 377, 381-382; 603 NW2d 295 (1999). Procedural due process serves as a limitation on government action and requires government to institute safeguards in proceedings that affect those rights protected by due process, including life, liberty, or property. *Id.* at 382. Due process is a flexible concept applied to any adjudication of important rights. *Thomas v Pogats*, 249 Mich App 718, 724; 644 NW2d 59 (2002). The procedural protections, which include fundamental fairness, are based on what the individual situation demands. *Id.* Fundamental fairness includes: (1) consideration of the private interest at stake; (2) the risk of an erroneous deprivation of such interest through the procedures used; (3) the probable value of additional or substitute procedures; and (4) the interest of the state or government, including the function involved and the fiscal or administrative burdens imposed by substitute procedures. *Dobrzanski v Dobrzanski*, 208 Mich App 514, 515; 528 NW2d 827 (1995). In civil cases, due process generally requires notice of the nature of the proceedings, a meaningful time and manner to be heard, and an impartial decision maker. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). The opportunity to be heard does not require a full trial-like proceeding. *Id.* However, it does require a hearing such that a party has the chance to learn and respond to the evidence. *Id.* Issues of witness credibility present a question for the trier of fact, and we defer to the trier of fact’s special opportunity to judge the witnesses who appear before it. *In re Clark Estate*, 237 Mich App 387, 395-396; 603 NW2d 290 (1999).

In the present case, the trial court deprived respondents of a meaningful opportunity to defend the case. The trial court signed the orders granting the PPOs while the hearing was proceeding and before respondents had the opportunity to place all of their proofs on the record. Additionally, the trial court denied respondents request to hear additional witnesses or to view partial portions of videotape. The trial court did not allow respondents to make an offer of proof to preserve the evidence for review on appeal. MRE 103(a)(2); *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 291; 730 NW2d 523 (2006). Finally, the trial court refused to assess the credibility of the witnesses despite the fact that the PPOs would be entered in the law

enforcement's LEIN system. See MCL 600.2950a(14). Accordingly, we vacate the trial court's entry of the PPOs in this case.

Review of the lower court record reveals that the PPOs expired on August 29, 2009. The parties have not provided any supplemental information regarding any extension of the PPOs. Accordingly, we do not remand for additional proceedings. In light of our holding, we need not address respondents' animosity challenge.

Vacated. We do not retain jurisdiction.

/s/ Alton T. Davis

/s/ Karen M. Fort Hood

/s/ Deborah A. Servitto