

STATE OF MICHIGAN
COURT OF APPEALS

ESTHER MORRIS,

Plaintiff-Appellee,

v

PAT RYAN,

Defendant-Appellant.

UNPUBLISHED

May 10, 2011

No. 297557

Clinton Circuit Court

LC No. 10-021942-PH

Before: DONOFRIO, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order denying in part his motion to terminate the personal protection order (PPO) granted to petitioner. For the reasons set forth in this opinion, we affirm.

Respondent appeals as of right the trial court's March 25, 2010 order denying in part his motion to terminate petitioner Esther Morris's personal protection order (PPO) against him. Respondent contends that the trial court abused its discretion because petitioner failed to meet her burden for the PPO and the trial court's findings of fact were clearly erroneous.

On February 24, 2010, petitioner petitioned for a non-domestic PPO against respondent based on harassment, which included telephone calls and making comments to petitioner and her coworkers at her workplace. On February 24, 2010, the trial court granted petitioner an ex parte PPO, which expired August 24, 2010. The trial court found that respondent made "unconsented, threatening, and harassing contacts with [petitioner]." The PPO prohibited respondent from following petitioner, appearing at her workplace or residence, approaching or confronting her in a public place or on private property, sending mail or other communications to her, or contacting her by telephone.

The conflict between petitioner and respondent arose because petitioner's husband claimed that respondent had not properly repaired their furnace, and he refused to fully pay for the repair. Shortly thereafter, petitioner's husband died. Following the death of petitioner's husband, respondent sought payment for the repair from petitioner, but she too refused to pay the disputed amount of \$347. Eventually, respondent filed a lawsuit against petitioner for the remaining balance of the repair, and the district court entered a judgment against petitioner, which petitioner paid respondent approximately one week after the judgment was entered.

Payment to respondent was tendered approximately a year and a half before the March 25, 2010 hearing on respondent's motion to terminate the PPO.

On March 25, 2010, a hearing was held on respondent's motion to terminate the ex parte PPO. At the hearing, petitioner testified that respondent called her on the telephone multiple times to request payment before he filed the civil lawsuit. Petitioner worked as a manager at a local restaurant in DeWitt, Michigan, which respondent frequented, stating negative things about petitioner to her employees and customers, including comments about the lawsuit, petitioner's past, and her husband. According to petitioner, this happened "every couple weeks, every week, every couple of weeks" throughout the entire civil lawsuit court proceedings, and it continued to occur well after petitioner paid respondent. Respondent testified that he had dined at the local eating establishment since its opening on a weekly basis, usually with his technicians. Respondent claimed that since the civil lawsuit, he had not even spoken to petitioner, much less had any verbal or physical confrontations with her.

Testimony further revealed that on February 5, 2010, respondent was at the local dining establishment with his son and a technician and when in line to pay for the meal, petitioner helped the three or four people ahead of respondent, but when respondent reached the front of the line, she left, and he had to wait for another employee to come to the cash register. Respondent admitted that he told one of the employees, "I guess [petitioner] is still mad at me over the court case, and she won't wait on me." Respondent's son Steven Ryan and a technician Todd Marsh, testified that they had not heard respondent make negative comments regarding petitioner at the dining establishment on February 5, 2010 or on any previous visits.

Petitioner claimed respondent was being loud and boisterous. She became very upset by a comment respondent made about her deceased husband and contacted a sheriff's deputy. On February 6, 2010, a sheriff's deputy called respondent on the telephone and warned him not to go to the dining establishment where petitioner worked or he would be arrested. Following this incident, petitioner testified that the managers and owners banned respondent from the local dining establishment.

Respondent argued that petitioner had failed to carry her burden because she had not demonstrated specific facts to prove that she was in imminent harm. The trial court responded that petitioner testified that "on multiple occasions [respondent] by her testimony went into her place of work, has spoken ill of her to people she works with and patrons at the restaurant." Therefore, the trial court found petitioner had "two noncontinuous acts that could be construed as harassment and intimidation, that [was] a sufficient basis, she [had] presented a case." Based on its findings, the trial court denied respondent's motion to terminate the PPO in part but entered an amended PPO with an expiration date of June 24, 2010 instead of August 24, 2010. At the hearing, the trial court found there was harassment as defined under 750.411(h), explaining:

[Petitioner] has indicated that since she paid him in full there have been times where she has come . . . he has come into her place of business and made disparaging comments to coworkers, employees, whatever you want to call it, and that have been overheard by the patrons at the place of her employment. So much that law enforcement got involved and the owners made a decision that this gentlemen was not to come back to his [sic] restaurant . . . and by [respondent's]

own admission he got a call from the sheriff's department that told him not to go back there. So apparently something has continued to occur. Clearly she hasn't wanted contact, she turns away from him, she walks away when he is at the register, it's clear that she doesn't want this. She's testified she has suffered emotional distress and I think her testimony is credible and particularly when some of these comments not only talk about her or the lawsuit but she indicated there was some comment about her deceased husband.

When respondent questioned the trial court as to the specific facts that constituted harassment, the trial court responded:

Going to her place of employment, talking with her . . . talking with her employees, talking in a manner that's overheard by customers, talking about the lawsuit and disparaging her, disparaging her deceased husband and causing her emotional distress. And again, it was to the extent that the owners had to step in, have law enforcement ask him not to come back. He's banned, not by [petitioner], but by her employer from that establishment because of what has occurred.

On appeal, respondent argues that the trial court's findings of facts supporting its decision to deny respondent's motion to terminate the PPO were not supported by the record, and they were insufficient to constitute stalking. Further, respondent argues that petitioner failed to meet her burden for establishing reasonable cause for the PPO and justification for the continuance of the PPO. According to respondent, this case reflects nothing more than the trial court's desire to impose a "cooling off" period, which is not a legally justifiable reason for a PPO.

A PPO is an injunctive order. MCL 600.2950(30)(c). Granting a PPO is within the sound discretion of the trial court and is reviewed for an abuse of discretion. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008); *Jeffrey v Clinton Twp*, 195 Mich App 260, 263; 489 NW2d 211 (1992). An abuse of discretion is not simply a matter of a difference in judicial opinion; it occurs only when the trial court's decision was outside the range of reasonable and principled outcomes. *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007).

This Court "review[s] the trial court's factual findings for clear error." *Brandt v Brandt*, 250 Mich App 68, 72; 645 NW2d 327 (2002). There is clear error when there is "no evidentiary support for [the factual findings] or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake." *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007), lv den 480 Mich 1195 (2008). "This Court affords great deference to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Lumley v Bd of Regents for Univ of Mich*, 215 Mich App 125, 135; 544 NW2d 692 (1996), lv den 454 Mich 876 (1997).

A court may enter a PPO to restrain an individual from engaging in conduct that is prohibited by MCL 750.411h or MCL 750.411i only if the petition alleges facts that constitute stalking as defined by MCL 750.411h or MCL 750.411i. MCL 600.2950a(1). MCL 750.411h(1)(d) defines harassment as "a willful course of conduct involving repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional

distress.” “Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.” MCL 750.411h(1)(d). “‘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 750.411h(1)(a). Unconsented contact is “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.” MCL 750.411h(1)(e). Under MCL 750.411h(1)(e), unconsented contact includes but is not limited to the following:

- (i) Following or appearing within the sight of that individual.
- (ii) Approaching or confronting that individual in a public 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 petitioner bears the burden of establishing reasonable cause for issuance of a PPO, and of establishing a justification for the continuance of a PPO at a hearing on the respondent’s motion to terminate the PPO.” *Hayford*, 279 Mich App at 326. In determining whether the petitioner carried her burden, “[t]he trial court must consider the testimony, documents, and other evidence proffered and whether the respondent had previously engaged in the listed acts.” *Id.*

Petitioner presented evidence regarding respondent’s course of conduct in coming to her workplace on numerous separate occasions and making “unconsented harassing comments” about the civil lawsuit, petitioner’s past, and her deceased husband to her and her employees that were overheard by customers. There was evidence that these comments were unconsented because petitioner avoided respondent whenever possible even if it meant simply walking away from him. She also testified that the comments were emotionally upsetting to her.

Respondent contends that his conduct was not harassment because he regularly dined at the eating establishment where petitioner was employed and his comments served the legitimate purpose of collecting debt. However, the harassment was based on respondent’s alleged comments, not simply his presence at the eating establishment, and the comments continued after respondent collected the debt. Although respondent had a legitimate claim against petitioner for the repair debt and arguably there was a close question regarding whether his conduct amounted to harassment, the trial court’s decisions were not outside of the range of reasonable and principled outcomes in light of the evidence presented. *Saffian*, 477 Mich at 12.

The trial court’s factual findings did not constitute clear error because there was sufficient evidentiary support for the findings in the record. In the amended PPO, the trial court

found that respondent made unconsented harassing comments, and at the hearing, the trial court specified that there was harassment because respondent went to petitioner's place of employment and made comments to her and her employees that were overheard by customers. The comments concerned the lawsuit respondent filed against petitioner and disparaged her and her deceased husband. Additionally, they caused her emotional distress and resulted in respondent being banned from the restaurant. Despite conflicting evidence regarding respondent's comments, this Court affords great deference to the trial court's ability to judge the credibility of the witnesses. *Lumley*, 215 Mich App at 135. Consequently, this Court should not be left with a definite and firm conviction that the trial court made a mistake. See *Hill*, 276 Mich App at 308.

Affirmed. Petitioner, did not submit a brief in this matter, no costs are awarded. MCR 7.219(A).

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Jane M. Beckering