

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN M. METHNER,

Petitioner-Appellee,

v

ARDEN STANLEY PIERSON, JR.,

Respondent-Appellant.

UNPUBLISHED

October 25, 2011

No. 298545

Grand Traverse Circuit Court

LC No. 2010-007353-PP

Before: STEPHENS, P.J., and SAWYER and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's denial of his request to terminate an ex parte personal protection order (PPO) that had been granted to petitioner. We affirm.

Respondent first argues the ex parte PPO issued in this instant case was void because the trial court failed to decide whether to issue it within 24 hours of petitioner's filing. We find this argument to be without merit. MCR 3.705(1) requires a court to "rule on a request for an ex parte order within 24 hours of the filing of the petition." However, our review of the lower court record indicates that the PPO was, in fact, ruled upon within 24 hour of petitioner's filing, as provided for in MCR 3.705(A)(1). In any event, even if the trial court had not ruled on the request within 24 hours, the effect of the delay would not be to render the untimely order void. Court rules are interpreted using the same principles that govern statutory interpretation. *Wilcoxon v Wayne Co Neighborhood Legal Servs*, 252 Mich App 549, 553; 652 NW2d 851 (2002). The stated time for performance set forth in a statute should be viewed as directory, rather than mandatory, when there is no language denying performance after the specified time. *In re Forfeiture of Bail Bond (On Remand)*, 276 Mich App 482, 495-496; 740 NW2d 734 (2007). Here, the court rule provides no direction that failure to respond to a request for a PPO within 24 hours is to result in mandatory denial of the petition.

Respondent next argues petitioner failed to meet her burden of proof. We disagree. MCL 600.2950 governs the issuance of a PPO in cases where the petitioner and the person to be restrained are or were married, in a dating relationship, or cohabitated. MCL 600.2950(4) requires a court to issue a PPO if it determines there is reasonable cause to believe that the individual to be restrained will engage in certain conduct, including entering onto premises, assaulting the petitioner, interfering with the petitioner's place of employment, or acts that would constitute stalking under MCL 750.411h, MCL 750.411i, or MCL 750.411s. MCL

600.2950(1),(4). The burden of proof in obtaining a PPO is on the applicant. *Kampf v Kampf*, 237 Mich App 377, 385-386; 603 NW2d 295 (1999); MCR 3.310(B)(5).

In the instant case, petitioner testified that she had been subject to sexual and physical abuse by respondent in the past and that respondent continued to enter her home without permission even after being told not to. Petitioner also stated that respondent disturbed her at her place of employment. This testimony formed a sufficient basis to grant the requested PPO. We acknowledge that respondent denied these allegations. However, this does not equate to a lack of evidentiary support for petitioner's allegations. In addition, we recognize the trial court's superior position to assess issues of witness credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000).

Respondent finally argues that the issuance of the PPO in this case was improper because the petitioner was a prisoner. Respondent relies on MCL 600.2950a(31), which prohibits a court from issuing a PPO if the petitioner is a prisoner. However, that provision applies specifically to that section. MCL 600.2950a governs the issuance of a PPO in cases where the petitioner and the person to be restrained *are not* and *have not* been married, in a dating relationship, or cohabitated. As noted above, petitioner sought a PPO pursuant to MCL 600.2950, which has no similar prisoner limitation.

Moreover, even if we were to infer that the prisoner limitation applied to a request for a PPO brought pursuant to MCL 600.2950, there is nothing in the record before us to indicate that petitioner fell within the definition of "prisoner," which is defined in the statute as "a person subject to incarceration, detention, or admission to a prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of federal, state, or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program." MCL 600.2950a(32)(e). There is nothing in the lower court record that indicates that petitioner was subject to incarceration, detention, or admission to a prison at the time the request for the PPO was made.

Affirmed. Petitioner may tax costs.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly