

STATE OF MICHIGAN
COURT OF APPEALS

ARDEN STANLEY PIERSON, JR.,
Petitioner-Appellant,

UNPUBLISHED
October 25, 2011

v

PAM BLUE,

Respondent-Appellee.

No. 299122
Grand Traverse Circuit Court
LC No. 2010-007505-PH

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

PER CURIAM.

Petitioner appeals as of right the trial court's denial of his request for a personal protection order (PPO) against respondent. We affirm.

Following a hearing to address petitioner's request for a PPO, the referee made the following findings: (1) that petitioner had failed to present any evidence indicating that respondent had engaged in any behavior that would support the issuance of a PPO, and (2) that respondent owed no duty of confidentiality to petitioner. Consequently, the referee made a recommendation that the petition be denied. The trial court denied the petition in an order that referenced the referee's recommendation.

As an initial matter, we note that petitioner's brief on appeal is lacking in that it fails to comply with MCR 7.212, references matters not before this Court in this appeal, and contains little cogent discussion or citation to authority. An appellant may not merely announce his position and then leave it to this Court to discover and rationalize the basis for his claims. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Failure to meet this burden can result in this Court treating a claim as abandoned. *Id.* Nevertheless, we will address the merit of petitioner's claims below.

We review a trial court's ultimate decision related to a request for a PPO for an abuse of discretion. *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002). In addition, we review the trial court's findings of fact for clear error. *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006). Concurrent issues of law or statutory interpretation are reviewed de novo. *Esselman v Garden City Hosp*, 284 Mich App 209, 216; 772 NW2d 438 (2009); *Auto Club Ins Ass'n v General Motors Corp*, 217 Mich App 594, 598; 552 NW2d 523 (1996).

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. MCL 600.2950a(1) requires the petitioner to allege “facts that constitute stalking” under MCL 750.411h, MCL 750.411i, or MCL 750.411s. Pursuant to MCL 750.411h(1)(d),

“[s]talking” means 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.

Here, in order to claim that respondent had engaged in stalking behavior, petitioner relied on the following definitions in MCL 750.411h(1):

(a) “Course of conduct” means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) “Harassment” means 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.

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 support of his contention that he was entitled to a PPO, petitioner alleged that he contacted respondent, who is a probation officer, on two occasions to report that one of respondent’s probationers had violated the terms of her probation. According to petitioner, respondent revealed petitioner’s identity as the person who had reported the violation and, as a result of the disclosure, he suffered emotional distress. However, respondent testified that she did not reveal petitioner’s identity to the probationer involved, but that the probationer guessed petitioner’s identity upon being informed that a report of a probation violation had occurred. In addition, respondent alleged that petitioner initiated the contact on both occasions, either by sending a letter or calling respondent. Petitioner presented no admissible evidence to contradict this testimony. Thus, the facts presented do not support a finding of a willful course of conduct on the part of respondent, or harassment of petitioner.

Moreover, even if we were to assume for the sake of argument that respondent did disclose petitioner’s identity, we must conclude that the trial court did not abuse its discretion in denying petitioner’s request for a PPO. Petitioner has failed to establish that respondent engaged in behavior that, even if true, would constitute stalking and thus merit the issuance of a PPO. We cannot agree with petitioner’s characterization of respondent’s alleged conduct as “harassment.” Our review of the record demonstrates no conduct on respondent’s part that would constitute harassment under the statute. Also, while petitioner asserts that he suffered severe emotional

distress as a result of the alleged disclosure and introduced the testimony of a friend who indicated that petitioner has “changed” and seemed to be under “emotional distress,” the clear language of the statute requires that the emotional distress complained of result from conduct that would cause a “reasonable person” to feel emotional distress. As noted above, it was petitioner who initiated contact with respondent. When he made his reports he did not ask to remain anonymous, and there is no evidence in the record to support a finding that petitioner expected to be harmed or to suffer other concrete reprisals by presenting respondent with this information or by having his identity revealed. We fail to see how a person who voluntarily initiates contact with a probation officer under such circumstances to report a probation violation could reasonably suffer emotional distress upon having his identity revealed.

We further reject petitioner’s assertions that respondent owed a duty of confidentiality toward him. Petitioner’s attempt to support this position by referencing the Model Code of Conduct for Michigan Court employees is not persuasive. We find nothing in the provided passage that would indicate a probation officer is not permitted to disclose the identity of a person who reports a probation violation to the probationer involved. Moreover, as noted above, respondent denied revealing petitioner’s identity and respondent has offered no admissible evidence to refute this testimony.

Petitioner also seems to argue that he was entitled to a PPO against respondent because she had advised the probationer petitioner to seek a PPO against petitioner. Respondent admitted to making such recommendation. However, petitioner has failed to adequately support his assertion that such recommendation, standing alone, should justify petitioner obtaining a PPO against respondent. Defendant does not address how this could be construed as anything other than “conduct that serves a legitimate purpose” pursuant to MCL 750.411h(1)(c). The trial court’s decision to award the probationer a PPO in her separate petition was based solely upon the evidence presented concerning petitioner’s interactions with the probationer, and is inapplicable to resolving whether a PPO against respondent was justified in the instant case.

Finally, we elect to disregard petitioner’s occasional references to the conduct of one of the lower court judges. There is nothing in the record before us to demonstrate that the alleged contact occurred. Moreover, petitioner has failed to articulate how such conduct would have had any bearing on the decision to deny the requested PPO.

Affirmed. Respondent may tax costs.

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