

STATE OF MICHIGAN
COURT OF APPEALS

CYNTHIA GAY ARSNOE,

Petitioner-Appellee,

v

JENNIFER ANDREA JENKINS,

Respondent-Appellant.

UNPUBLISHED
September 20, 2012

No. 306037
Kalkaska Circuit Court
LC No. 11-010758-PH

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

The circuit court issued a personal protection order (PPO) in petitioner Cynthia Gay Arsnoe’s favor against her sister-in-law, respondent Jennifer Andrea Jenkins. The PPO barred Jenkins from entering Arsnoe’s workplace and property, or confronting Arsnoe in public. Because Arsnoe alleged and established facts that constitute stalking under MCL 750.411h, the circuit court properly entered the order and we affirm.

We review a trial court’s decision to grant a PPO for an abuse of discretion and its underlying factual findings for clear error. *Hayford v Hayford*, 279 Mich App 324, 325-326; 760 NW2d 503 (2008). “The petitioner bears the burden of establishing reasonable cause for issuance of a PPO[.]” *Id.* at 326. When determining whether to grant the order, “[t]he trial court must consider the testimony, documents, and other evidence proffered[.]” *Id.*

MCL 600.2950a(1) governs the issuance of nondomestic PPOs and provides in part:

[A]n individual may petition the family division of circuit court to enter a [PPO] to restrain or enjoin an individual from engaging in conduct that is prohibited under . . . MCL 750.411h, 750.411i, and 750.411s. Relief under this subsection shall not be granted unless the petition alleges facts that constitute stalking as defined in [MCL 750.411h or 750.411i], or conduct that is prohibited under . . . MCL . . . 750.411s.

MCL 750.411h, as relied upon by Arsnoe, proscribes stalking. “Stalking” is defined under MCL 750.411h 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.” MCL 750.411h(d) (emphasis

added). “Harassment” in turn 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.” MCL 750.411h(c) (emphasis added). MCL 750.411h(e) lists examples of “unconsented contact”:

- (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

MCL 750.411h(1)(a) defines “course of conduct” as “a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.”

Jenkins is married to Arsnoe’s brother. Both women’s husbands formed a partnership and purchased Jenkins Potato Farm from Arsnoe’s parents, and have run the business together since 1998. Arsnoe does the Farm’s bookkeeping and human resources work. Jenkins was hired as a Farm employee in 2005, began dating Arsnoe’s brother, and the two married in 2007. Arsnoe testified that the family dynamic began to disintegrate after her brother’s marriage. She described an incident in September 2009 in the Farm’s parking lot when Jenkins and Arsnoe’s brother were angry that Arsnoe had hired a particular employee. During the dispute, Arsnoe asked Jenkins to refrain from using profanity. Jenkins admitted that she told Arsnoe to “get used it” and proceeded to “rattl[e] off” the “F word” several times. Jenkins claimed this occurred as Arsnoe walked away, but Arsnoe testified that Jenkins yelled in her face.

Arsnoe also testified that, in April 2010, Jenkins approached her during a family meal at a local restaurant and called her a “psychotic bitch.” Jenkins admitted to this incident as well, but claimed that Arsnoe began the conflict the previous day by threatening to end Jenkins’ mother’s employment at the Farm.

Arsnoe then testified to three incidents at the end of May 2011, which led to her seek a PPO. First, Jenkins yelled in front of Farm employees that her husband had to fire Arsnoe or she would divorce him. Jenkins denied this claim, but her own witness confirmed it. Arsnoe claimed that the following day Jenkins entered the Farm warehouse where several employees were working and purposefully screamed, in order to be heard over the din, vulgar insults about Arsnoe. Arsnoe’s husband confirmed this event. Jenkins admitted to yelling vulgarities about Arsnoe but justified her behavior, claiming that Arsnoe was not actually present. Finally, on May 31, 2011, Jenkins was a passenger in a vehicle driven by her father. Jenkins admittedly yelled obscenities from the car window as they passed Arsnoe’s house. Jenkins claimed that she merely responded to Arsnoe’s daughter who first shouted profanity at her. Arsnoe was inside the house at the time, but heard the insult through an open window.

The circuit court initially denied Arsnoe's petition for a PPO based solely on the pleadings. On Arsnoe's objection, the court conducted a hearing pursuant to MCL 600.2950a(7). The court entered the order thereafter.

The evidence presented was sufficient to establish harassment, and therefore stalking, under MCL 750.411h to support the issuance of a PPO under MCL 600.2950a(1). Jenkins engaged in "unconsented contact" with Arsnoe by approaching her at a restaurant and appearing at Arsnoe's home and workplace. Arsnoe testified that she asked Jenkins not to use profanity but Jenkins continued to do so. As such, the contact was made without Arsnoe's consent. The unconsented contact began in 2009 and occurred with more frequency as time went on. Arsnoe and her husband testified that she suffered emotional distress as a result of Jenkins behavior, crying frequently. Arsnoe also felt terrorized and harassed and was afraid to leave home or go to work lest she encounter Jenkins. Moreover, there was evidence to support the circuit court's conclusion that a reasonable person would feel terrorized and harassed by Jenkins' repeated and profane verbal attacks. We acknowledge that Jenkins presented some conflicting testimony about whether Arsnoe was present during all incidents and whether Arsnoe instigated certain conflicts. However, we defer to the circuit court's resolution of those factual disputes based on its assessment of the witnesses' credibility. *HJ Tucker & Assocs, Inc v Allied Chucker & Eng'g Co*, 234 Mich App 550, 563; 595 NW2d 176 (1999).

Affirmed.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause