

STATE OF MICHIGAN
COURT OF APPEALS

JOSHUA ALLEN COOKE,

Petitioner-Appellee,

v

ROBERT S. SCHEERE, JR.,

Respondent-Appellant.

UNPUBLISHED
February 19, 2013

No. 306074
Oakland Circuit Court
LC No. 2011-787178-PH

Before: MURPHY, C.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

Respondent, proceeding in propria persona, appeals as of right the trial court's order denying his motion to terminate a personal protection order (PPO) that petitioner had obtained against him. Because the trial court did not abuse its discretion by denying the motion or by determining that further evidence was unnecessary, we affirm.

This case involves the second of two PPOs that petitioner obtained against respondent. The first PPO prohibited respondent from stalking petitioner for the period of July 29, 2010, to July 29, 2011. On May 27, 2011, respondent was found guilty of civil contempt for violating that PPO.

On August 4, 2011, less than one week after the first PPO expired, petitioner filed a petition for a second PPO. The petition alleged that after the first PPO expired, respondent began repeatedly calling petitioner's telephone and sending him numerous text messages. The trial court entered the PPO on the same day. Respondent thereafter filed a motion to terminate the second PPO. The trial court held an evidentiary hearing, at which both petitioner and respondent testified under oath. Respondent accused petitioner of lying about various matters, but the trial court determined that respondent's own admitted conduct supported the continuance of the PPO. Respondent admitted calling or texting petitioner at least 50 times in less than one week. The court thus determined that the PPO was "completely appropriate." After denying respondent's motion, the court directed that deputies be summoned because respondent appeared violent.

Within one month after the trial court denied respondent's motion, petitioner filed two police reports against respondent for violating the PPO. The trial court entered orders to show cause why respondent should not be held in contempt for violating the PPO. The trial court adjourned hearings regarding the alleged PPO violations pending resolution of this appeal.

We review for an abuse of discretion a trial court's decision regarding the issuance of a PPO, including a decision to continue a PPO. *Hayford v Hayford*, 279 Mich App 324, 325, 329; 760 NW2d 503 (2008). We also review for an abuse of discretion a trial court's evidentiary rulings. *Craig v Oakwood Hosp*, 471 Mich 67, 76; 684 NW2d 296 (2004). We review for clear error the trial court's findings of fact. *Hayford*, 279 Mich App at 325. "The clear error standard provides that factual findings are clearly erroneous where there is no evidentiary support for them 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). We defer to the trial court's credibility determinations. MCR 2.613(C); *Pickering v Pickering*, 253 Mich App 694, 702; 659 NW2d 649 (2002).

To the extent that respondent argues that he should have been permitted to relitigate issues pertaining to the first PPO that expired on July 29, 2011, his argument lacks merit. "Collateral estoppel, or issue preclusion, precludes relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). The second PPO was sought on the basis of conduct that occurred after the first PPO expired. Thus, the trial court properly precluded respondent from relitigating issues related to the first PPO.

Respondent has also failed to establish error with respect to the trial court's decision not to entertain further proofs after hearing respondent's testimony at the evidentiary hearing. A trial court has broad power in controlling the manner in which a court proceeding is conducted. *Hartland Twp v Kucykowicz*, 189 Mich App 591; 595; 474 NW2d 306 (1991); see also MRE 611(a). The material issue before the court was whether respondent engaged in a course of conduct that constituted stalking as defined in MCL 750.411h(d), during the one-week period between the expiration of the first PPO on July 29, 2011, and the entry of the second PPO on August 4, 2011. See MCL 600.2950a(1); *Lamkin v Ingram*, 295 Mich App 701, 706; 815 NW2d 793 (2012). The trial court could properly consider the testimony, documents, and other proffered evidence in determining whether respondent engaged in stalking. *Id.* at 711.

Although the parties gave conflicting testimony concerning some of the details of respondent's repeated nonconsensual contact with petitioner during the relevant time period, respondent's own testimony describing his numerous contacts with petitioner supported the court's finding that he engaged in stalking behavior. Accordingly, the trial court did not abuse its discretion by determining that further evidence was unnecessary. Moreover, respondent has failed to establish that the trial court clearly erred by determining that he engaged in stalking or that the court abused its discretion by denying his motion to terminate the second PPO.

Affirmed. No costs.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher