

STATE OF MICHIGAN  
COURT OF APPEALS

---

RACHAEL A. LOPUCKI,  
Petitioner-Appellee,

UNPUBLISHED  
February 21, 2013

v

DAVID JAMES SCOTT,  
Respondent-Appellant.

No. 306594  
Livingston Circuit Court  
LC No. 10-043622-PH

---

Before: WHITBECK, P.J., and SAAD and SHAPIRO, JJ.

MEMORANDUM.

Respondent, a felon, seeks to overturn the trial court's order continuing the personal protection order (PPO) against him, which prevents respondent from having contact with petitioner or her minor children. For the reasons set forth below, we affirm.

Respondent argues that the trial judge was biased. Respondent initially sought to disqualify the judge on the ground that all other judges in the circuit court had disqualified themselves from hearing respondent's claims and that, therefore, this judge should do so as well. The judge correctly ruled that this did not constitute proper grounds for disqualification. See MCR 2.003(C)(1)(a). Respondent asked for review by the Chief Judge, but, because he also disqualified himself from hearing matters brought by respondent, the motion was heard by a judge in another circuit.

During that hearing, respondent raised the additional claim that the trial judge was biased because the judge issued the PPO on the basis of information she learned during a child protection proceeding and on the basis of information from an assistant prosecutor that respondent was violent, dangerous, and threatened the lives of judges. Respondent met petitioner's ex-husband while they were both in the Livingston County Jail. In the child protection proceeding involving alleged abusive conduct toward the children by petitioner's ex-husband, the court was attempting to protect petitioner's minor children from her ex-husband, also a felon. Respondent's claim of bias lacks merit and we reject it because the trial court's efforts to protect the safety and well being of petitioner's minor children properly included court orders to avoid *any* contact with *any* felon, including petitioner's ex-husband and his friend, respondent. The trial court's order was among numerous other rulings the court made to protect petitioner's children and does not suggest, let alone demonstrate, any personal bias against respondent. Further, the judge testified at length at the disqualification hearing and the

reviewing judge found no evidence of prejudice. Indeed, the record clearly reflects that respondent failed to show actual bias or antagonism by the trial court toward him and failed to overcome the presumption of impartiality. See *In re MKK*, 286 Mich App 546, 566; 781 NW2d 132 (2009) (“A trial judge is presumed to be impartial and the party who asserts partiality has a heavy burden of overcoming that presumption.”).

At the hearing on respondent’s motion to terminate the PPO, petitioner testified that she believes the PPO is necessary to protect her and her children from felons, including her ex-husband and respondent, and that respondent violated the PPO after he was aware that he should not contact her. A trial court’s grant of a PPO and its decision whether to modify a PPO are within the court’s sound discretion and will not be reversed on appeal absent an abuse of that discretion. *Hayford v Hayford*, 279 Mich App 324, 355; 760 NW2d 503 (2008).

Petitioner testified that respondent’s contacts made her nervous and uncomfortable and that, if the PPO were lifted, she would fear for her and her minor children’s safety. She stated that respondent and her ex-husband remained close and it also appeared respondent’s contacts were calculated because they occurred shortly before hearings in the child protective proceeding involving her ex-husband’s alleged abuse of the children. Petitioner testified that she felt “leery” of respondent because the timing of his communication and because her husband had used various people to “convince [her] to do certain things . . . .” The trial court found petitioner’s testimony to be credible and un rebutted. The trial court also found, specifically, that respondent contacted petitioner after he was advised of the court orders not to do so. The trial court ruled that those contacts were in direct violation of the court’s orders issued in the child protection proceedings. The trial court further found that respondent acted as agent for his friend and co-felon, petitioner’s ex-husband, and that the orders should be maintained for the safety of the minor children and their mother, petitioner, who had no relationship with respondent and felt nervous and uncomfortable about his uninvited contacts.

The record clearly demonstrates that the trial court did not abuse its discretion and properly denied respondent’s motion to set aside the PPO, especially in light of respondent’s direct and knowing violation of the trial court’s orders. See *Hayford*, 279 Mich App at 325, 329; MCL 600.2950a(1); MCL 750.411h(1). Accordingly, we affirm the trial court’s denial of respondent’s motion to set aside the PPO.

Affirmed.

/s/ William C. Whitbeck

/s/ Henry William Saad

/s/ Douglas B. Shapiro