

STATE OF MICHIGAN
COURT OF APPEALS

JANET JASTRABEK,

Petitioner-Appellee,

UNPUBLISHED
October 15, 2013

v

No. 313704
Wayne Circuit Court
Family Division
LC No. 12-113050-PP

FRANK LAWRENCE JASTRABEK,

Respondent-Appellant.

Before: M. J. KELLY, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

Respondent Frank Lawrence Jastrabek appeals of right the trial court's order denying his motion to terminate the personal protection order (PPO) in favor of petitioner Janet Jastrabek. Because we conclude that the trial court did not abuse its discretion when it denied Frank Jastrabek's motion to terminate the petition, we affirm.

I. BASIC FACTS

Frank and Janet Jastrabek were married in January 2004 and had one child together. They permanently separated in May 2011 and, after contentious proceedings that included multiple requests for PPOs, the parties divorced in February 2012.

In October 2012, Janet Jastrabek petitioned for a PPO against Frank Jastrabek. She alleged that she needed the order because her former husband would not stop various inappropriate conduct, including allegedly threatening and intimidating her in front of their five-year-old daughter. She relied on a recent incident where he allegedly threatened her at a hospital and to prior incidents where he assaulted or threatened her. Later that same month, Frank Jastrabek moved to have the PPO set aside on the ground that his wife's allegations were not credible.

The trial court held a hearing on the motion in November 2012.

Janet Jastrabek testified that she sought the order after a recent incident. She went to pick up her daughter from Frank Jastrabek's residence and discovered that their daughter had been running a high fever and was up all night vomiting. She told Frank that she was going to take their daughter to the hospital. As she was going out to her car, Frank saw that Janet had come

with her boyfriend. Janet stated that Frank became “very upset” and started to yell and jump up and down and exclaimed that he would not go to the hospital if Janet’s boyfriend was going to be there. Janet proceeded to take their daughter to the hospital.

Janet Jastrabek stated that, although he had said he would not go, her former husband nevertheless showed up at the hospital approximately 15 minutes later. He became very loud and started to call her names. When her boyfriend warned that he might call the police, Janet testified that Frank responded that he did not care: “And he said I don’t care, I’m not afraid of cops. Go ahead, you should be afraid of me.” She said she was afraid the whole time he was there.

Janet Jastrabek also testified about previous incidents involving Frank. She noted that there were two previous PPOs issued—one after he shoved her into a wall and another after he threatened her with a gun. She admitted that she dropped both prior orders, but explained that she did so under pressure and after mediation in their divorce.

Frank Jastrabek testified that he did not threaten anyone at the hospital and that the police officers did not have to restore civility when they arrived: “They were peaceful, I mean everything was fine. I just didn’t want a strange adult male in the examination room with my 5-year-old daughter.”

After the close of proofs, Frank Jastrabek’s trial lawyer argued that Janet Jastrabek was not credible and that his client did not tell her that she should be afraid. He also suggested that her allegations in support of her previous PPOs were all false on the basis of an affidavit that he submitted in prior proceedings, but that was not made part of the record here.

In its ruling, the trial court did not explicitly mention Frank Jastrabek’s conduct from prior proceedings, but it did find that Frank went to the hospital “to make trouble” and demean his former wife, which the court characterized as “harassment.” It also stated that it was “convinced” that Frank Jastrabek had a “problem with self control.” As such, it determined that the PPO should continue.

Frank Jastrabek then appealed to this Court.

II. STATUTORY GROUNDS FOR PPO

A. STANDARD OF REVIEW

On appeal, Frank Jastrabek argues that the trial court erred when it denied his motion to dismiss the PPO. Specifically, he argues that his former wife’s testimony was not credible and that the trial court could not continue the PPO on the basis of his conduct during the incident at the hospital because his conduct did not amount to the type of conduct that could be enjoined under the statute. This Court reviews a trial court’s decision to deny a motion to dismiss a PPO for an abuse of discretion, but reviews the findings in support of the decision for clear error. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). This Court reviews de novo whether the trial court properly interpreted and applied the relevant statutory provisions. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012).

B. ANALYSIS

On appeal, Frank Jastrabek appears to argue that, in order to properly deny his motion, the trial court had to determine whether Frank actually committed an act that could be enjoined under MCL 600.2950(1) before it could permit the PPO to continue. He is, however, mistaken on this point.

The Legislature provided that a person may petition the family court for an order to restrain or enjoin—in relevant part—a “former spouse” from doing certain acts. See MCL 600.2950(1). The trial court must issue the PPO if it “determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit” one or more of the acts that may be enjoined under MCL 600.2950(1). MCL 600.2950(4). Under MCL 600.2950(1), the family court may enjoin the person to be restrained from “[a]ssaulting, attacking, beating, molesting, or wounding a named individual”; may enjoin the person from making threats to kill or physically injure a named individual; may enjoin the person from engaging in conduct that amounts to stalking under MCL 750.411h and MCL 750.411i; and may enjoin the person from “[a]ny other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.” MCL 600.2950(1)(b), (c), (i), and (j). Although the trial court must consider whether the person to be restrained or enjoined has already committed or threatened to commit an act listed under MCL 600.2950(1) in determining whether to issue the PPO, see MCL 600.2950(4)(b), the relevant inquiry is not whether the person to be restrained has already committed an act that may be enjoined, but rather whether there is “reasonable cause to believe” that the person will do so in the future, MCL 600.2950(4). Consequently, as long as Janet Jastrabek presented sufficient evidence to give the trial court “reasonable cause to believe” that Frank Jastrabek might *in the future* commit an act that may properly be enjoined under MCL 600.2950(1), the trial court had the authority to continue the PPO. MCL 600.2950(4); *Pickering v Pickering*, 253 Mich App 694, 701; 659 NW2d 649 (2002) (stating that the petitioner bears the burden of justifying the continuation of a PPO).

With regard to the incident that gave rise to the most recent request for a PPO, Janet Jastrabek testified that her former husband became angry after she decided to take their minor daughter to the hospital; specifically, she stated that he became angry after he realized that she was with her boyfriend. Janet stated that her former husband arrived at the hospital and became loud and argumentative and, after her boyfriend threatened to involve the police, Frank Jastrabek warned that “you should be afraid of me.” If believed, this testimony permitted an inference that Frank Jastrabek physically threatened his former wife, or her boyfriend, or both, which is a type of conduct that may be enjoined under MCL 600.2950(1)(c).

In addition, on the basis of the testimony at the hearing, the trial court found that Frank Jastrabek went to the hospital to “cause trouble”—that is, the trial court found that Frank’s motive in going to the hospital was to harass his former wife and her boyfriend. The trial court also found that Frank has a problem with “self control.” Given the record evidence, we are not left with the definite and firm conviction that the trial court was mistaken as to these findings. *Attorney General v Harkins*, 257 Mich App 564, 575; 669 NW2d 296 (2003). And these findings support an inference that Frank Jastrabek might lose his self control and engage in the types of conduct that may be enjoined under MCL 600.2950(1)(b), (c), (i) or (j).

Similarly, Janet Jastrabek's testimony concerning prior incidents involving a physical assault and a threat with a gun further supported an inference that her former husband might threaten or harm her in the future. As such, there was sufficient evidence to permit the trial court to determine that there was "reasonable cause to believe" that Frank Jastrabek might commit one or more of the acts listed under MCL 600.2950(1). Accordingly, we cannot agree with Frank Jastrabek's contention on appeal that the trial court lacked the statutory authority to continue the PPO.

Frank Jastrabek also argues that the trial court erred when it denied his motion because his former wife's testimony was not credible. This Court is ill-equipped to judge credibility; as such, we must defer to the trial court's superior ability to judge the credibility of the witnesses. MCR 2.613(C). This is especially true in domestic matters where—as is evident from the record here—the trial court is often familiar with the parties. See *Pickering*, 253 Mich App at 702 n 3 (noting that in domestic disputes the trial court will often have sufficient knowledge of the parties' circumstances to judge whether the petitioner is inappropriately seeking a PPO). Here, the trial court plainly found Janet Jastrabek's testimony to be credible and we will not second-guess that determination on appeal. *Dep't of Community Health v Risch*, 274 Mich App 365, 375; 733 NW2d 403 (2007) (stating that it is not this Court's role to second-guess the fact-finder's credibility determinations and factual findings).

III. CONCLUSION

There was sufficient evidence to support the trial court's determination that the PPO should continue. Therefore, the trial court did not abuse its discretion when it denied Frank Jastrabek's motion to dismiss the PPO.

Affirmed. As the prevailing party, Janet Jastrabek may tax her costs. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood