

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD ALAN PETRUCELLI,
Petitioner-Appellee,

UNPUBLISHED
November 14, 2013

v

MARK STEVEN MOORE,

Respondent-Appellant.

No. 31112
Kent Circuit Court
LC No. 12-003300-PH

Before: MURRAY, P.J., and DONOFRIO and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's entry of a personal protection order (PPO) against him pursuant to MCL 600.2950a(1). Because respondent was not denied due process of law and his remaining issue is moot because the PPO expired by its own terms, we affirm.

The dispute in this case stems from a shared driveway that runs through respondent's property and provides petitioner access to his home. Dealings between respondent, petitioner, and their families became contentious after respondent believed that petitioner and his wife were trying to widen the easement on respondent's property without his permission. Petitioner filed a petition for an ex parte PPO against respondent. When the trial court denied that petition, petitioner requested a hearing pursuant to MCR 3.705(B)(1)(b). Following the hearing, the trial court granted the PPO.

Respondent now appeals, arguing that his right to procedural due process was violated when the trial court granted the PPO without holding an evidentiary hearing. Respondent acknowledges that the trial court held a hearing pursuant to MCR 3.705(B)(1)(b) upon petitioner's request, but he contends that he was denied a *meaningful* hearing at which he could present evidence.

"Procedural due process serves as a limitation on government action and requires [the] government to institute safeguards in proceedings that affect those rights protected by due process, including life, liberty, or property." *Thomas v Pogats*, 249 Mich App 718, 724; 644 NW2d 59 (2002). Due process "generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). In order to fulfill the "opportunity to be heard" requirement of due process, a trial court need not hold a "full trial-like proceeding," but must at least hold "a hearing to allow a party the chance to know and respond to

the evidence.” *Id.* This Court, in considering MCR 3.705(B), held that a trial court is not limited to the four corners of a petition, but rather, “must consider the testimony, documents, and other evidence proffered,” in determining whether the respondent engaged in conduct set forth in MCL 600.2950a. *Lamkin v Engram*, 295 Mich App 701, 711; 815 NW2d 793 (2012). This Court further stated, “our court rules specifically require the circuit court to go beyond the PPO petition and either interview the petitioner or provide an evidentiary hearing.” *Id.*

A review of the record demonstrates that respondent was not denied his right to procedural due process. At the beginning of the hearing, the trial court indicated that it had reviewed all of the materials that the parties submitted. The court questioned petitioner regarding his allegations and allowed respondent an opportunity to respond to the allegations. The court viewed pictures that respondent presented to the court. The parties and the court discussed the allegations in detail and respondent was provided an opportunity to respond to each allegation. The only piece of evidence that respondent attempted to submit that the trial court did not accept was an unsigned note. The court indicated that it did not accept unsigned notes as a general rule because of authenticity concerns. Because the trial court considered the parties’ arguments, all of the evidence submitted with the exception of the unsigned note, and allowed respondent an opportunity to defend against the allegations, it did not deny respondent his right to procedural due process.

Further, because the PPO expired by its own terms, and nothing indicates that the PPO was extended, we need not address respondent’s remaining argument that the conduct at issue did not constitute stalking behavior. “An issue becomes moot when a subsequent event renders it impossible for the appellate court to fashion a remedy.” *Kieta v Thomas M. Cooley Law Sch*, 290 Mich App 144, 147; 799 NW2d 579 (2010).

Affirmed. Petitioner, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Mark T. Boonstra