

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN LYNNE BECKWITH,

Petitioner-Appellee,

v

JAMES TYERS,

Respondent-Appellant.

UNPUBLISHED
February 20, 2014

No. 312616
Wayne Circuit Court
LC No. 12-106723-PP

Before: GLEICHER, P.J., and SAAD and FORT HOOD, JJ.

PER CURIAM.

Respondent, James Tyers, appeals an order that denied his motion for reconsideration of the previous denial of his motion to terminate a personal protection order (PPO) entered against him.¹ For the reasons stated below, we affirm.

Respondent argues that the factual allegations were insufficient to support the issuance of the PPO. A trial court's decision whether to grant or deny a PPO is reviewed for an abuse of discretion. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). The trial court's findings in support of the decision are reviewed for clear error. *Id.* 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).

Under MCL 600.2950, a PPO "shall" be issued if the court determines that there is "reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1)." MCL 600.2950(1) and (4). "[T]he court must make a positive finding of prohibited behavior by the respondent before issuing a PPO." *Kampf v Kampf*, 237 Mich App 377, 386; 603 NW2d 295 (1999).

Here, the allegations were sufficient to support the issuance of the PPO, and the evidence at the hearing was sufficient to support the denial of respondent's motion to terminate the PPO.

¹ The PPO at issue has expired. Nevertheless, because the issuance of the PPO may affect respondent's livelihood, this appeal is not deemed moot. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008).

The allegations and evidence showed that there was reasonable cause to believe that respondent engaged in stalking behavior and conduct that caused a reasonable apprehension of violence. MCL 600.2950(1)(i) and (j).

MCL 600.2950(1)(i) prohibits an individual from engaging in conduct that is prohibited by MCL 750.411h, Michigan's stalking statute. "Stalking" is defined 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(1)(d). The evidence of respondent's repeated attempts to contact petitioner against her wishes, his threats that petitioner would have to meet him "face to face" if she did not respond to his calls, in addition to respondent's intimidating conduct during the May 28th incident, satisfy the definition of "stalking" under MCL 750.411(h)(1)(d). Although there is evidence that petitioner contacted respondent several times after their breakup, petitioner explained that she contacted respondent only to placate him or to avoid an escalation of a scene. The record thus supports a finding of stalking under MCL 750.411(h)(1)(d).

There is also evidence that respondent engaged in conduct prohibited by MCL 600.2950(1)(j), which bars "[a]ny other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence." The testimony that respondent chased petitioner, tried to grab her arm, and lunged at her during the May 28th incident, and that petitioner felt the need to summon restaurant security and to run from respondent after she left the restaurant shows that respondent engaged in conduct that caused a reasonable apprehension of violence. Petitioner testified that respondent refused to leave her restaurant table, tried to grab her arm to get her to listen to him, waited outside the eatery for two hours after his removal from the premises by security personnel, chased petitioner down the street as she was trying to return home, and lunged at her from behind.

Accordingly, the trial court did not abuse its discretion when it granted the PPO, nor did it do so when it denied respondent's motion to terminate the PPO.²

Further, respondent argues that the comments he made about petitioner in the restaurant during the May 28th incident were constitutionally protected speech and could not be used as a basis for a PPO. Because the May 28th incident involved much more than "speech" and because he engaged in conduct as well as stalking behavior, his argument is without merit.

Therefore, we affirm the trial court's order denying respondent's motion for reconsideration of the denial of his motion to terminate the PPO.

² Respondent also argues that petitioner's PPO request was barred by the "unclean hands" doctrine. Because this theory has no applicability to these proceedings, we reject this fallacious argument.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Henry William Saad

/s/ Karen M. Fort Hood