

STATE OF MICHIGAN
COURT OF APPEALS

VERONICA O. ANI,

Petitioner-Appellant,

V

CYRIL E. UMEH,

Respondent-Appellee.

UNPUBLISHED

May 6, 2014

No. 312643

Wayne Circuit Court

LC No. 12-108813-PP

VERONICA O. ANI, f/k/a VERONICA O.
UMEH,

Plaintiff-Appellant,

v

CYRIL E. UMEH,

Defendant-Appellee.

No. 312959

Wayne Circuit Court

LC No. 11-105830-DM

VERONICA O. ANI,

Petitioner-Appellant,

v

CYRIL E. UMEH,

Respondent-Appellee.

No. 313040

Wayne Circuit Court

LC No. 12-108813-PP

Before: SERVITTO, P.J., and FORT HOOD and BECKERING, JJ.

PER CURIAM.

In these consolidated cases, plaintiff appeals by right the orders denying her request for a personal protection order (PPO) against defendant,¹ plaintiff's ex-husband, the sua sponte entry of a mutual restraining order, and the denial of the motions for reconsideration. We vacate and remand for further proceedings, if necessary.

The parties were married and had two children together. Following a bench trial before the lower court, their divorce was finalized in June 2012. In July 2012, plaintiff sought a PPO. At the July 26, 2012 hearing on her petition, plaintiff testified that on July 4, 2012, plaintiff attended an annual picnic. Defendant was also present at the picnic with the couple's two children. His visitation was to end at 8:00 p.m. that evening. At 8:30 p.m., plaintiff encountered defendant, advised him that she was taking the children home, and proceeded to her car. The couple's son began to strap himself into the car while plaintiff placed their daughter in her car seat. Plaintiff testified that defendant shoved her out of the way and attempted to remove their daughter. Defendant also threatened to kill her. The children began to cry. Plaintiff suffered a laceration to her finger. Plaintiff alleged that her brother-in-law and a "mutual friend" who was passing by witnessed the event. Plaintiff also testified that defendant had been previously arrested for domestic violence and forcibly entered her home. Consequently, she feared defendant.

Defendant objected to the continuation of the proceedings and sought an adjournment. He was served after hours on Monday with the petition. Although he contacted an attorney, the attorney was unavailable to be present for the hearing on Thursday. Defendant denied striking plaintiff and further alleged that he had a witness who would counter the testimony of plaintiff. The trial court declined to hear the testimony of plaintiff's additional witnesses or to grant the adjournment. Instead, the court stated as follows:

Okay, let me make this statement, as I did earlier. And I didn't go into the details, but I surely will now. Your client [plaintiff] and her ex-husband [defendant] participated in a lengthy trial before this court. Throughout the trial I was able to assess her credibility as well as his credibility. And from [sic] I heard this morning, is that [defendant] is stating she has made all these statements falsely in an attempt to put him in a bad light, to portray him in a bad light, to somehow effect his parenting time, that's what his defense is.

He further states that he didn't have ample time to get an attorney after being served late Monday. And today I will note it's Thursday. I don't find that hard to believe. I think two or three days' notice to get an attorney is not

¹ In Docket No. 312643, plaintiff appeals by right the order denying her petition for a PPO. In Docket No. 312959, plaintiff appeals by leave granted the sua sponte entry of a mutual restraining order. In Docket No. 313040, plaintiff appeals by right the orders denying reconsideration of the above referenced orders. The appeals were consolidated to advance the efficient administration of the appellate process. *Ani v Umeh*, unpublished order of the Court of Appeals entered May 6, 2013 (Docket Nos. 312643, 312959, 313040). Although a petition for a PPO was filed, for ease of reference, we will use the terms "plaintiff" and "defendant."

sufficient time, which is why I checked the rules. And they do indicate all he needs is 24 hours.

So, I am taking into account that he doesn't have an attorney here today to properly defend him against her allegations, and that's all they are, are allegations. She refused, I read on the police report, medical treatment. So we don't have medical records to verify her failure. She has her brother-in-law here today as a witness. However, I will note that his name came up often during the divorce trial. And I don't believe that he would be a witness who I would consider to be completely neutral in this case, since she helps to support him financially. Okay.

Furthermore, I issued the restraining order to try to prevent these parties from engaging in any behavior that was described by her in her allegations of her request for a PPO.

So, if she had a neutral witness here today, someone I believed was a neutral witness, if she had a medical report concerning her injury, I would have entertained her in putting forth those two issues - - or that witness, as well as the medical evidence, but she did not.

I also heard his testimony that she's, as I indicated, not telling the truth. And I know the two - - both of them, as I indicated already on the record, to have very hostile feelings towards each other.

And knowing all this, and having spent a great deal of time assessing these two individuals during the trial, which just ended as you indicated in June, I made the decision to deny her request, and to instead, in the alternative, grant the personal protection order. . . . I mean, the mutual - - excuse me, the mutual restraining order. However, if [plaintiff] should come back again and request a PPO with mutual witnesses, with any other kind of evidence, that this man has assaulted her, I don't see any telephone records with regard to stalking. I don't think she's claiming that, that he's stalking her. I think she's claiming that she's afraid of him, and that he'll injure her.

And just so you know, counselor, she claimed that during the divorce proceedings, too. And he was able to answer through his attorney . . . he was able to respond to some of those allegations, which I hear again today.

So, just so you know, counselor, the allegations she's making in her PPO are not new. They are allegations she made during the divorce proceedings. And I'm finished. Thank you very much.

From this ruling, plaintiff now appeals.

A PPO is an injunctive order, and we review the trial court's determination to issue a PPO for an abuse of discretion. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). "[T]he burden of proof in obtaining the PPO, as well as the burden of justifying the continuance of the order, is on the applicant for the restraining order." *Pickering v Pickering*, 253 Mich App 694, 701; 659 NW2d 649 (2002). Reasonable cause to enter a PPO exists when the respondent engages in conduct designed to cause the petitioner a reasonable apprehension of violence. MCL 600.2950(1)(j); *Pickering*, 253 Mich App at 701. "The interpretation and application of a statute presents a question of law that the appellate court reviews de novo." *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541; 840 NW2d 743 (2013). The goal is to interpret the statute in accordance with the legislative intent as evidenced by the statute's plain language. *Id.* The trial court's factual findings are reviewed for clear error, and legal conclusions are reviewed de novo. *Id.* at 542. "Special deference is given to the trial court's findings when they are based on the credibility of the witnesses." *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010). The trier of fact is entitled to believe all, part, or none of the testimony given by the witnesses. *Brown v Pointer*, 41 Mich App 539, 552; 200 NW2d 756 (1972), rev'd on other grounds 390 Mich 346 (1973). Remand is warranted where the trial court's dispositional holding is insufficient for this Court to determine whether the trial court reached the proper result on the basis of its findings of fact. *Jackson v Thompson-McCully Co*, 239 Mich App 482, 489; 608 NW2d 531 (2000).

PPOs are governed by both statute, MCL 600.2950 *et seq.*, and the court rules, MCR 3.700 *et seq.* MCL 600.2950 provides, in relevant part:

(4) The court shall issue a personal protection order under this section 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). In determining whether reasonable cause exists, the court shall consider all of the following:

(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).

(6) A court shall not refuse to issue a personal protection order solely due to the absence of any of the following:

(a) A police report.

(b) A medical report.

(c) A report or finding of an administrative agency.

(d) Physical signs of abuse or violence.

(8) A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court pursuant to subsection (1).

For personal protection orders, the court must hold a hearing on the record and state the reasons for granting or denying the order on the record. MCR 3.705(B)(3), (5); MCL 600.2950(7). In civil cases, due process generally requires notice of the nature of the proceedings, a meaningful time and manner to be heard, and an impartial decision maker. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). A full trial-like proceeding is unnecessary to satisfy the opportunity to be heard requirement. *Id.* The parties must have an opportunity to present and respond to the evidence. See *id.*

A review of the hearing reveals that the trial court deprived the parties of a meaningful opportunity to be heard. *Cummings*, 210 Mich App at 253. The trial court was advised that plaintiff had two witnesses available to testify, her brother-in-law and a mutual friend. Additionally, defendant stated that he had a witness that would contradict plaintiff's testimony. Despite these representations, the trial court did not hear the testimony or grant an adjournment to allow defendant to secure counsel and his witness. Instead, it concluded that it would rely on the credibility determination made at trial and held that the allegations were "not new."

Contrary to the trial court's statements, this proceeding did involve a matter that was "new." *After the divorce was finalized*, plaintiff claimed that, at a picnic, defendant assaulted her. Despite the fact that each party asserted that there were witnesses to the event that would support their respective positions, the court declined to hear the testimony and did not provide the parties the opportunity to present an offer of proof when the testimony of plaintiff's witnesses was excluded. See MRE 103(a)(2); *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 291; 730 NW2d 523 (2006). Rather, the trial court rendered a conclusion based on the party for whom the witness would testify without actually hearing the testimony.² Questions of credibility are resolved by the trier of fact, *Drew v Cass Co*, 299 Mich App 495, 502 n 1; 830 NW2d 832 (2013), and resolving a credibility dispute is a common function that the trial court is required to address, see *In re Kramek Estate*, 268 Mich App 565, 576; 710 NW2d 753 (2005). Although the trial court has discretion regarding the mode and order of witnesses and the

² We do not have the benefit of the trial transcripts. The trial court stated on the record that it had previously heard testimony and questioned plaintiff's credibility in the prior trial. Moreover, the trial court also indicated that the brother-in-law would testify in favor of plaintiff because of her financial support. The trial court further noted that there were no impartial witnesses or documented medical injury. MCL 600.2950 and MCR 3.700 *et seq.* do not contain requirements that the petitioner suffer a medically treated injury in a public place in front of impartial witnesses to warrant issuance of a PPO. Rather, the trial court must assess the credibility of the witnesses presented in light of the most recent occurring event. If a party learned that a court's initial credibility assessment would be binding on all future proceedings, he or she would have no incentive to abide by court orders or to conform their conduct.

presentation of evidence, MRE 611(a), *Barksdale v Bert's Marketplace*, 289 Mich App 652, 655; 797 NW2d 700 (2010), the court should not forecast that a witness will be disbelieved in light of the calling party or an affiliation with a party.

Finally, we note that in lieu of hearing the testimony, the trial court sua sponte ruled that a mutual restraining order would be entered in the divorce action. Although the trial court labeled the order as mutual restraint, it repeatedly and mistakenly referred to the order as a PPO. Additionally, although the court indicated that it had issues with the credibility of plaintiff, this order contained language commonly utilized in PPOs, by precluding the parties "from assaulting, attacking, threatening, molesting, stalking, or wounding each other." It further provided that defendant was prohibited from entering plaintiff's home. We are not bound by the court's label as one of mutual restraint because, to do so, would exalt form over substance. See *Johnston v City of Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). Despite the court's label of the order as a mutual restraining order, it effectively constituted a PPO, and PPOs may not be mutual. MCL 600.2950(8). Although the parties appeared for oral argument on appeal, they did not provide supplemental information regarding any extension of the mutual restraining order or any violations. Accordingly, we vacate the lower court's orders and remand for additional proceedings if necessary.

Vacated and remanded. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Karen M. Fort Hood
/s/ Jane M. Beckering