

STATE OF MICHIGAN
COURT OF APPEALS

CRAIG LANTAGNE,

Petitioner-Appellee,

v

JIMMY LEE SABIN,

Respondent-Appellant.

UNPUBLISHED

May 20, 2014

Nos. 312269; 315533

Ionia Circuit Court

LC Nos. 2012-004858-PH;

2013-005151-PH

STEVEN KARBER,

Petitioner-Appellee,

v

JIMMY LEE SABIN,

Respondent-Appellant.

Nos. 312270; 315532

Ionia Circuit Court

LC Nos. 2012-004859-PH;

2013-005150-PH

Before: MURPHY, C.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

In Docket Nos. 312269 and 312270 of these consolidated appeals,¹ respondent appeals as of right two 2012 personal protection orders (PPOs) issued by the trial court against respondent. One of the PPOs was for the benefit and protection of petitioner Craig Lantagne and the other was for the benefit and protection of petitioner Steven Karber. In Docket Nos. 315532 and 315533, respondent appeals as of right two 2013 PPOs issued by the trial court against respondent; again, one for each petitioner. We affirm.

¹ Respondent's appeals were consolidated on order of this Court. *Lantagne v Sabin*, unpublished order of the Court of Appeals, entered May 6, 2013 (Docket Nos. 312269, 312270, 315532, 315533).

The record indicates that respondent founded the Heritage Bible Fellowship (HBF), which was a non-profit “ministry” that corresponded with prisoners within the Michigan Department of Corrections (MDOC). Respondent is a former prisoner himself, having been incarcerated from 1990 to 1999. Respondent corresponded, through HBF, with various MDOC prisoners. One of these prisoners was serving multiple life sentences for various convictions. In 2011, this prisoner was incarcerated at the Ionia Maximum Security Correctional Facility (ICF) and was considered to be a “high escape risk.” Petitioners worked as “clerks” in the ICF mail room. As mailroom clerks, petitioners screened ICF’s incoming and outgoing mail. In 2011, petitioners rejected multiple letters that respondent wrote to ICF prisoners, deeming the letters to be security threats or otherwise in violation of ICF policy. Respondent appealed many of petitioners’ rejections. Respondent also wrote multiple letters to ICF prisoners, particularly the high-escape-risk prisoner mentioned above, in which respondent specifically named and derided each petitioner. Additionally, respondent wrote letters and e-mails to ICF’s administration, complaining about petitioners’ mail rejections and disparaging petitioners. Respondent attached some of these appeals and complaints to the letters that he wrote to ICF prisoners. Thus, petitioners reviewed the materials.

On January 17, 2012, petitioners filed petitions for ex parte PPOs against respondent under MCL 600.2950a to prohibit him from stalking them. The trial court issued two ex parte PPOs on January 17, 2012, enjoining respondent from stalking petitioners as defined under MCL 750.411h and 750.411i. Respondent moved to terminate the PPOs, and the trial court held a hearing on respondent’s motion. Respondent argued that his underlying conduct was constitutionally protected and served a legitimate purpose and, thus, did not justify the PPOs. The trial court denied respondent’s motion and, instead, continued the 2012 PPOs. The trial court found that respondent’s letters to prisoners, which petitioners were required to review, were harassing and reasonably caused petitioners to suffer emotional distress.

Respondent appealed the trial court’s two corresponding orders continuing the January 17, 2012 PPOs. During the pendency of the appeal, the 2012 PPOs expired by their own terms on January 17, 2013. On January 28, 2013, petitioners moved the trial court to compel respondent to show cause why he should not be held in contempt for violating the 2012 PPOs before they expired. Petitioners’ motions were premised on a January 2013 letter that respondent wrote to an ICF prisoner, in which he indirectly referred to petitioners. Thereafter, on January 29, 2013, petitioners filed for two new ex parte PPOs against respondent under MCL 600.2950a, alleging that he had violated the 2012 PPOs before they expired and that he had attempted to obtain information on petitioners through the Freedom of Information Act (FOIA), MCL 15.231 *et seq.*, and private investigators. The trial court issued two ex parte PPOs that same day. Respondent subsequently moved to terminate the 2013 PPOs.

Thereafter, the trial court held a hearing, at which it addressed petitioners’ show cause motion and respondent’s motion to terminate the 2013 PPOs. The trial court denied petitioners’ motion to show cause, finding that neither respondent’s challenged letter, nor his attempts to obtain information on petitioners, violated the 2012 PPOs. The trial court, however, denied respondent’s motions to terminate the 2013 PPOs, and it continued those PPOs on the basis of the evidence supporting the 2012 PPOs. Respondent appealed the trial court’s two corresponding orders denying his motions to terminate the 2013 PPOs. The 2013 PPOs were set to expire by their own terms on January 29, 2014.

On appeal, respondent first contends that the conduct that formed the basis for the trial court's decision to issue and continue the 2012 PPOs was constitutionally protected and served a legitimate purpose; therefore, reversal is warranted. With respect to the parties' arguments concerning mootness and the expired 2012 PPOs, we shall assume that respondent's challenge of those PPOs is not moot. We review for an abuse of discretion the trial court's decision to issue a PPO as well as its decision to deny a motion seeking to rescind or terminate a PPO. *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002). Underlying factual findings are reviewed for clear error. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). We review de novo questions of constitutional law and statutory interpretation. *Midland Cogeneration Venture Ltd Partnership v Naftaly*, 489 Mich 83, 89; 803 NW2d 674 (2011); *Hayford*, 279 Mich App at 325-326.

As relevant to this case, a trial court may issue a PPO under MCL 600.2950a "to restrain or enjoin an individual from engaging in conduct that is prohibited under" MCL 750.411h or MCL 750.411i, which concern stalking and aggravated stalking, respectively. See *Nastal v Henderson & Assoc Investigations, Inc.*, 471 Mich 712, 721; 691 NW2d 1 (2005). 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); MCL 750.411i(1)(e) (emphasis added). The term "harassment" is also defined under the statutory scheme, providing, in part, that it "does not include constitutionally protected activity or conduct that serves a legitimate purpose." MCL 750.411h(1)(c); MCL 750.411i(1)(d). "[C]onduct that serves a legitimate purpose' means conduct that contributes to a valid purpose that would otherwise be within the law irrespective of the criminal stalking statute.'" *Nastal*, 471 Mich at 723.

In examining the trial court's ruling regarding the 2012 PPOs, the court found, upon assessment of credibility and contemplation of the facts as viewed in the context of the unique circumstances and prison setting, that respondent's actual intent or purpose relative to including certain information and statements in the various communications was to harass petitioners and not to legitimately conduct HBF affairs, legitimately seek redress of grievances, or to legitimately pursue the enforcement of policies. The trial court effectively concluded that the particular statements and information at issue that were contained in respondent's communications or attempted communications to prisoners, and particularly the high-escape-risk prisoner who is serving multiple life sentences, were not employed to serve a legitimate purpose. Rather, the trial court found that the statements and information were meant to frighten, harass, and intimidate petitioners, given that respondent was fully aware that petitioners would, as part of their job duties, be reading the communications at issue, and considering that potentially dangerous prisoners were part of the equation. The trial court also made reference to suspicious activities at petitioners' homes and respondent's hiring of a private investigator.

We conclude that whether respondent's inclusion of the relevant statements and information in the various communications or attempted communications to prisoners could be viewed as constitutionally protected activity that served a legitimate purpose hinged upon, given some ambiguities and respondent's cryptic writing style, a determination of the meaning or purpose behind respondent's chosen words. Such an analysis required consideration of the

surrounding circumstances and respondent's credibility in testifying that there was a valid and legitimate purpose in the language that he employed, absent a nuanced or subtle effort to frighten, harass, and intimidate petitioners. This is not case in which one can simply examine the language in the communications and contemplate the circumstances and then easily conclude that respondent's conduct contributed to a valid purpose. *Nastal*, 471 Mich at 723. With respect to the trial court's factual findings, "regard [must] be given to the special opportunity of the . . . court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). The trial court indicated that it found petitioners to be credible, while suggesting otherwise in regard to respondent.²

Giving the trial court the required deference on its assessment of credibility and considering the pertinent statements and information contained in the communications, especially when examined in the context of the surrounding circumstances, we hold that the trial court did not err in determining that the conduct at issue did not constitute constitutionally protected conduct that served a legitimate purpose. The record sufficiently supports a conclusion that the purpose of respondent's communications, at least in part, was to frighten, harass, and intimidate petitioners. Importantly, we are not ruling that the act of generally communicating and corresponding with prisoners and prison officials does not or cannot serve a legitimate purpose. Rather, it was respondent's use of particular language in the communications, as viewed in the context of the prison setting, which leads us to hold that the trial court did not err in finding that a legitimate purpose was not being served. Accordingly, the trial court did not err in issuing the 2012 PPOs and in denying respondent's motion to terminate those PPOs.

Although not argued by respondent, we also note that the 2012 PPOs did not prohibit him from communicating with prisoners or filing formal appeals or complaints regarding decisions by petitioners with respect to allowing mail to be delivered.

On appeal in Docket Nos. 315532 and 315533, respondent argues that the trial court erred by issuing the 2013 PPOs and by denying his subsequent motion to terminate those PPOs. The 2013 PPOs were scheduled to expire on January 29, 2014. We shall again assume that respondent's challenge is not moot. Petitioners sought the issuance of the 2013 PPOs on the basis of the alleged violations of the 2012 PPOs and respondent's efforts to obtain information concerning them through FOIA requests and private investigators. The trial court rejected petitioners' arguments that respondent violated the 2012 PPOs. The court, however, denied respondent's motion to terminate the 2013 PPOs, relying on its prior ruling and the evidence presented in regard to the 2012 PPOs. The hearing on the 2012 PPOs had occurred just seven

² The trial court observed:

Again, I want to recognize the fact that while Mr. Sabin has explained his conduct, I think the concerning aspect to this [c]ourt is the tenor of his communication but then also with whom he is engaging in this conduct and the fact that these are individuals who are convicted and as I've indicated, this particular individual with whom he was communicating certainly appears to be a very potentially dangerous individual in and of himself.

months earlier, and the court in its ruling on the 2013 PPOs noted that it had recently heard extensive testimony on the nature of respondent's conduct. And we have now ruled that the court did not err in connection with the 2012 PPOs. Under these circumstances, we find no abuse of discretion by the court in denying respondent's motion to terminate the 2013 PPOs.

Affirmed. Having fully prevailed on appeal, petitioners are awarded taxable costs under MCR 7.219.

/s/ William B. Murphy

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly