STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of ROMEO GALLEGO.

SARAH HILLEWAERT,

Petitioner-Appellee,

v

ROMEO VICTOR GALLEGO,

Respondent-Appellant.

UNPUBLISHED
August 12, 2014

No. 314476
Washtenaw Circuit Court
Family Division
LC No. 12-001874-PP

Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

Respondent, Romeo Victor Gallego, appeals as of right from the circuit court's order finding him in violation of a personal protection order (PPO) and ordering him to serve 88 days in jail. We affirm.

I. BACKGROUND

On October 9, 2012, Judge Wheeler of the Washtenaw County Circuit Court presided over respondent's second PPO violation hearing. At that hearing, petitioner, Sarah Hillewaert, described an incident which occurred on September 20, 2012, while she was walking on the University of Michigan campus. Petitioner testified as follows:

> I was walking to a meeting I had on campus, and I was walking from Huron to North University on Fletcher, and as I passed by the University Health Service a car drove by very slowly, and when I looked up it was Romeo staring at me, and I stopped walking and he kept staring at me and slowed down even more, and then mouthed, "I love you; I love you so much." And I grabbed my phone and then he continued driving, and I stood behind a white van so I don't know which way he turned, right or left.

Respondent did not testify at the hearing.

Judge Wheeler found respondent guilty of having violated the PPO. She held:

> In this case I do find that the evidence is insufficient to show that he was following her. I do find that he was sending a communication. He mouthed words to her or said words to her that she could identify, and that in itself is a violation of this protection order. Before there were telephones and cables and all this stuff we have to communicate with today, all we had was our mouth, and that's what he used to send her communication, so I find him guilty of violating this personal protection order in that way.

Previously, Judge Wheeler found respondent guilty on July 30, 2012, for entering onto and remaining on property occupied by petitioner. At the time of that hearing, respondent had served five days in jail which the judge considered time served on an official 93 days sentence, suspending the remaining 88 days. It was to those remaining 88 days that he was sentenced to in this case.

II. A COMMUNICATION UNDER MCL 750.411h(1)(e)(*vi*)

Respondent's first argument to this Court is that the trial court clearly erred in finding he violated MCL 750.411h(1)(e)(*vi*) where his mouthing of words did not constitute a communication under the statute. We agree that the nature of the communication in this case does not fit under MCL 750.411(l)(e)*(vi)* but do not find that the court erred in finding that the mouthed communication constituted a violation of the PPO.

This Court reviews a trial court's findings of fact regarding a personal protection order for clear error. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). "Findings of fact by the trial court may not be set aside unless clearly erroneous." MCR 2.613(C). "The clear error standard provides that factual findings are clearly erroneous where there is no evidentiary support for them or where there is supporting evidence but the reviewing court is nevertheless left with a definite and firm conviction that the trial court made a mistake." *Hill v City of Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

Questions of statutory interpretation are reviewed de novo. *State Farm Fire & Casualty Co v Corby Energy Services, Inc*, 271 Mich App 480, 483; 722 NW2d 906 (2006).

The resolution of this case depends on whether mouthing the words "I love you; I love you so much" constituted a violation of the PPO. The respondent argued in his brief that the judge made her finding of guilt under MCL 750.411h(1)(e)(*vi*) for "[s]ending mail or electronic communications to that individual." At oral argument he agreed that the listing of prohibited actions in the statute was illustrative but not exhaustive. He argued that the mouthing of words, however, was not prohibited by the statute because the legislature expressed its intent to limit prohibited communications to those noted in MCL 750.411h(l)(e)*(vi)*. We disagree.

This Court's primary goal in interpreting a statute "is to discern and give effect to the intent of the Legislature." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999) (citation omitted). Analysis begins with examining the language of the statute itself. *Id.* at 236. The language of the statute is "the most reliable evidence of its intent[.]" *US v Turkett*, 452 US 576, 593; 101 S Ct 2524; L Ed2d 246 (1981). Consideration must be given to the "plain meaning of the critical word or phrase as well as its placement and purpose in the statutory

scheme." *Sun Valley Foods Co*, at 237 (citations and internal quotation marks omitted). Each word in the statute should be given full effect and understood in its grammatical context. *Id*. "If the language used is clear, then the Legislature must have intended the meaning it has plainly expressed, and the statute must be enforced as written." *Hiltz v Phil's Quality Market*, 417 Mich 335, 343; 337 NW2d 237 (1983) (citation omitted).

This case is resolved by examining MCL 750.411h(1)(e) and its subsection MCL 750.411h(l)(e)*(vi)*. The former reads:

> "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes **but is not limited** to any of the following:" [Emphasis added.]

The statute then lists seven examples of unconsented contact. MCL 750.411h(1)(e)*(i)-(vii)*. The example in subsection (e)*(vi)* and at issue here is: "Sending mail or electronic communications to that individual."

By the express language of the statute the illustrations are not limitations. An unconsented contact need not fit into examples (*i*) through (*vii*). The contact only needs to be without petitioner's consent or in disregard of her expressed desire that contact with respondent be discontinued. *People v White*, 212 Mich App 298, 310; 536 NW2d 876 (1995). We agree that had the court found the respondent guilty of violating subsection *(vi)*, that finding would be contrary to the plain language of the act. The language is facially non-ambiguous. The phrase lists two means of unconsented contact: 1) mail, and 2) electronic communications. Unless the mail is to be sent or the nature of the communication is electronic, it is not prohibited under this section of the act. However, neither the transcript nor the Order of Conviction specifically indicates that respondent's conviction was under that section. Instead, the court orally indicated that the oral communication was a violation of the PPO. The trial court correctly found that MCL 750.411h(1)(e) prohibited unconsented contact through direct face-to-face verbal communications. We look to the purpose of the act and the harm it is designed to prevent when interpreting a statute. *People v Pitts*, 222 Mich App 260, 265-66; 564 NW2d 93 (1997). The purpose of the act is to protect persons from unconsented contact. Respondent offers no authority to support his argument that the legislature intended to only prohibit unconsented contact through electronic or mailed communication.

III. SUFFICIENCY OF EVIDENCE

Respondent next argues that were was insufficient evidence for the trial court to find him guilty of having violated the PPO. We disagree.

This Court reviews challenges to the sufficiency of evidence de novo. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010). Evidence is examined in a light most favorable to the non-challenging party, resolving all evidentiary conflicts in her favor, to determine whether a rational trier of fact could have found the essential elements proven beyond

a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010) (citations omitted).

The trial court specifically acquitted the respondent of following the petitioner and entered a finding of guilt only on the communication theory:

> In this case I do find that the evidence is insufficient to show that he was following her. I do find that he was sending a communication. He mouthed words to her or said words to her that she could identify, and that in itself is a violation of this protection order. Before there were telephones and cables and all this stuff we have to communicate with today, all we had was our mouth, and that's what he used to send her communication, so I find him guilty of violating this personal protection order in that way.

We defer to the trial court's findings of fact. The court determined that respondent encountered the petitioner, slowed his car to a slow pace, engaged her gaze, and mouthed words toward her. The court rejected respondent's testimony that he was talking on his Bluetooth. It also found that petitioner understood the words respondent mouthed toward her and was fearful as a consequence of this contact. Thus, the court concluded that respondent made a second post-PPO unconsented contact. There is record support for each of the court's findings of fact.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Henry William Saad
/s/ Mark T. Boonstra