

STATE OF MICHIGAN
COURT OF APPEALS

KMB,

Petitioner-Appellee,

v

BLM,

Respondent-Appellant.

UNPUBLISHED
February 18, 2021

No. 351725
Calhoun Circuit Court
LC No. 2019-000017-PP

Before: M. J. KELLY, P.J., and RONAYNE KRAUSE and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order holding him in criminal contempt for violating a personal protection order (PPO). The trial court sentenced respondent to 93 days in jail for each violation, to run concurrently. For the reasons discussed, we affirm the trial court's order.

I. BACKGROUND

Petitioner and respondent were formerly married and have a child together. The trial court issued a PPO against respondent after respondent engaged in conduct that included several assaults, batteries, and threats. Among a list of prohibitions, the PPO prohibited respondent from entering onto property where petitioner lived and removing a minor child from petitioner's custody without a court order. At a contested hearing, petitioner testified that respondent violated the PPO on four different occasions¹.

Petitioner was the only witness to testify. During the first violation, petitioner was cooking dinner when her daughter ran to her screaming. Her daughter warned petitioner that respondent was at their house and that he was at the window trying to get her to come with him. When petitioner looked outside, she saw respondent's face as he was getting in his car and pulling out of

¹ Petitioner alleged four total PPO violations. However, the trial court only found respondent guilty of criminal contempt for two of those allegations. Therefore, we will only address the allegations for which the trial court found respondent guilty.

the driveway with his lights off. Petitioner recognized respondent's vehicle because she was with him when it was purchased. The second violation occurred shortly after the first. Respondent entered into petitioner's enclosed porch and knocked on the door. To get into the enclosed porch, respondent had to enter through a door in the porch walls first, and then walk to the storm door on the house where he knocked. Through the windows on the front porch, petitioner saw respondent's face as he was leaving. At the conclusion of the hearing, the trial court found respondent guilty of two counts of criminal contempt for violating the violating the PPO. This appeal followed.

The gravamen of respondent's argument is that the evidence was insufficient because only one biased witness testified and there was no physical evidence to support petitioner's testimony showing that he entered onto petitioner's property. We disagree.

II. STANDARD OF REVIEW

We review a "trial court's findings in a contempt proceeding for clear error, and such findings must be affirmed if there is competent evidence to support them." *In re Kabanuk*, 295 Mich App 252, 256; 813 NW2d 348 (2012). "Clear error exists when this Court is left with the definite and firm conviction that a mistake was made." *In re Contempt of Henry*, 282 Mich App 656, 668; 765 NW2d 44 (2009). A challenge to the sufficiency of the evidence invokes due process of law. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). Whether a party has been afforded due process of law is reviewed de novo. *Henry*, 282 Mich App at 668. Additionally, we do not weigh the credibility of witnesses when determining whether the evidence supports the findings. *Kabanuk*, 295 Mich App at 256. The evidence is viewed in a light most favorable to the prosecution to determine whether the crime's elements were proven beyond a reasonable doubt. *Jackson v Virginia*, 443 US 307, 319; 99 S Ct 2781; 61 L Ed 2d 560 (1979); *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *Henry*, 282 Mich App at 677.

III. ANALYSIS

Under Michigan law, there are three different types of PPOs, which are determined by the relationship between the respondent and the petitioner. *TM v MZ*, 501 Mich 312, 316; 916 NW2d 473 (2018). Domestic-relationship PPOs, such as the PPO at issue in this matter, require the presence of a domestic relationship and are issued under MCL 600.2950. *Id.* at 316-317. A PPO is an injunctive order in which the circuit court can restrict a respondent from engaging in a list of conduct, including entering onto premises and removing a child from his or her legal custodian without a court order. MCL 600.2950(1)(a) and (d). After a show-cause hearing, if the trial court finds a basis to believe the respondent violated the PPO, the trial court will hold a violation hearing. MCR 3.708(B). Because a PPO is an injunctive order, the respondent may be held in criminal contempt if the trial court finds that the respondent violated the PPO. MCR 3.708(H); see also MCL 600.2950(30)(d).

No person may be deprived of life, liberty, or property without due process of law. US Const Am XIV, § 1; Const 1963, art 1, § 17; *Henry*, 282 Mich App at 669. At a criminal-contempt hearing, many due-process safeguards apply, and the respondent's guilt must be proven beyond a reasonable doubt. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 713-714; 624 NW2d 443 (2000); see also MCR 3.708(H). A reasonable doubt is an honestly entertained doubt, which

arises from a defect of knowledge or evidence. *People v Allen*, 466 Mich 86, 91-92; 643 NW2d 227 (2002).

The rules of evidence apply at the criminal contempt hearing, and there is no right to a jury trial. MCR 3.708(H)(1) and (3). Although there must be more than just “some evidence” of guilt, *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979), sufficient evidence can derive from direct evidence, circumstantial evidence, and reasonable inferences, as long as it constitutes sufficient proof beyond a reasonable doubt. *Henry*, 282 Mich App at 677. In fact, “[a] victim’s testimony alone can provide sufficient evidence to support a conviction.” *People v DeLeon*, 317 Mich App 714, 719, 895 N.W.2d 577 (2016). The trier of fact has a front-row seat to see and hear witnesses and is in the best position to decide the weight and credibility to be given to their testimony. *Wolfe*, 440 Mich at 515.

In this case, petitioner testified about two separate instances when she saw respondent on her property. In the first instance, petitioner testified that she saw respondent leaving after her daughter was screaming that respondent tried to get her to come with him. Petitioner was able to see respondent’s face as he got in his car and drove away. In the second instance, petitioner testified that respondent entered onto petitioner’s enclosed porch and knocked on her door. Petitioner saw respondent’s face as he was leaving, and she called 911. In accordance with MCL 600.2950, the PPO prohibited respondent from entering onto petitioner’s property where she lived and from removing a minor child from petitioner’s legal custody².

When viewing the evidence in a light most favorable to petitioner, petitioner’s eyewitness testimony was sufficient to find beyond a reasonable doubt that respondent entered onto petitioner’s premises twice and attempted to remove their child on one of those occasions. See *Wolfe*, 440 Mich at 515. Although petitioner was not able to admit any physical evidence, respondent can be convicted on petitioner’s testimony alone. See *DeLeon*, 317 Mich App at 719. Further, respondent’s argument that petitioner is a biased witness falls short. The trial court addressed any issues of credibility in its ruling and had the opportunity to weigh petitioner’s testimony and credibility firsthand. See *Wolfe*, 440 Mich at 515.

IV. CONCLUSION

We are not definitely and firmly convinced that a mistake was made, and the trial court did not clearly err by finding that respondent entered onto petitioner’s premises twice, and on one

² Respondent asserts in his brief that his conduct did not constitute stalking as defined by MCL 750.411h(1)(d). This argument is misplaced. The trial court’s order states that the PPO was violated by respondent entering onto the petitioner’s property and by attempting to remove a minor child from petitioner’s legal custody. Although the PPO also prohibited stalking, that was not the prohibition in the PPO that respondent was found to have violated.

occasion attempted to remove their child from her home. See *Henry*, 282 Mich App at 668.

Affirmed.

/s/ Michael J. Kelly
/s/ Amy Ronayne Krause
/s/ James Robert Redford