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STATE OF MICHIGAN

COURT OF APPEALS

SP,

Petitioner-Appellee,

v

BEK,

Respondent-Appellant.

FOR PUBLICATION
October 7, 2021
9:05 a.m.

No. 353984
Ionia Circuit Court
LC No. 2020-006832-PP

SP,

Petitioner-Appellee,

v

BEK,

Respondent-Appellant.

No. 353992
Ionia Circuit Court
LC No. 2020-006833-PP

Before: SAWYER, P.J., and STEPHENS and RICK, JJ.

RICK, J.

In these consolidated[1] personal protection order (PPO) appeals, respondent, BEK, appeals as of right the trial court order denying his motion to terminate the PPOs issued against respondent on behalf of two minor children, HP and RP.[2] Respondent argues that MCL 600.2950(26)(b)

[1] *SP v BEK*, unpublished order of the Court of Appeals, entered June 30, 2020 (Docket Nos. 353984 and 353992).

[2] Although the PPOs were set to expire on February 10, 2021, the issue is not moot because issuance of a PPO can affect other rights. See *Hayford v Hayford,* 279 Mich App 324, 325; 760

precludes a court from issuing a PPO on the behalf of a minor child against a respondent whose parental rights have been terminated. This is an issue of first impression for this Court and is a matter of statutory interpretation. MCR 7.215(B)(2). Respondent also argues that the trial court abused its discretion by granting the ex parte PPOs and denying his motion to terminate the PPOs. We affirm.

I. BACKGROUND

Petitioner and respondent were previously married and were divorced at the time that the petitions were filed.

In 2016, respondent was charged with five counts of criminal sexual conduct (CSC) based on allegations that he sexually abused the minor children. Although respondent was acquitted of all CSC charges in 2018, child protective proceedings to terminate respondent's parental rights were initiated on the basis of the CSC allegations. In the child protective proceedings, the trial court took jurisdiction over the children and found by clear and convincing evidence that termination was in the best interest of the children. Subsequent to respondent's acquittal of the CSC charges, respondent's parental rights to both RP and HP were terminated in May 2018.[3] Respondent had little to no contact with the minor children between 2015 and 2019, and had no contact with the children from May 2018 until November 2019.

In February 2020, petitioner filed two separate petitions seeking ex parte PPOs against respondent on behalf of her minor children, RP and HP. In the petitions, petitioner alleged that respondent attended four of HP's basketball games in November 2019, December 2019, and February 2020. Petitioner asserted that respondent stood up in the stands during the games and tried to intimidate HP. Petitioner asserted that the children exhibited mental distress after seeing respondent at the games. The trial court entered an ex parte PPO against respondent on behalf of both minor children.

Respondent moved to terminate the personal protection orders in March 2020, arguing that the trial court erred by issuing the PPOs. Specifically, respondent argued that the PPOs could not be issued against him under MCL 600.2950(26)(b) because he was the parent of the unemancipated minor children and that the allegations in the petitions were insufficient to support the issuance of the ex parte PPOs.

Following a motion hearing, the trial court denied respondent's motion to terminate the PPOs. The trial court rejected respondent's argument that the PPOs were improperly granted

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NW2d 503 (2008) (holding that although the PPO had been terminated since the filing of the appeal, the entry of the PPO was not moot because it "may affect eligibility for a federal firearms license"). Petitioner did not submit a brief on appeal and, therefore, does not assert that the issue is moot.

[3] The termination of parental rights court file was not part of the PPO lower court records in this appeal. However, respondent did not dispute that his parental rights had been terminated on the basis of the allegations of sexual abuse and the trial court considered the sexual abuse allegations that led to respondent's termination of parental rights in its findings and ruling.

because of MCL 600.2950(b) and concluded that MCL 600.2950(26)(b) did not preclude it from issuing the PPOs because respondent's parental rights had been terminated. The court also concluded that the ex parte PPOs were appropriately granted.

II. STANDARD OF REVIEW

The granting and continuation of a PPO is "within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion." *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). A trial court's findings of fact underlying a PPO ruling are reviewed for clear error. *Id*. "The clear-error standard requires us to give deference to the lower court and find clear error only if we are nevertheless left with the definite and firm conviction that a mistake has been made." *Arbor Farms, LLC v GeoStar Corp*, 305 Mich App 374, 386-387; 853 NW2d 421 (2014) (cleaned up). Additionally, "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." MCR 2.613(C). "[T]he trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Questions of statutory interpretation are reviewed de novo. *Hayford*, 279 Mich App at 325.

III. ANALYSIS

A. MCL 600.2950(26)(B)

Respondent first argues that the trial court erred in its interpretation and application of MCL 600.2950(26)(b). We disagree.

MCL 600.2950 sets forth the criteria under which a trial court may issue a PPO in a "domestic" context. This permits the court to "restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner[.]" MCL 600.2950(1). Under MCL 600.2950(4), the trial court is required to issue a PPO if it 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)".

Respondent argues that the trial court erred in its interpretation and application of MCL 600.2950(26)(b) because the subsection precluded the trial court from granting the PPOs.

The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. *Mich Ed Ass'n v Secretary of State* (*On Rehearing*), 489 Mich 194, 217; 801 NW2d 35 (2011). "[T]he provisions of a statute should be read reasonably and in context." *McCahan v Brennan*, 492 Mich 730, 739; 822 NW2d 747 (2012). "[N]othing may be read into a statute that is not within the manifest intent of the Legislature as derived from the act itself." *Mich Ed Ass'n*, 489 Mich at 218. "When the plain and ordinary meaning of statutory language is clear, judicial construction is neither necessary nor permitted." *Pace v Edel-Harrelson*, 499 Mich 1, 7; 878 NW2d 784 (2016).

However, "[a] provision is not ambiguous just because 'reasonable minds can differ regarding' the meaning of the provision." *People v Gardner*, 482 Mich 41, 50 n 12; 753 NW2d 78 (2008), quoting *Mayor of Lansing v Pub Serv Comm*, 470 Mich 154, 165; 680 NW2d 840 (2004), superseded in part by statute on other grounds as stated in *South Dearborn Environmental Improvement Ass'n, Inc v Dept of Environmental Quality*, 502 Mich 349 (2018). "Rather, a provision of the law is ambiguous only if it irreconcilably conflicts with another provision, or when it is *equally* susceptible to more than a single meaning." *Mayor of Lansing*, 470 Mich at 166 (cleaned up). An apparently ambiguous statute can be clarified by the remainder of the statutory scheme. *MidAmerican Energy Co v Dep't of Treasury*, 308 Mich App 362, 370; 863 NW2d 387 (2014).

"Where the language of a statute is of doubtful meaning, a court must look to the object of the statute in light of the harm it is designed to remedy, and strive to apply a reasonable construction that will best accomplish the Legislature's purpose." *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644; 513 NW2d 799 (1994). However, "a court should not abandon the canons of common sense". *Id*. This Court should avoid any construction that would render any part of a statute surplusage or nugatory. *Robinson v Lansing*, 486 Mich 1, 21; 782 NW2d 171 (2010). Further, "[s]tatutes should be construed so as to prevent absurd results, injustice, or prejudice to the public interest." *McAuley v Gen Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998).

MCL 600.2950(26)(b) provides that "[a] court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) if . . . [t]he petitioner is the unemancipated minor child of the respondent." Although respondent does not dispute that his parental rights to the minor children were terminated, he argues that because he is the natural father or parent of the minor children as defined by MCL 722.1(b), the PPOs were issued in violation of MCL 600.2950(26)(b).

"Minor" and "emancipated" are not defined under MCL 600.2950. However, "[w]hen two statutes or provisions lend themselves to a construction that avoids conflict, that interpretation is controlling." *Bloomfield Twp v Kane*, 302 Mich App 170, 176; 839 NW2d 505 (2013). "Statutes that address the same subject or share a common purpose are *in pari materia* and must be read together as a whole." *Id*. (Cleaned up.) "The objective of the *in pari materia* rule is to give effect to the legislative purpose as found in statutes addressing a particular subject." *Id*. MCL 722.1 *et seq*., codifies the "fundamental liberty interest of parents with regard to their children . . . ." *Ryan v Ryan*, 260 Mich App 315, 333; 677 NW2d 899 (2004). MCL 722.1 provides the following definitions:

> (a) "Minor" means a person under the age of 18 years.
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> (b) "Parents" means natural parents, if married prior or subsequent to the minor's birth; adopting parents, if the minor has been legally adopted; or the mother, if the minor is illegitimate.
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> (c) "Emancipation" means termination of the rights of the parents to the custody, control, services and earnings of a minor.

Respondent argues that in order for a court to issue a PPO under MCL 600.2950 as it relates to a minor child as petitioner against a respondent parent, the child must be emancipated from both parents, meaning both parents' parental rights must be terminated. Respondent asserts that MCL 722.1(c) requires that *both* parents' parental rights be terminated in order for a minor to be "emancipated." However, a plural term may include the singular, and a singular term may be extended to include its plural. *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 428; 565 NW2d 844 (1997); see also MCL 8.3b. Given the definitions provided by MCL 722.1, we hold that "emancipated minor" as it relates to MCL 600.2950(26)(b) applies to a minor child where the parental rights of one or both parents have been terminated.

The trial court did not err when it concluded that MCL 600.2950(26)(b) did not preclude it from issuing the PPOs against respondent. It is undisputed that respondent's parental rights to the minor children were terminated.[4] Based on the definitions provided under MCL 722.1, the minor children were "emancipated minors" as to respondent because respondent's parental rights were terminated at the time the petitions were filed. Therefore, the trial court was not precluded from issuing the PPOs under MCL 600.2950(26)(b) because it did not apply under these circumstances.

B. ISSUANCE OF PPOS AND MOTION TO TERMINATE

Respondent also argues that the trial court abused its discretion by granting the ex parte PPOs and denying his motion to terminate the PPOs. We disagree.

As indicated, under MCL 600.2950(4), the trial court is required to issue a PPO if it 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 [MCL 600.2950(1)]." "The petitioner bears the burden of establishing reasonable cause for issuance of a PPO and of establishing a justification for the continuance of a PPO at a hearing on the respondent's motion to terminate the PPO." *Hayford*, 279 Mich App at 326 (cleaned up). "The trial court must consider the testimony, documents, and other evidence proffered and whether the respondent had previously engaged in the listed acts." *Id.*; see also MCL 600.2950(4). "A court shall issue an ex parte personal protection order without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by a verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued." MCL 600.2950(12); see also MCR 3.705(A)(2). "[T]he court must make a positive finding of prohibited behavior by the respondent before issuing a PPO." *Kampf v Kampf*, 237

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[4] MCL 712A.19b(5) provides, "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." "[W]hen parental rights are terminated, what is lost are those interests identified by the Legislature as parental rights. In other words, the terminated parent loses any entitlement to the 'custody, control, services and earnings of the minor.' " *In re Beck*, 488 Mich 6, 15; 793 NW2d 562 (2010) (cleaned up).

Mich App 377, 386; 603 NW2d 295 (1999). To terminate a PPO, a respondent is required to show "good cause." MCR 3.707(A)(1)(b).

MCL 600.2950(1)(j) allows a court to restrain individuals from engaging in conduct that is prohibited under 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). MCL 750.411h(1) further provides, in pertinent part:

> (a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.
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> (b) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
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> (c) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.
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> * * *
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> (e) "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:
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> (i) Following or appearing within the sight of that individual.
>
> (ii) Approaching or confronting that individual in a public place or on private property.
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> * * *
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> (f) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

However, MCL 750.411h "does not require a showing of fear." *Hayford*, 279 Mich App at 331.

Respondent argues that the factual allegations were insufficient to support the issuance of the ex parte PPOs. Specifically, respondent argues that there was no evidence to support "the showing of any immediate or irreparable harm or intimidation perpetrated by [respondent] towards HP and RP" and that the allegations did not allege that he "made any attempts to contact, intimidate or otherwise interact with HP and RP."

We hold that the allegations were sufficient to support the issuance of the ex parte PPOs. The evidence at the hearing was sufficient to support the denial of respondent's motion to terminate the PPOs. The allegations and evidence established that there was reasonable cause to believe that respondent engaged in stalking behavior. MCL 600.2950(1)(j) and (4).

The record sufficiently supported the trial court's findings regarding respondent's behavior at the basketball games and we are not "left with the definite and firm conviction that a mistake has been made" regarding its findings. *Arbor Farms, LLC*, 305 Mich App at 386-387 (cleaned up). The court found that the petition alleged four instances of contact between the minor children and respondent. Respondent did not dispute that he attended at least four basketball games on four separate occasions. The court noted that at least two of the contacts involved RP. At the hearing, petitioner testified that respondent stood during the games to make sure that HP saw respondent. Photographs of respondent attending the games showed respondent standing at the top of the bleachers and that respondent was the only individual standing in the stands. Petitioner testified that one photograph taken at the February 2020 game depicted respondent staring at HP, who was seated on the bench, while most other spectators watched what was going on in the game.

Respondent argues that to grant the PPOs, the trial court was required to find that the intent behind his course of conduct was "to bring about the reaction or else the language selected, such as 'willful,' and 'purpose' would not have been the words chosen by the Legislature." Respondent's argument has no merit. The plain language of the statute provides only that respondent willfully engage in the "course of conduct." MCL 750.411h(1)(d). "Willful" has been defined as "[p]roceeding from a conscious motion of the will; voluntary; knowingly; deliberate." *Jennings v Southwood*, 446 Mich 125, 140; 521 NW2d 230, 237 (1994) (cleaned up). MCL 750.411h does not require that an individual engage in the "course of conduct" with the intent to bring about the harm. Cf. *Id.* ("Willful and wanton misconduct is made out only if the conduct alleged shows an intent to harm or, if not that, such indifference to whether harm will result as to be the equivalent of a willingness that it does.") (Cleaned up.) Rather, MCL 750.411h(1)(d) requires a showing that an individual willfully engaged in the "course of conduct" and that the conduct "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). Respondent did not dispute that he attended at least four basketball games on four separate occasions, that he stood in the stands, or that HP or RP actually saw him at the games. Accordingly, the trial court did not err when it concluded that respondent engaged in "a willful course of conduct" that included a "series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411h(1)(a) and (d).

Respondent requests that we adopt a "more appropriate definition of stalking." However, "nothing may be read into a statute that is not within the manifest intent of the Legislature as derived from the act itself." *Mich Ed Ass'n*, 489 Mich at 218. "When the plain and ordinary meaning of [the] statutory language is clear, judicial construction is neither necessary nor permitted." *Pace v Edel-Harrelson*, 499 Mich 1, 7; 878 NW2d 784 (2016). Therefore, we refuse to adopt a new definition of stalking under MCL 750.411h because it would be contrary to the language of the statute and the intent of the Legislature. Based on the language of the statute, the trial court did not err when it concluded that respondent willfully engaged in the course of conduct of attending the basketball games.

The trial court also did not err in holding that the minor children experienced emotional distress as a result of respondent's harassment. Respondent had little to no contact with the children between 2015 and 2019. Respondent may have been acquitted in criminal court of five counts of CSC under the standard of proof beyond a reasonable doubt. Nevertheless, those allegations were sufficiently proven by clear and convincing evidence such that respondent's parental rights to the minor children were terminated as a result of the CSC allegations in May 2018. Petitioner testified that the children had not seen respondent since May 2018, until the November 2019 game. Petitioner alleged that respondent stood in the stands during HP's basketball game and tried to intimidate HP and that respondent's behavior at the games caused both of the children mental distress. Petitioner testified that although respondent was found not guilty of the criminal CSC charges, the children had daily mental distress as a result of the alleged sexual abuse that he perpetuated against the children and that respondent's attendance and behavior at the games brought back "a lot of fear in [the minor children] . . . ."

After the November 2019 game, petitioner alleged that HP and RP were "in tears" and asked "when this will end?" Further, petitioner alleged that HP would not eat after the game, did not "say much" and put his head on the table, which was not normal behavior. Petitioner asserted that the children were distressed after each game that respondent attended. A photograph admitted at the hearing depicted HP with his head on a table during dinner after the November 2019 game. A photograph of RP, after she saw respondent at the February 2020 game, was also admitted during the hearing. Petitioner testified that the photograph showed RP's anxiety. Petitioner further testified that the children wanted the basketball season to "hurry up and be over with so they didn't have to deal with this" and that HP no longer wanted to play other sports because HP feared that respondent would attend his games.

As indicated earlier, respondent did not dispute that he attended at least four basketball games on four separate occasions, that he stood in the stands, or that HP or RP actually saw him at the games. Respondent testified that he did not do anything at the basketball games with the intent to get HP, RP, or petitioner's attention. However, he testified that he only stood in the stands during halftime. Respondent speculated that his presence did not affect how HP played during the basketball games and he did not believe HP felt there was any immediate danger. Respondent also testified that he only saw RP at the February 2020 game and speculated that RP did not appear to have "any angst" or "fear."

The trial court rejected respondent's cavalier rendition of how his conduct impacted the children. Based on the petition, hearing testimony, and photograph exhibits, the trial court concluded that respondent's intent was "to make his presence known, i.e., frighten, harass, intimidate, and threaten." The trial court also considered the sexual abuse allegations that led to the termination of respondent's parental rights and found that respondent's presence at the games caused harm to the children. As indicated, respondent did not dispute that his parental rights to the minor children had been terminated as a result of CSC allegations that involved the minor children. Regarding the immediacy of the harm, the trial court, considering the sexual abuse allegations and circumstances that led to the termination of respondent's parental rights, concluded that the moment that the children became aware of respondent's presence created "immediate and irreparable" harm and immediately effected the children. The trial court recognized that respondent testified that he only attended the games to watch HP play. However, the trial court found that petitioner's testimony was more credible. This Court defers to the trial court regarding

the weight of the evidence and credibility of witnesses. MCR 2.613(C); see also *In re Miller*, 433 Mich at 337 ("the trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony."). Considering all of the evidence presented at the hearing, we conclude that the trial court did not clearly err when it found that the minor children and petitioner did in fact experience, and that a reasonable person would also have experienced, significant mental distress as a result of respondent's conduct considering the circumstances.

Importantly, under MCL 600.2950(4), petitioner was not required to show that respondent actually committed one of the acts listed in MCL 600.2950(1), only that there was reasonable cause to believe that he *may* commit one of the acts. While respondent claims that petitioner was not credible, the trial court properly considered petitioner's statements in support of the petition and found petitioner credible. The trial court did not clearly err by finding reasonable cause to believe that respondent might commit one of the prohibited acts under MCL 600.2950(1). Additionally, given the circumstances, the trial court did not err by concluding that immediate and irreparable injury, loss, or damage would result from the delay required to give notice to respondent or abuse its discretion by granting the ex parte PPOs. MCL 600.2950(12).

In sum, the trial court's findings of fact were not clearly erroneous, and we are not "left with the definite and firm conviction that a mistake has been made." *Arbor Farms, LLC*, 305 Mich App at 386-387 (cleaned up). The trial court's issuance of the ex parte PPOs and denial of respondent's motion to terminate the PPOs fell within the range of principled outcomes. *Hayford*, 279 Mich App at 325. Accordingly, the trial court did not abuse its discretion when it granted the ex parte PPOs, nor did it do so when it denied respondent's motion to terminate the PPOs. *Id.*

Affirmed.

/s/ Michelle M. Rick
/s/ David H. Sawyer
/s/ Cynthia Diane Stephens