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STATE OF MICHIGAN

COURT OF APPEALS

TB, Petitioner-Appellee,	UNPUBLISHED October 23, 2026 10:05 AM
v	No. 376600 Wayne Circuit Court
LRW, Respondent-Appellant.	LC No. 25-101173-PP

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

Respondent, LRW, appeals as of right from the circuit court's July 16, 2025 order denying his motion to terminate an ex parte personal protection order (PPO) that was issued in connection with a PPO petition filed by petitioner, TB. We reverse the order denying respondent's motion to terminate the PPO and instruct the circuit court to enter an order terminating the ex parte PPO on remand.

I. BACKGROUND

The parties share a minor child. Since 2023, they have been engaged in contentious custody litigation in Michigan and Arizona. Although the minor child was born in Arizona and lived there for a period of time with the parties, petitioner and the minor child moved to Michigan at some point. Respondent continued to live in Arizona. In October 2023, this Court held that Arizona—not Michigan—is the proper state to decide custody under the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), MCL 722.1101 *et seq*.[1] While the custody proceedings were ongoing, petitioner sought and obtained an ex parte PPO against respondent in Arizona in May 2024. However, after a hearing was held, the PPO was dismissed because petitioner "failed to establish by a preponderance of the evidence that [respondent] committed an

[1] We purposely omit the citation to the order to protect the parties' privacy.

act of domestic violence or may commit an act of domestic violence and that the Order of Protection should be maintained."

In December 2024, the Arizona court awarded the parties joint legal custody. The Arizona court found that petitioner had intentionally alienated respondent from the minor child by preventing respondent from having parenting time, including when respondent traveled to Michigan to see the minor child. Respondent was awarded parenting time, which was to increase over time and occur in Arizona. The Arizona court held that for respondent's first parenting time, "[respondent] shall retrieve the Child from [petitioner], at [petitioner's] residence." Respondent repeatedly, and unsuccessfully, traveled to Michigan for the parenting-time exchange after giving petitioner advanced notice. After petitioner refused to comply with the custody and parenting time order, and respondent could not locate the minor child in Michigan, in January 2025, he initiated legal proceedings in Michigan's Oakland Circuit Court to register, confirm, and enforce the Arizona order under the UCCJEA.

On January 30, 2025, petitioner sought the ex parte PPO in this case against respondent in the Wayne Circuit Court based largely on allegations of stalking and harassment. The ex parte PPO was granted on January 31, 2025. However, respondent would later assert "the proof of service was fabricated," and he was never served with the PPO.

Meanwhile, on February 20, 2025, a hearing was held at which the Arizona custody order was registered and confirmed by the Oakland Circuit Court over petitioner's objections.[2] Petitioner still refused to cooperate with respondent's exercise of parenting time; and, on February 28, 2025, petitioner obtained a second ex parte PPO against respondent in Arizona. In the Arizona PPO petition, petitioner alleged many of the same allegations she proffered when obtaining the Michigan PPO. After a hearing was held on March 28, 2025, the PPO was dismissed by an Arizona judicial officer based on a finding petitioner failed to meet her burden of proof. The judicial officer noted the evidence "strongly suggest[ed]" petitioner was "attempting to circumvent the Arizona court orders in multiple ways, including, but not limited to, filing an order of protection to stave off the enforcement of the Arizona orders."

On April 15, 2025, respondent moved the circuit court to terminate the Michigan PPO. Respondent asserted he was never served with the PPO and was unaware of it until he received a letter from the Michigan State Police in April 2025.[3] Respondent argued petitioner failed to inform

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[2] The Oakland Circuit Court's decision to register, confirm, and later enforce the custody order was affirmed by this Court. We purposely omit the citation to the opinion and order to protect the parties' privacy. Any attempt by petitioner to challenge this Court's previous custody orders amounts to an impermissible collateral attack and will not be considered. See *In re Ferranti*, 504 Mich 1, 22-23; 934 NW2d 610 (2019) ("[T]he collateral bar rule generally prohibits a litigant from indirectly attacking a prior judgment in a later, *separate* action. . . . Instead, the litigant must seek relief by reconsideration of the judgment from the issuing court or by direct appeal." (quotation marks, and citation omitted)).

[3] Petitioner argued respondent was served on March 8, 2025, when he was in Michigan attempting to acquire physical custody of the minor child. Although the circuit court stated during a May

the circuit court of the parties' ongoing custody proceedings in the PPO petition, and he attached multiple orders to the motion. Respondent also argued petitioner refused to comply with Arizona custody orders, which was why respondent contacted her via e-mail and appeared at her Michigan residences with police officers. Respondent also alleged that petitioner was using the PPO proceedings to thwart enforcement of the custody orders, as evidenced by two Arizona courts dismissing ex parte PPOs against respondent. The circuit court scheduled a hearing.

On July 3, 2025, the parties appeared before the circuit court on respondent's motion to terminate the PPO. Both parties testified, and petitioner repeatedly stated that respondent sought to enforce custody orders that were declared unenforceable in Michigan. Respondent's testimony contradicted petitioner's testimony. Although it was clear that the custody orders were central to the issues before the circuit court and whether respondent's conduct had a legitimate purpose, the court refused to consider documentary evidence relating to the custody proceedings, including orders entered by this Court and circuit courts in Michigan and Arizona. After the parties' testimony was complete, the circuit court denied respondent's motion to terminate the ex parte PPO. The circuit court's rationale largely hinged on its finding that petitioner's testimony was credible and respondent's testimony was not credible.

This appeal followed.[4]

II. STANDARDS OF REVIEW AND PRESERVATION

"The granting . . . of a PPO is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *JLS v HRS*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 368375); slip op at 3 (quotation marks and citations omitted). "A trial court's findings of fact underlying a PPO ruling are reviewed for clear error." *SP v BEK*, 339 Mich App 171, 176; 981 NW2d 500 (2021). "The clear-error standard requires us to give deference to the lower court and find clear error only if we are nevertheless left

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2025 hearing that it would consider the issue of service before deciding the merits of respondent's motion to terminate the PPO, the circuit court never decided the issue. Petitioner's arguments to the contrary are patently false, which is a pattern of litigation by the petitioner that this court finds troubling.

[4] After the instant appeal commenced, the PPO proceedings were transferred to a different jurist. That jurist denied petitioner's motion to extend the PPO past January 31, 2026. Petitioner filed several motions concerning this decision and then sought to appeal as of right the resulting orders. On April 3, 2026, this Court dismissed that appeal for lack of jurisdiction. *TB v LRW*, unpublished order of the Court of Appeals, entered April 3, 2026 (Docket No. 379751).

Even though it appears the PPO expired on January 31, 2026, the issues raised on appeal are not moot because the PPO was entered into Law Enforcement Information Network (LEIN). See MCL 600.2950(17). "Entry of an improperly issued PPO into LEIN presents a live controversy." *HMM v JS*, ___ Mich ___, ___; ___ NW3d ___ (2024) (Docket No. 367586); slip op at 4. In addition, the PPO could affect respondent's eligibility for a firearms license. See *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008).

with the definite and firm conviction that a mistake has been made." *Id*. (alteration in original; quotation marks and citations omitted).

"Whether due process has been afforded is a constitutional issue that is reviewed de novo." *CAJ v KDT*, 339 Mich App 459, 464; 984 NW2d 504 (2021) (quotation marks and citation omitted). "De novo review means that we review the legal issue independently, without deference to the lower court." *Estate of Swanzy v Kryshak*, 336 Mich App 370, 377; 970 NW2d 407 (2021) (quotation marks and citation omitted). We also review "de novo issues involving the proper interpretation and application of statutes and court rules." *McGregor v Jones*, 346 Mich App 97, 100; 11 NW3d 597 (2023).

However, respondent never argued the circuit court violated MCR 3.703(D) by refusing to consider documentary evidence relating to the custody proceedings, rendering the argument unpreserved. See *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). Generally, "[i]n civil cases, Michigan follows the raise or waive rule of appellate review." *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023) (quotation marks and citation omitted). "If a litigant does not raise an issue in the trial court, this Court has no obligation to consider the issue." *Id*. However, "because of the potential criminal consequences for a respondent's violation of a PPO, and the liberty interests at stake," this Court has concluded "that plain-error review also applies to unpreserved issues in PPO proceedings." *HMM v JS*, ___ Mich ___, ___; ___ NW3d ___ (2024) (Docket No. 367586); slip op at 4.

"To avoid forfeiture under plain-error review, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *In re VanDalen*, 293 Mich App 120, 135; 809 NW2d 412 (2011) (quotation marks and citations omitted). "[A]n error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App at 9. Reversal is only warranted when the plain error "seriously affect[ed] the integrity, fairness, or public reputation of judicial proceedings." *In re Mota*, 334 Mich App 300, 311; 964 NW2d 881 (2020).

III. THE ISSUANCE OF THE EX PARTE PPO AND DENIAL OF RESPONDENT'S MOTION TO TERMINATE

Respondent argues that the circuit court erred in granting an ex parte PPO against him because the allegations did not suggest that petitioner would suffer immediate or irreparable injury, loss or damage from the delay required to provide respondent notice. We agree.

A PPO is "an injunctive order." *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). "MCL 600.2950 sets forth the criteria under which a trial court may issue a PPO in a domestic context." *SP*, 339 Mich App at 177 (quotation marks omitted). "[U]nder 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)].' " *Id*. "A PPO is not to be sought or issued on a whim or because someone simply does not like someone else and makes reckless statements to support a fiction." *Brown v Rudy*, 324 Mich App 277, 295; 922 NW2d 915 (2018). "Importantly, under MCL 600.2950(4), [a] petitioner [is] not required to show that [a] 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." *SP*, 339 Mich App at 187.

A PPO can be issued on an ex parte basis. *Kampf v Kampf*, 237 Mich App 377, 384-385; 603 NW2d 295 (1999). See also MCL 600.2950(12); MCR 3.703(G); MCR 3.705(A). However, to warrant an ex parte PPO, "the petition must set forth specific facts showing that immediate and irreparable injury, loss, or damage will result to the petitioner from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued." MCR 3.704(G). As with any PPO, "a petitioner bears the burden of proof when seeking to obtain an ex parte PPO." *Pickering v Pickering*, 253 Mich App 694, 697; 659 NW2d 649 (2002). An ex parte PPO can be issued on the basis of facts alleged in a verified complaint, a written petition or motion, or an affidavit. MCL 600.2950(12); MCR 3.705(A)(2).

In this case, the allegations in the petition supported "reasonable cause to believe that [respondent] may commit 1 or more of the acts listed in [MCL 600.2950(1)]." See MCL 600.2950(4). Specifically, petitioner alleged that respondent: (1) repeatedly sought to remove the minor child from petitioner's care "through fraudulent and legally void orders," see MCL 600.2950(1)(d); (2) entered onto petitioner's premises in an effort to unlawfully take the minor child from petitioner, see MCL 600.2950(1)(a); (3) assaulted and attacked petitioner and the minor child, see MCL 600.2950(1)(b); and (4) stalked petitioner and would continue to do so, see MCL 600.2950(1)(j). In short, based solely on the allegations in the petition before the circuit court, there was reasonable cause to believe that respondent may commit an impermissible act under MCL 600.2950(1). See *SP*, 339 Mich App at 187.

However, the circuit court abused its discretion by issuing the PPO on an ex parte basis because petitioner failed to demonstrate that "immediate and irreparable injury, loss, or damage" would result if respondent was provided notice of the petition. See MCL 600.2950(12). While the allegations against respondent were serious, most of the allegations were too stale to support a finding of immediate harm. Additionally, there was no imminent danger to warrant the issuance of an ex parte PPO. See MCL 600.2950(12). It was clear from the allegations that respondent lived in Arizona and most of his unwanted contacts with petitioner, who lived in Michigan, were through e-mail. One day before petitioner filed the petition for an ex parte PPO against respondent, respondent allegedly stated he would "never stop flying into Michigan." However, this does not support the conclusion that "immediate and irreparable injury, loss, or damage" would result if respondent was provided notice. See MCL 600.2950(12).

Notably, petitioner did not allege respondent had recently taken steps to physically harm her, or that there was any recent direct contact between them. Rather, petitioner alleged respondent repeatedly attempted to obtain physical custody of the minor child against her wishes, ignoring the fact that he was directed to do so by the legal and enforceable custody order. It is clear from the allegations that respondent's efforts were unsuccessful, which led to respondent (1) engaging in further e-mail contact with petitioner; (2) continuing to appear at petitioner's residence and (3) contacting Child Protective Services (CPS). In sum, petitioner failed to show that "danger [was] imminent and that [a] delay to notify the respondent [would be] intolerable or in itself dangerous" to support the issuance of an ex parte PPO. See *Kampf*, 237 Mich App at 385. The circuit court clearly erred by finding otherwise, and abused its discretion by issuing the ex parte PPO. We vacate the ex parte PPO. See, e.g., *CAJ*, 339 Mich App at 469-470.

IV. DUE PROCESS AND MCR 3.703(D)

Further compounding the circuit court's error in issuing the ex parte PPO is the circuit court's failure to provide respondent with procedural due process at the July 2025 hearing.

"The federal and Michigan constitutions guarantee that the state cannot deny people life, liberty, or property without due process of law." *Kampf*, 237 Mich App at 381 (quotation marks omitted), citing US Const, Am XIV; Const 1963, art 1, § 17. "The essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Norman v Dep't of Transp*, 338 Mich App 141, 159; 979 NW2d 390 (2021) (quotation marks and citation omitted). The procedures at issue should "be tailored to the capacities and circumstances of those who are to be heard to ensure that they are given a meaningful opportunity to present their case." *Id*. (quotation marks and citation omitted).

Due-process protections apply to proceedings on a motion to terminate a PPO. See *CAJ*, 339 Mich App at 468. After an ex parte PPO is issued, the respondent may move to "modify or rescind the [PPO] and request a hearing under the Michigan court rules." MCL 600.2950(13). See also MCR 3.707(A)(1)(b). When such a motion is filed, the circuit court "shall schedule a hearing on the motion . . . within 14 days after the motion is filed." MCL 600.2950(14). See also MCR 3.707(A)(2). "[T]he burden of justifying continuation of a PPO granted ex parte is on the applicant for the restraining order." *Pickering*, 253 Mich App at 699. The circuit court "must consider the testimony, documents, and other evidence proffered and whether the respondent had previously engaged in the listed acts." *Hayford*, 279 Mich App at 326. See also MCL 600.2950(4). Due process mandates an opportunity for the respondent to present evidence at such a hearing, including the opportunity for meaningful cross-examination. *HMM*, ___ Mich App at ___; slip op at 6. See also *JLS*, ___ Mich App at ___; slip op at 5 (holding that "due process necessarily mandates an opportunity for the respondent to present evidence at a hearing to terminate a PPO").

In this case, the circuit court refused to consider respondent's evidence concerning the custody proceedings even though the parties disputed whether the custody order entered in Arizona was valid and enforceable in Michigan. The circuit court maintained it would not resolve custody disputes between the parties. In so holding, the circuit court failed to appreciate that a court issuing a PPO cannot simply disregard an existing custody or parenting time order. See MCR 3.703(D); MCR 3.205. It is important that a circuit court issuing a PPO be cognizant of custody proceedings because a PPO takes precedence over any existing custody or parenting time order, see MCR 3.706(C)(3), and "PPOs can be inappropriately utilized in a divorce or custody proceeding by parties attempting to obtain some perceived advantage," *Pickering*, 253 Mich App at 702 n 3. Regardless of whether it can be said the circuit court violated MCR 3.703(D) when issuing the PPO, the circuit court's refusal to consider the custody proceedings after being informed of their existence in July 2025 contradicts the spirit of the court rules, which clearly promote the principle that the court presiding over the PPO action should be familiar with other actions affecting the parties. We conclude that the circuit court erred by failing to acknowledge these principles.

In refusing to consider the evidence relating to the custody proceedings, the circuit court deprived respondent of a meaningful opportunity to present his case as to why the PPO should be terminated. One of the issues to be decided by the circuit court was whether reasonable cause

existed to believe that respondent may commit one or more of the acts listed in MCL 600.2950(1). See *SP*, 339 Mich App at 177. In relevant part, petitioner alleged respondent engaged in stalking, which can involve "continuing harassment of another individual that would cause a reasonable person to feel . . . frightened, intimidated, threatened, [or] harassed . . . and that actually causes the victim to feel" that way. MCL 750.411h(1)(e). However, "[h]arassment does not include . . . conduct that serves a legitimate purpose." MCL 750.411h(1)(d); see *Hayford*, 279 Mich App at 332-333. As a result of the circuit court's ruling, respondent was unable to present evidence to corroborate his testimony that his conduct served a legitimate purpose, i.e., to schedule parenting-time exchanges to ensure he received parenting time. This was extremely detrimental to respondent because it effectively prevented him from supporting his claims and establishing his credibility.

Additionally, because the circuit court refused to consider the custody orders, respondent was unable to present evidence to support his argument that petitioner (1) used the PPO proceedings to obtain leverage against respondent in the custody proceedings and (2) had a motive to ensure respondent was denied contact with the minor child. The orders were also relevant to petitioner's credibility because they contradicted her claims that respondent attempted to use unenforceable court orders to unlawfully remove the minor child from her care. "The credibility of witnesses is a material issue and evidence that shows bias or prejudice of a witness is always relevant." *Lewis v LeGrow*, 258 Mich App 175, 211; 670 NW2d 675 (2003). "Typically, the trial court has an advantage in determining the weight and credibility of a witness's testimony, and we give regard to that opportunity to judge credibility." *HMM*, ___ Mich App at ___; slip op at 5. However, the circuit court limited its own ability to judge the parties' credibility by refusing to consider the custody orders. See *id*. at ___; slip op at 5.

In sum, although respondent testified at the PPO hearing, respondent was effectively unable to be heard in a meaningful manner because the circuit court refused to consider pivotal evidence. See *JLS*, ___ Mich App at ___; slip op at 2-5. See also *Cummings v Wayne County*, 210 Mich App 249, 253; 533 NW2d 13 (1995) (noting that due process requires the opportunity to be heard in a meaningful manner and the opportunity to respond to the evidence). Accordingly, we find that respondent was deprived of procedural due process at the hearing.

V. RES JUDICATA

Respondent also argues petitioner's allegations were barred under the doctrine of res judicata because petitioner's claims were considered, and rejected, in an Arizona PPO proceeding. However, respondent did not rely on res judicata in the circuit court and this issue is unpreserved. See *McCoy v Berrien County Clerk*, 348 Mich App 602, 611-612; 19 NW3d 897 (2023). Moreover, because this issue was never considered by the circuit court, we decline to address it. See *Aguirre v Dep't of Corrections*, 307 Mich App 315, 326; 859 NW2d 267 (2014) (explaining that this Court "need not address an issue that was not the basis of the trial court's decision"); *In re Martin*, 200 Mich App 703, 717; 504 NW2d 917 (1993) ("An appellate court's primary function in regard to fact finding is review of the trial court's record and determination whether that record supports the trial court's findings." (quotation marks and citation omitted)). See also *HMM*, ___ Mich App at ___; slip op at 7 (declining to consider an issue the respondent did not "squarely challenge" in the circuit court).

VI. CONCLUSION

We reverse the order denying respondent's motion to terminate the ex parte PPO and remand for entry of an order terminating the PPO for the reasons set forth in this opinion.[5] We do not retain jurisdiction.

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado

[5] We acknowledge that the PPO appears to have expired on January 31, 2026. Nonetheless, given the clear invalidity of the ex parte PPO, we instruct the circuit court to formally terminate it on remand. See, e.g., *CAJ*, 339 Mich App at 470 (vacating and remanding with instruction to the trial court to enter an order terminating the PPO when the trial court failed to follow required procedures and failed to afford the parties due process).