STATE OF MICHIGAN

COURT OF APPEALS

In re MARK SISSON.

COURTNEY LYNN BOX,

Petitioner-Appellee,

v

MARK SISSON,

Respondent-Appellant.

UNPUBLISHED
September 22, 2015

Nos. 321500 and 321538
Osceola Circuit Court
LC No. 14-013817-PP

REEVES BOX, as Next Friend of BROK BOX, Minor,

Petitioner-Appellee,

v

MARK SISSON,

Respondent-Appellant.

No. 321540
Osceola Circuit Court
LC No. 14-013818-PH

REEVES BOX, as Next Friend of MACKENZIE BOX, Minor,

Petitioner-Appellee,

v

MARK SISSON,

Respondent-Appellant.

No. 321541
Osceola Circuit Court
LC No. 14-013819-PH

REEVES BOX, as Next Friend of BRENDON BOX, Minor,

Petitioner-Appellee,

v

MARK SISSON,

Respondent-Appellant.

No. 321542
Osceola Circuit Court
LC No. 14-013820-PH

REEVES GARRISON BOX,

Petitioner-Appellee,

v

MARK SISSON,

Respondent-Appellant.

No. 321543
Osceola Circuit Court
LC No. 14-013821-PH

REEVES BOX, as Next Friend of ALLANA BOX, Minor,

Petitioner-Appellee,

v

MARK SISSON,

Respondent-Appellant.

No. 321544
Osceola Circuit Court
LC No. 14-013822-PH

Before: SERVITTO, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

In Docket No. 321538, respondent appeals from the trial court's final order denying his motion to terminate an ex parte domestic personal protection order (PPO) issued for petitioner Courtney Box (respondent's daughter). In Docket Nos. 321540, 321541, 321542, 321543, and 321544, respondent appeals from the trial court's decision to grant nondomestic PPOs to petitioners Reeves Box, Courtney's husband, and their four minor children. In Docket No. 321500, respondent appeals from the trial court's judgment of contempt, issued on the ground that he gave false testimony while under oath. We reverse the trial court's April 4, 2014, orders

granting personal protection orders to the petitioners and vacate its judgment of contempt against respondent and remand to the trial court for further proceedings.

Respondent is the owner of Employee Benefits Solutions, Inc. (EBS). His daughter, petitioner Courtney Box, worked at EBS for approximately 11 years until she quit on November 11, 2013. Apart from a single voicemail message left by respondent, Ms. Box had no contact with respondent after she quit. Upset that his daughter left his business, respondent expressed his anger and frustration in several troubling statements to another daughter, Denise Ochampaugh. Ms. Box learned about these statements in December 2013 from her mother. In March 2014, very shortly after respondent filed a civil lawsuit naming Ms. Box as one of the defendants, Ms. Box petitioned the court for an ex parte domestic PPO, citing the statements made about her to Ms. Ochampaugh. The trial court granted the PPO, and respondent moved to have it terminated. After a hearing, the trial court denied respondent's motion, and granted nondomestic PPOs to petitoners Reeves Box, Ms. Box's husband, and their four minor children. The trial court also held respondent in contempt on the ground that he testified falsely under oath, and ordered him immediately to jail for two days.

On appeal, respondent first argues that the trial court improperly issued the PPOs for Ms. Box, her husband, and their four minor children. We review for an abuse of discretion a trial court's determination whether to issue a PPO because it is an injunctive order. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008).

Although the PPOs were effective when respondent filed the instant appeal, all of them expired on September 6, 2014.[1] Nevertheless, this issue is not moot. An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief and an appellate court will generally not decide moot issues. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). However, an issue is not moot where it "may have collateral legal consequences" for an individual. *Mead v Batchlor*, 435 Mich 480, 486; 460 NW2d 493 (1990), abrogated on other grounds by *Turner v Rogers*, 131 S Ct 2507; 180 L Ed 2d 452 (2011).

A PPO may be entered into the Law Enforcement Information Network (LEIN). MCL 600.2950(16) and (17). Although there is no statutory provision providing for the removal of a PPO from the LEIN after a PPO expires, MCL 600.2950(19) and (20) provide that the LIEN must be updated with information that a PPO was "rescinded, modified, or extended by court order." Thus, the issuance of a PPO may continue to have consequences for an individual unless rescinded by court order. Further, in this case, respondent provided an affidavit attesting that he owns his own business in a highly regulated industry which requires disclosure of his involvement in any court violations or criminal actions. Respondent attested that the PPO's could harm his business reputation and potentially result in the revocation of appointments and

[1] Ms. Box moved to extend the PPO in case no. 14-13817-PP (docket no. 321538). The trial court denied her motion on September 5, 2014.

licensing designations, thereby causing a loss of business. Thus, the expired PPO's continue to have adverse consequences to respondent. See *Hayford*, 279 Mich App 324 at 325.

Respondent contends that the trial court abused its discretion in granting the PPOs because there were not two acts of "unconsented contact" initiated by respondent against any of the six petitioners. We agree.

Pursuant to MCL 600.2950a(1), an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin an individual from engaging in conduct that is prohibited under MCL 750.411h, 750.411i, and 750.411s. "Relief under this subsection shall not be granted unless the petition alleges facts that constitute stalking as defined in section 411h or 411i or conduct that is prohibited under section 411s . . . ." MCL 600.2950a(1). "Stalking" is defined in both MCL 750.411h(1)(d) and MCL 750.411i(1)(e) 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.

" '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." MCL 750.411h(1)(c); MCL 750.411i(1)(d). " '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 . . . ." MCL 750.411h(1)(e); MCL 411i(1)(f).

MCL 750.411s(1) prohibits the posting of a message through an electronic medium of communication without the victim's consent if all of the following apply:

> (a) The person knows or has reason to know that posting the message could cause 2 or more separate noncontinuous acts of unconsented contact with the victim.
>
> (b) Posting the message is intended to cause conduct that would make the victim feel terrorized, frightened, intimidated, threatened, harassed, or molested.
>
> (c) Conduct arising from posting the message would cause a reasonable person to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.
>
> (d) Conduct arising from posting the message causes the victim to suffer emotional distress and to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

Here, the trial allowed the PPO's after analyzing MCL 750.411h and MCL 750.411i. The trial court erred in finding sufficient evidence to sustain Courtney's PPO and to issue the remaining PPOs under MCL 750.411h and MCL 750.411i because petitioners did not present evidence of "unconsented contact." The trial court construed the telephone calls between respondent and Ochampaugh as "unconsented contact," observing that it did not "imagine that [Courtney] consented to him calling and making those phone calls." However, under the plain language of the statute, "unconsented contact" in the instant case would mean contact between respondent and petitioners initiated or continued by respondent without petitioners' consent or despite their wishes to avoid it or stop it. Clearly, respondent's telephone conversations with Ochampaugh do not satisfy the definition of "unconsented contact" found in MCL 750.411h(1)(e) and MCL 750.411i(1)(f). Nor do they meet the requirement of "2 or more separate noncontinuous acts of unconsented contact with the victim" under MCL 750.411s(1)(a).

Courtney testified that, apart from a single voicemail message, she had had no contact with respondent since November 11, 2013. Courtney did not claim that the voicemail message was "unconsented contact." Even if the message were "unconsented contact," a single instance of contact does not constitute a "course of conduct," i.e., "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411h(1)(a); MCL 750.411i(1)(a), or "2 or more separate noncontinuous acts of unconsented contact with the victim" under MCL 750.411s(1)(a). Further, petitioners presented no evidence of any contact between respondent and Reeves Box and the Box minors. Because petitioners presented no evidence of "unconsented contact" or a "course of conduct," they failed to justify issuance of the PPOs. The trial court thus abused its discretion by issuing the PPOs for Reeves and the Box minors and by denying respondent's motion to terminate the PPO issued to Courtney.

Respondent also argues that the trial court erred in holding him in contempt for allegedly false testimony. We agree. This Court reviews a lower court's decision to hold an individual in contempt for an abuse of discretion. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714; 624 NW2d 443 (2000). A trial court has not abused its discretion if its decision results in an outcome within the range of principled outcomes. *In re Contempt of Henry*, 282 Mich App 656, 671; 765 NW2d 44 (2009).

"Contempt of court is a wilful act, omission, or statement that tends to impair the authority or impede the functioning of a court," *In re Contempt of Robertson*, 209 Mich App 433, 436; 531 NW2d 763 (1995), or a neglect or violation of a duty to obey a court order. *In re Contempt of United Stationers Supply Co*, 239 Mich App 496, 501; 608 NW2d 105 (2000). When a contempt is committed in the immediate view and presence of a court, the court may summarily punish it. MCL 600.1711(1). Such direct contempt occurs when all the facts necessary to find contempt are within the personal knowledge of the judge. *In re Contempt of Henry*, 282 Mich App at 675. However, summary punishment is disfavored because it does "not allow for many of the procedural safeguards viewed as essential to fundamental fairness." *In re Meizlish*, 72 Mich App 732, 739; 250 NW2d 525 (1976). Contumacious behavior that does not require an immediate response should not be summarily punished. *In re Contempt of Scharg*, 207 Mich App 438, 439-440; 525 NW2d 479 (1994).

During the hearing on respondent's motion to terminate the PPO, petitioners' attorney asked respondent, "Was there . . . anytime that you left her [i.e., Ms. Box] a voicemail; that you stated that you were going to destroy her?" Respondent replied, "Absolutely not." At the request of the trial court, petitioners' attorney played respondent's voicemail message to Ms. Box. The trial court indicated that it heard respondent say on the recording that he would destroy his daughter in court, and found this statement inconsistent with respondent's testimony. Respondent's attorney attempted to explain that respondent understood petitioners' question regarding whether he had stated he was "going to destroy her" to refer to whether he had ever threatened his daughter physically. Rejecting this explanation, the trial court replied, "But, I heard him say he was going to destroy her in court. And I heard him say; 'Absolutely not,' he had never said that." On redirect examination, respondent attempted to explain how he had understood petitioners' question. Nevertheless, at the end of the proceeding, with no forewarning and no discussion, the trial court found respondent in criminal contempt for providing false testimony in court while under oath, and ordered him to jail for two days.

Respondent convincingly argues that his testimony was not false under the circumstances. He asserts that he understood petitioners' question in the context of the PPO hearing to refer to whether he had ever threatened his daughter with physical destruction. Most of the prior testimony at the hearing revolved around the statements respondent made to Ochampaugh which involved physical violence, respondent's alleged anger-management issues, and the fear these generated in Ms. Box. Consequently, it is reasonable for respondent to have thought that petitioners' attorney was asking whether he had ever threatened to destroy his daughter physically. This conclusion is buttressed by the fact that the trial court had already made it very clear that the PPO hearing was not the place to discuss respondent's lawsuit and that the context of the voicemail clearly conveyed that respondent's message was that he would destroy Ms. Box in the court system.

This record also does not establish that respondent willfully testified falsely, or that he had a reason to do so. "Wilful" conduct implies design, purpose, and intent. *Jennings v Southwood*, 446 Mich 125, 139-140; 521 NW2d 230 (1994). If, as seems reasonable, respondent had a different understanding of the question asked, he cannot be said to have intended to lie if he answered accurately consistent with that understanding. Moreover, respondent would gain nothing by denying his threat to destroy Ms. Box in court because the hearing was focused on the threats of physical violence that respondent conveyed to Ochampaugh.

"Because the power to hold a party in contempt is so great, it 'carries with it the equally great responsibility to apply it judiciously and only when the contempt is clearly and unequivocally shown.' " *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App at 708, quoting *People v Matish*, 384 Mich 568, 572; 184 NW2d 915 (1971). Here, the falsity of respondent's testimony was not shown clearly and unequivocally. Finding respondent in contempt under these circumstances and summarily punishing him with two days in jail falls outside the range of principled outcomes and, therefore, constitutes an abuse of the trial court's discretion. *In re Contempt of Henry*, 282 Mich App at 671.

We reverse the trial court's April 4, 2014, orders granting personal protection orders to the petitioners and vacate its judgment of contempt against respondent. Furthermore, we remand this matter to the trial court and require the trial court to enter the appropriate orders removing

the PPOs and/or any reference to criminal contempt from the LEIN. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Jane M. Beckering
/s/ Mark T. Boonstra