STATE OF MICHIGAN

COURT OF APPEALS

DAWN M. WILSON,

Petitioner-Appellee,

v

MICHAEL C. WILSON,

Respondent-Appellant.

UNPUBLISHED
July 14, 2016

No. 327410
Livingston Circuit Court
LC No. 15-049666-PP

Before: OWENS, P.J., and BORRELLO and O'BRIEN, JJ.

PER CURIAM.

Respondent, Michael C. Wilson, appeals as of right the trial court's order denying his motion to terminate a personal protection order (PPO) that was entered between him and petitioner, Dawn M. Wilson. Because respondent was deprived of his constitutional right to due process, we reverse the trial court's May 8, 2015 order denying his motion to terminate the PPO, as well as the trial court's June 11, 2015 order denying petitioner's subsequent motion to terminate the PPO.

Petitioner filed a petition for a PPO against her husband, respondent, on May 6, 2015. According to the petition, respondent "has threatened me in front of our children and is a police officer and threatens to be above the law because police stick together" "[o]n several occasions." A questionnaire included with the petition cited three separate "incidents that caused [her] to seek a PPO," including (1) an April 25 incident where respondent "was drinking and threatened to pour gas and burn me while sleeping (Dawn Wilson) our [sic] 8 year old [child's name omitted] heard him and felt threatened"; (2) a May 3 incident where respondent "was walking around with his gun making threatening gestures our [sic] children saw him and began to cry"; and (3) multiple incidents where respondent "has stated many times that with divorce we will all disappear and no one will see me." Petitioner acknowledged on the petition that the parties were "starting divorce proceedings." An ex parte PPO was entered the same day.

Respondent filed a motion to terminate the PPO the following day, on May 7, 2015. In his motion, respondent stated that "[t]he allegations [in the petition] are grossly inaccurate and false." He continued, "An hour after being served the PPO Dawn Wilson sent me a text message . . . ." A hearing on respondent's motion was scheduled for the next day, May 8, 2015, and both parties retained counsel before that hearing. On May 8, respondent also filed an answer to petitioner's petition, largely denying the allegations that were asserted against him.

Specifically, respondent asserted "that he ha[d] (a) never threatened the Plaintiff, (b) never stalked the Plaintiff, (c) [sic] never assaulted the Plaintiff, (d) never battered the Plaintiff, and (e) never engaged in any conduct which would necessitate the need for a Personal Protection Order." Respondent ultimately explained that petitioner sought a PPO "to attempt to gain an advantage in a potential divorce action and attempt to divert attention away from [her own] misconduct."

As indicated above, a hearing on respondent's motion was held on May 8, 2015. To begin, the trial court explained that it "d[id] not have that long" and that a different judge "does usually 10 minutes on this side, 10 minutes on that side and makes a decision," which "may be the case here." Petitioner then called her first witness, Wesley Hellmuth, who testified that he "was friends with both [parties]." He testified that he was at a social gathering at the parties' home in April, and then the following exchange took place:

> *Petitioner's Counsel*: And did you hear anything outside the residence that caused you to pause?
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> *Hellmuth*: I -- I -- did. I -- we were outside and we were gonna start a bonfire. And there was another gentlemen that was there with me. And we said to Mike -- we said, Mike, why don't you grab some gasoline so we can start this fire. So he walked out and he grabbed the can of gasoline and said I've been savin' this for that bitch to burn her bed.
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> *Petitioner's Counsel*: Okay. To burn her or to burn her bed?
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> *Hellmuth*: To burn her bed.
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> *Petitioner's Counsel*: Okay. Okay. Did you then at some point relate that to Ms. Wilson?
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> *Hellmuth*: I did not.
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> *Petitioner's Counsel*: Okay.
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> *The Court*: Did something -- was something said about her while she was sleeping?
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> *Hellmuth*: I can't recall anything about while she was sleeping. I can't, no.
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> *The Court*: Okay.

Hellmuth admitted on cross-examination that the individuals at the social gathering, including himself, were drinking alcohol when this discussion occurred. He denied, however, that respondent's comment was made "as a joke," instead describing a situation where he "felt anger from [respondent]."

Petitioner's counsel next called respondent to testify. Petitioner's counsel began questioning respondent about a document that was submitted with petitioner's petition that appeared to be a police report.[1] Eventually, petitioner described it as "a false report" that was "a joke." She elaborated, however, that "all the statements in it are true." While respondent's counsel objected to the trial court's consideration of that document, arguing that it was speculative in nature, lacked foundation, and constituted inadmissible hearsay, the trial court continued the hearing and did not indicate whether it would be considered or not.[2] Petitioner's counsel then asked where the officer who drafted the joke report learned the information that was included, and respondent admitted that the bonfire incident was discussed "[w]hen [we] came into work Monday morning [and talked] about things we did over the weekend." Respondent admitted that he "had made a mistake sitting by a bonfire and ultimately created a -- a problem . . . ." In response to both questioning from petitioner's counsel and the trial court, respondent maintained that his comment at the bonfire was made as a joke.

Respondent's counsel then began cross-examination of respondent. Respondent denied that his comment at the bonfire was anything more than "a 100 percent joke." He also testified that the gun-related incident described in the petition was, in reality, him simply bringing his law enforcement firearm and badge into the parties' home and leaving it in the bathroom rather than his vehicle. The trial court then redirected respondent's counsel's cross-examination of respondent back to the comments at the bonfire. Respondent explained that his comment was made as a joke, that it was a reference to *Burning Bed* with Farrah Fawcett, and that he never actually intended to harm petitioner. After more back-and-forth between the trial court and respondent, the trial court concluded the hearing, stating as follows: "I'm going to continue this PPO at this time. If you want a further hearing you can schedule one with my office, but at this time I'm --[.]"

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[1] The document, which appears to be a "CHILD ABUSE NEGLECT" complaint that identifies one of the parties' children as the victim and respondent as the parent, describes the alleged abuse as follows:

> R/S indicates that [the child] is scared to be at home with her father, Mike Wilson, after he made verbal threats to the fact that he will burn his wife while sleeping in bed. R/S indicates that after [the child] overheard her father say this, she felt it credible enough to ask the R/S if she could stay in a hotel for the night. A safety plan should be initiated as soon as possible for the safety of the children.

[2] As will be indicated below, both parties' attorneys met with the trial court prior to the hearing. In part, the trial court's conversation appeared to focus on the validity of this document. The trial court explained that conversation as follows: "When I was back in chambers both attorneys seemed to indicate that both agreed that this was a fraudulent document." However, once petitioner explained that "all the statements in it are true," the trial court concluded that it was "not fraudulent" and described the difference between the document being made as a joke and being fraudulent as "a huge distinction[.]"

Respondent's counsel then asked whether the firearm provision in the PPO could be removed, and the trial court responded, "No way." After further back-and-forth between respondent's counsel and the trial court in this regard, respondent asked and the trial court answered as follows:

> *Respondent's Counsel*: Your Honor, could I present other witnesses or take other -- other evidence here to show the history and why this may have been filed for strategic purposes in a divorce case and -- and overstating some of this that happened? And --
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> *The Court*: No, I'm satisfied with what's been testified to.

After further preserving several issues for appellate review, the trial court appeared to have concluded the hearing. Petitioner's counsel, however, asked whether it was "possible to put -- state on the record that we had tried to settle this and we did have an agreement?" The trial court then explained that it rejected both parties' attorneys' attempt to "make this an injunction rather than a PPO" but refused to terminate the PPO. An order reflecting the same was entered that day. This appeal followed.[3]

On appeal, respondent first argues that he was deprived of his constitutional right to due process because the trial court did not allow him to present evidence.[4] We agree.

As a constitutional issue, the issue of whether a party has been deprived of his or her constitutional right to due process is reviewed de novo. *Thomas v Deputy Warden, State Prison of Southern Mich*, 249 Mich App 718, 724; 644 NW2d 59 (2002). "Procedural due process serves as a limitation on government action and requires [the] government to institute safeguards in proceedings that affect those rights protected by due process, including life, liberty, or property." *Id*. "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). While it is true that "[t]he opportunity to be heard does not mean a full trial-like proceeding," it is equally true that "it does require a hearing to allow a party the chance to know and respond to the evidence." *Id*.

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[3] After respondent filed the appeal in this matter, petitioner, represented by the same counsel, moved to terminate the PPO before the trial court. While she continued to maintain her need for protection, she pointed to the fact that the practical result of the PPO was respondent losing his employment and income of approximately $87,000.00 per year, which constituted nearly 90 percent of the family's total income. Respondent filed an answer to petitioner's motion, also asserting that the PPO should be terminated. On June 11, 2015, the trial court denied petitioner's motion after a hearing, explaining that the motion was "all about money," not petitioner's or the parties' children's safety.

[4] We note that the PPO has expired by its own terms; however, we will consider the issues on appeal because there are ongoing ramifications as a result of the issuance of the PPO.

Applying those rules to this case, we conclude that respondent was not provided with the requisite opportunity to respond to the evidence presented by petitioner. *Cummings*, 210 Mich App at 253. Specifically, the trial court reached its decision to deny respondent's motion to terminate the PPO during petitioner's second witness's testimony. When respondent's counsel expressly asked for an opportunity to present evidence in response, the trial court unequivocally denied that request.[5] As stated above, procedural due process requires that respondent be provided a "chance to know and respond to the evidence," and respondent was denied that chance here. *Id*. While it is true that petitioner's second witness was respondent, that fact, alone, does not render the proceedings below constitutionally sufficient. Rather, respondent should have been provided an opportunity to present evidence. Therefore, we conclude that respondent was deprived of his constitutional right to due process.[6]

Accordingly, we reverse the trial court's May 8, 2015 order denying respondent's motion to terminate the PPO and reverse the trial court's June 11, 2015 order denying respondent's motion to terminate the PPO. Although we need not substantively address them in light of this conclusion, we will briefly address respondent's arguments as they relate to the trial court's alleged misunderstanding of MCL 600.2950 and the trial court's refusal to accept the parties' stipulation to dismiss the PPO. We agree with respondent in that the trial court was permitted, in its discretion, to either include or exclude the prohibition against "[p]urchasing or possessing a firearm." See MCL 600.2950(1)(e).[7] While we do not agree with respondent that the trial court

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[5] The transcript reflects, however, the following statement by the trial court that was made later in the hearing: "And it is" "surprising it doesn't look like there's anyone in the courtroom who . . . ." Even in context, it is difficult to discern whether this statement reflected the trial court's conclusion that respondent did not actually have any evidence to present. If that was the case, our conclusion may well have been different. But, in our view, the record as presented by the parties is simply insufficient, especially in light of the fact that respondent's counsel's request to prevent evidence was summarily denied. Thus, a remand is necessary.

[6] Petitioner's counsel acknowledged this precise concern before the trial court during the June 11, 2015 hearing. He stated as follows:

> But -- but my -- concern is is [sic] that the hearing you granted very very quickly which was good. I was appreciated [sic] that you did that, but -- but we had limited time. And -- and they weren't allowed to put anything on and that's one of the points on appeal.
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> * * *
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> But I mean they weren't allowed to put it in the -- it was -- it was on my examination not his. He wasn't allowed to put anything on. Here -- here's my -- my concern is if the Court of Appeals says, oh no, the judge, you know, forget what she did substantively procedurally she can't not allow him to put on a case. I don't want the PPO then gone without somethin' . . . .

[7] MCL 600.2950(1) provides as follows:

(1) Except as provided in subsections (27) and (28), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order 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 from doing 1 or more of the following:

(a) Entering onto premises.

(b) Assaulting, attacking, beating, molesting, or wounding a named individual.

(c) Threatening to kill or physically injure a named individual.

(d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.

(e) Purchasing or possessing a firearm.

(f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.

(g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.

(h) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.

(i) Engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

(j) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.

As is apparent from this statutory section's plain language, see *Grossman v Brown*, 470 Mich 593, 598; 685 NW2d 198 (2004) (providing that courts are to apply and interpret statutory language according to its plain and unambiguous meaning), a trial court is permitted to enter a PPO that prohibits an individual from doing one or more, but not necessarily all, of the actions set forth in subsections (a) through (j). Thus, it follows that the trial court could, in its discretion,

was required to accept the parties' stipulation to dismiss the PPO as a matter of law, the trial court is certainly permitted to reconsider the parties' wishes to do so. See, e.g., *In re Ford Estate*, 206 Mich App 705, 708; 522 NW2d 729 (1994) ("[P]arties to a civil matter cannot by their mere agreement supersede procedures and conditions set forth in statutes or court rules.").

Reversed. No taxable costs pursuant to MCR 7.219, a question of public policy involved.

/s/ Donald S. Owens
/s/ Stephen L. Borrello
/s/ Colleen A. O'Brien

choose to allow respondent to possess a firearm while the PPO is in effect. While respondent argues on appeal that the trial court was unaware of this discretion, the record is not clear in that regard, and we merely make this point to clarify MCL 600.2590(1).