STATE OF MICHIGAN

COURT OF APPEALS

JENNIFER JO MUELLER, Petitioner-Appellee,	UNPUBLISHED October 18, 2016
v	No. 327945 Ingham Circuit Court
SCOTT BOUIS, Respondent-Appellant.	LC No. 12-000308-PH

Before: RIORDAN, P.J., and METER and OWENS, JJ.

PER CURIAM.

Respondent appeals as of right a trial court order denying his motion to terminate an amended personal protection order ("PPO") and extending the expiration date of the amended PPO. We affirm.

I. FACTUAL BACKGROUND

In January 2012, petitioner and respondent met through an Internet dating site. According to petitioner, on the parties' second date, respondent sexually penetrated her despite her repeated requests that he refrain from doing so. The parties exchanged several text messages after the incident, in which petitioner contended that respondent sexually assaulted her and respondent denied the allegations. Shortly thereafter, petitioner obtained a one-year, ex parte PPO against respondent on the basis of sexual assault. Respondent filed a motion to terminate the ex parte PPO, which the trial court denied after a lengthy hearing. In 2013 and 2014, the trial court granted petitioner's motions to extend the PPO based on respondent's ongoing indirect contact with respondent and his stated intent to continue taking action until petitioner retracted the PPO and the related allegations of sexual assault. During this time, respondent initiated, among other things, a defamation lawsuit against petitioner, which was dismissed when the trial court granted summary disposition in favor of petitioner.

In January 2015, the trial court granted an additional ex parte extension of the PPO, entering an amended PPO set to expire on July 28, 2015. On February 20, 2015, respondent filed a motion to terminate the PPO. A hearing on respondent's motion was scheduled for March 6, 2015, but the trial court adjourned the hearing to May 28, 2015, after petitioner requested a stay of the proceedings pursuant to the Servicemembers Civil Relief Act ("SCRA"), 50 USC 3901 *et seq*. (formerly 50 App USC 501 *et seq*.). Ultimately, after taking testimony from the parties at the May 2015 hearing, the trial court denied respondent's motion to terminate the PPO

and extended the PPO to July 28, 2020, concluding that circumstances continue to exist that justified the extension.

Respondent now appeals as of right. See MCR 3.709(B)(1)(b).

II. SCOPE OF APPEAL

As an initial matter, it is necessary to clarify the proper scope of this appeal in light of respondent's numerous claims regarding the initial entry of the PPO in 2012. "[I]ssues relating to the initial granting of [a] PPO [are] not properly before the Court of Appeals where the respondent failed to seek appellate review of the original PPO." *Visser v Visser*, 495 Mich 862, 863; 836 NW2d 693 (2013). Here, the initial PPO was granted ex parte on January 26, 2012, and respondent subsequently filed a motion to terminate the PPO on February 6, 2012. After holding a hearing, the trial court denied respondent's motion to terminate the PPO on March 9, 2012. Pursuant to MCR 3.709(B)(1)(b), respondent was entitled to appeal as of right the trial court's order denying his motion to terminate the PPO because that order was "the ruling on respondent's first motion to rescind or modify" a PPO that was entered ex parte, but he never appealed the order. Instead, similar to *Visser*, 495 Mich at 863, the only appeals that he filed related to the ongoing PPO against him were a delayed application for leave to appeal from the trial court's April 22, 2014 order *extending* the PPO, which this Court denied,[1] and the instant appeal, which also arises from an *extension* of the PPO.

Accordingly, respondent's claims regarding the trial court's initial entry, and continuance, of the original PPO are not properly before this Court because they are related to a prior final order that he was entitled to appeal as of right under MCR 3.709(B)(1)(b). See *Visser*, 495 Mich at 863 (vacating the portion of the Court of Appeals opinion that considered issues concerning the trial court's initial grant of the PPO). See also *Surman v Surman*, 277 Mich App 287, 294; 745 NW2d 802 (2007) ("When a final order is entered, a claim of appeal from that order must be timely filed. A party cannot wait until the entry of a subsequent final order to untimely appeal an earlier final order."); *McDonald v Stroh Brewery Co*, 191 Mich App 601, 609; 478 NW2d 669 (1991) ("Because plaintiffs did not file claims of appeal with regard to [an earlier] order, this Court is without jurisdiction to review the issue [related to that order].").

Thus, we will not consider respondent's arguments regarding the trial court's initial entry and continuance of the PPO in 2012.

III. TRIAL COURT'S DENIAL OF RESPONDENT'S MOTION TO TERMINATE THE PPO AND EXTENSION OF THE PPO

Respondent raises numerous claims in his brief on appeal—under all of the issues identified in his statement of the questions presented—related to the trial court's May 28, 2015

[1] *Mueller v Bouis*, unpublished order of the Court of Appeals, entered August 4, 2014 (Docket No. 321758).

denial of his motion to terminate the PPO and concurrent extension of the PPO. Although we acknowledge the inconvenience and difficulties that respondent has experienced for several years due to the PPO, we cannot conclude that the trial court's denial of respondent's motion and extension of the PPO constituted an abuse of discretion, or that the court otherwise erred during the PPO proceedings.

A. STANDARD OF REVIEW

We review a grant or denial of injunctive relief, including a trial court's decision to deny a respondent's motion to rescind or terminate a PPO, for an abuse of discretion. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008); *Pickering v Pickering*, 253 Mich App 694, 700-701; 659 NW2d 649 (2002). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Hayford*, 279 Mich App at 325. We review the trial court's underlying factual findings for clear error. *Id*. "A finding is clearly erroneous if there is no evidentiary support for it or if this Court is left with a definite and firm conviction that a mistake has been made." *Trahey v City of Inkster*, 311 Mich App 582, 593; 876 NW2d 582 (2015) (quotation marks and citation omitted). In considering the court's factual findings, deference is paid to its credibility determinations. MCR 2.613(C); *Pickering*, 253 Mich App at 702.

Many of respondent's claims are unpreserved. See *Detroit Leasing Co v City of Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). "This Court will generally decline to address unpreserved issues unless a miscarriage of justice will result from a failure to pass on them, . . . the question is one of law and all the facts necessary for its resolution have been presented, or [it is] necessary for a proper determination of the case." *Autodie, LLC v City of Grand Rapids*, 305 Mich App 423, 431; 852 NW2d 650 (2014) (quotation marks and citation omitted; alterations in original). Nonetheless, when we decide to review unpreserved claims, our review is limited to plain error affecting substantial rights. *Demski v Petlick*, 309 Mich App 404, 426-427; 873 NW2d 596 (2015).

B. ANALYSIS

1. PROCEDURAL ISSUES

Respondent argues that "[t]he trial court erred statutorily, procedurally, and constitutionally when it used the May 28, 2015 termination hearing scheduled to address Judge Economy's modified, six[-]month continuation order as a means to issue a new five-year PPO order [sic] under MCL 600.2950[a](2)(b)." Because respondent failed to preserve this issue below by objecting to the trial court's procedure at the May 28, 2015 hearing, see *Detroit Leasing Co*, 269 Mich App at 237, it is reviewed for plain error affecting substantial rights, *Demski*, 309 Mich App at 426-427. However, we deem this claim abandoned because respondent has failed to cite any legal authority supporting his claims.[2] *Houghton ex rel Johnson*

[2] Respondent cites MCL 600.2950a(11)(g) for the proposition that an individual restrained or enjoined by an ex parte PPO may file a motion to modify or rescind the PPO within 14 days after

v Keller, 256 Mich App 336, 339-340; 662 NW2d 854 (2003) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority. An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue.") (citations omitted). He also provides no explanation as to how the trial court's purported error violated the state or federal constitutions.

Further, we note that the trial court specifically stated in its ruling on the record at the May 28, 2015 hearing that it was denying the motion to terminate, and then it subsequently found that "circumstances continue to exist which would require an *extension* of order" until July 28, 2020. (Emphasis added.) Thus, contrary to respondent's claims, the trial court did not "replace" the prior PPO with a *new* PPO. The trial court *extended* the order, as confirmed by the "amended" PPO entered after the hearing. Accordingly, the underlying premise of respondent's claim is inaccurate.

Therefore, we conclude that respondent has failed to establish a plain error affecting his substantial rights. See *Demski*, 309 Mich App at 426-427; *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010).

2. FACTUAL BASIS FOR CONTINUATION OF PPO

Respondent raises numerous claims throughout his brief on appeal regarding the facts on which the trial court relied when it denied his motion to terminate the PPO and extended the PPO on May 28, 2015. However, respondent has failed to establish that the trial court's ruling was an abuse of discretion.

As an initial matter, despite the fact that the trial court's May 28, 2015 extension of the PPO was not a "new" PPO, respondent relies on the procedural and substantive requirements applicable to the initial entry of a PPO under MCL 600.2950a in contesting the trial court's extension of the PPO. This reliance is in error. With regard to motions to modify or rescind a PPO, MCL 600.2950a only prescribes the time within which a respondent may file such a motion and the time within which a court must take action on the motion. Likewise, MCL 600.2950a does not expressly address motions to extend a PPO other than noting that law enforcement agencies must be notified immediately when a PPO is extended by court order. MCL 600.2950a(19)(b).

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being served with the order or receiving actual notice of the order. Respondent's reliance on this provision is misplaced, as MCL 600.2950a(11)(g) only provides that such a statement must appear on the face of a PPO. See MCL 600.2950a(11). MCL 600.2950a(13) and MCR 3.707(A)(1)(b) establish a respondent's right to file a motion to modify or rescind an ex parte PPO within 14 days. More importantly, respondent's citation of this principle provides no basis for concluding that the trial court's extension of the PPO at the May 28, 2015 hearing was in error. There is nothing in those provisions indicating that a respondent's right to file such a motion precludes a trial court from extending the PPO following a hearing on that motion. Respondent cites no other authority in support of his claim.

Instead, pursuant to MCR 3.701, "[e]xcept as provided by this subchapter and the provisions of MCL 600.2950 and 600.2950a, actions for personal protection for relief against domestic violence or stalking are governed by the Michigan Court Rules. Procedure related to personal protection orders against adults is governed by this subchapter." Motions to extend or terminate a PPO are specifically addressed by MCR 3.707. However, as we previously recognized in *Pickering*, 253 Mich App at 698, "neither the statute nor the court rules address the allocation of the burden of proof in a hearing regarding a motion to rescind or terminate a PPO." Accordingly, we concluded that "MCR 3.310(B)(5) applies by its plain terms," *id.*, citing MCR 3.310(I), and that "under MCR 3.310(B)(5) the burden of justifying continuation of a PPO granted ex parte is on the applicant for the restraining order. Hence, the petitioner [has] the burden of persuasion in a hearing held on a motion to terminate or modify an ex parte PPO," *Pickering*, 253 Mich App at 699. Likewise, it logically follows that the petitioner similarly carries the burden of proof when she seeks to extend a PPO. Cf. MCR 3.310(B)(3) (stating that a temporary restraining order may be extended if good cause is demonstrated, and the reasons for the extension are stated either on the record or in a filed document).

We have located no statute or court rule—or any caselaw interpreting the applicable statute and court rules—that specifies the level or type of proof that a petitioner must provide in order to justify an extension of an existing PPO issued under MCL 600.2950a. However, consistent with our reliance on MCR 3.310 in *Pickering*, 253 Mich App at 697-700, given the silence of the applicable statutes and court rules on the burden-of-proof issue, we conclude that the petitioner must, at a minimum, demonstrate that circumstances continue to exist that require extension of the PPO. See MCR 3.310(B)(3) (permitting extension of a temporary restraining order for good cause shown or if the party subject to the order consents to the extension). Cf. *Black's Law Dictionary* (10th ed) (defining "good cause" as "[a] legally sufficient reason.").[3]

Here, the trial court denied respondent's motion to terminate the January 28, 2015 amended, ex parte PPO, and granted an extension of that PPO to July 28, 2020, based on several factors: (1) the trial court's previous finding that a PPO was proper because petitioner was sexually assaulted by respondent, (2) the fact that the ongoing need for the PPO, based on the sexual assault, had been extensively litigated, (3) its finding, after hearing petitioner's testimony and viewing her demeanor, that she continues to feel a need for protection, (4) the fact that respondent, through his counsel, told petitioner's commanding officer that she is pursuing a PPO based on false allegations of sexual assault, and (5) the court's conclusion that petitioner reasonably feared respondent and reasonably had an apprehension of future risk. The court identified several facts in support of its conclusion that petitioner's fear and apprehension were

[3] We note that the form approved by the State Court Administrative Office for orders on motions to modify, extend, or terminate PPOs currently requires the court to check a box indicating whether "[c]ircumstances continue to exist that would require extension/modification of the order," "[c]ircumstances do not exist that would require extension/modification of the order," or "[c]ircumstances do not exist that would require continuation of the term of the order." SCAO-Approved Form CC 385 (3/08), Order on Motion to Modify, Extend, or Terminate Personal Protection Order.

reasonable: (1) the nature of the sexual assault, (2) respondent's indication in court documents that he is aware of her location, and (3) the fact that respondent's counsel sent a letter to petitioner's commanding officer:

> not only pressing the assertion that relief under the Servicemembers Civil Relief Act wasn't done appropriately because he didn't think that the officer in charge who wrote the letter was sufficient enough or good enough for him, but in that letter outlined this personal business and suggested that her claims were false and that her version of the events [was] not accurate, [leaving] out the information that a court had already found that she had been assaulted by [respondent].

The trial court emphasized that the additional information in the letter was not necessary and that "anyone who has been sexually assaulted should not be receiving correspondence to her boss or [commanding officer] suggesting that, in fact, she's a liar and making false claims."

The trial court's findings are not clearly erroneous. See *Hayford*, 279 Mich App at 325. During the hearing, petitioner expressed her belief, based on the detailed information personally included by respondent in documents filed *in propria persona* in other appeals related to the PPO and defamation cases, that he has detailed information regarding her whereabouts. Petitioner testified, "I'm afraid he's going to come hurt me. I'm afraid he's going to hunt me down. I don't think there's any legitimate reason for him to continue searching for my location. And I think that he is going to come do something to me." The parties also confirmed that respondent's attorney contacted petitioner's commanding officer after the February 20, 2015 hearing on respondent's motion to terminate had been adjourned in order to obtain further information regarding petitioner's request for a stay. The trial court read a portion of the letter on the record: "[Respondent's counsel], you wrote her CO on May 1st, 2015, on behalf of your client, indicating to her CO, that as far as your client was concerned, 'In our opinion, the dispute arises over false claims of sexual assault as well as her unreasonable continuation of a personal protection order against [respondent] in order to prevent his admission to the bar. [Petitioner], of course, has her own version of events.' " The copy of the letter provided on appeal likewise confirms that respondent's counsel provided extraneous, egregious comments regarding the belief that petitioner's claims were baseless. Finally, another judge who previously presided over the instant case found, after hearing the testimony of the parties and reviewing text messages subsequently exchanged by the parties, that respondent did, in fact, sexually assault petitioner, regardless of the fact that the local prosecutor's office declined to prosecute the matter based on its finding of reasonable doubt.

In this appeal, respondent strongly contests the trial court's factual finding following the March 9, 2012 motion hearing that petitioner was sexually assaulted. In sum, he argues that he has established throughout the course of these proceedings, by at least a preponderance of the evidence, that the alleged sexual assault never occurred. As explained *supra*, the instant appeal is limited to claims related to the trial court's May 28, 2015 extension of the PPO, and we will not review respondent's claims related to the initial entry of the PPO. Nonetheless, to the extent that this finding of sexual assault directly influenced the trial court's May 28, 2015 ruling, our

review of the record confirms that the trial court did not clearly err in finding, for the purpose of determining whether a PPO was justified under MCL 600.2950a(2)(b), that respondent sexually assaulted petitioner,[4] see *Trahey*, 311 Mich App at 593, especially given the deference that we must give to the trial court's credibility determinations, see MCR 2.613(C); *Pickering*, 253 Mich App at 702. We reject respondent's numerous invitations to reweigh the evidence and the credibility of the witnesses, as those determinations were in the province of the trial court. See MCR 2.613(C); *Pickering*, 253 Mich App at 702. Cf. *Pocius v Smykowski*, 332 Mich 578, 581; 52 NW2d 224 (1952); *Herald Co, Inc v E Michigan Univ Bd of Regents*, 265 Mich App 185, 206; 693 NW2d 850 (2005).

For similar reasons, we reject respondent's claim that the trial court erred in deeming the occurrence of sexual assault as judicially determined, for the limited purpose of these PPO proceedings, and declining respondent's invitation to relitigate the initial entry of the PPO at the May 28, 2015 hearing. Contrary to respondent's characterization of the record, the trial court did not treat the prior issuance of a PPO on the basis of sexual assault as a criminal conviction of sexual assault, and it expressly recognized that respondent had not been found criminally liable of sexual assault. We also disagree that the trial court shifted the burden of proof to respondent when it considered the earlier factual findings of a judge who previously presided over the proceedings related to this PPO. At the May 28, 2015 hearing, the trial court expressly required petitioner to identify circumstances demonstrating that an extension of the PPO was warranted in this case, which was the sole question before the court in May 2015. Again, whether the PPO was properly entered in 2012 on the basis of sexual assault was already litigated and decided by the trial court.

Additionally, again contrary to respondent's claims, we are not compelled—based on the decisions of other agencies and organizations not to prosecute or discipline respondent, or pursue the matter further—to conclude that the trial court erred in finding that sexual assault justifying the issuance of a PPO occurred in this case. Most significantly, criminal cases must be proven beyond a reasonable doubt, and a prosecutor's decision not to prosecute respondent under that higher standard does not necessarily show that the trial court's finding of sexual assault, under the lesser standard applicable to civil cases, is clearly erroneous. See *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). Relatedly, respondent repeatedly emphasizes on appeal that he was not criminally convicted of sexual assault, but such a finding was not necessary for a PPO to be issued. MCL 600.2950a(2)(b) provides that "[r]elief may be sought and granted under this subdivision *regardless of whether the individual to be restrained or enjoined has been charged with or convicted of sexual assault*[.]" (Emphasis added.)

[4] Contrary to respondent's characterization of the original PPO in his brief on appeal, it is apparent from the face of the order that it was initially entered on the basis of sexual assault pursuant to MCL 600.2950a(2)(b), not MCL 600.2950a(1). Again, this appeal is not the appropriate forum to challenge the initial entry and continuation of the PPO based on the trial court's finding of sexual assault.

Furthermore, respondent appears to contend that the trial court effectively issued a PPO under the standards applicable to MCL 600.2950a(2)(a), which allows a victim of sexual assault to *automatically* obtain a PPO against the perpetrator of the assault following a criminal conviction, even though respondent was not convicted of sexual assault and the PPO at issue in this case was issued under MCL 600.2950a(2)(b). See *IME v DBS*, 306 Mich App 426, 434-444; 857 NW2d 667 (2014). As explained above, the trial court expressly found that an extension of the PPO was justified in light of multiple facts in addition to the court's prior determination that respondent sexually assaulted petitioner. Accordingly, respondent's reliance on the procedural requirements applicable to the *initial* entry of a PPO under MCL 600.2950a(2)(a) is misplaced.

We similarly reject respondent's renewed challenges to the trial court's finding of sexual assault in the context of this case under the guise of arguments regarding the Legislature's intent, especially his claim that the Legislature did not intend to allow PPOs to be issued on the basis of sexual assault if the prosecutor's office declined to file charges related to the incident. Respondent's analysis of MCL 600.2950a(2)(a) and (b) is not supported by the plain and unambiguous language of the statute. See *Auto-Owners Ins Co v Dep't of Treasury*, 313 Mich App 56, 68-69; 880 NW2d 337 (2015). Likewise, we reject respondent's claim that the trial court's application of the statute in this case was unconstitutional because, despite respondent's characterization of the PPO, the trial court's entry and extension of the PPO was not equivalent to a criminal conviction of sexual assault, and an extension of the PPO did not result in the consequences of a criminal conviction. Compare MCL 600.2950a(3) and (17), with *Morales v Michigan Parole Bd*, 260 Mich App 29, 50-51; 676 NW2d 221 (2003), *People v Saffold,* 465 Mich 268, 285-286; 631 NW2d 320 (2001), and *Meachum v Fano*, 427 US 215, 224; 96 S Ct 2532, 2538; 49 L Ed 2d 451 (1976). There is absolutely no indication in the record that the trial court effectively treated the PPO, in respondent's words, "as a criminal charge and conviction without a jury," nor is there any basis for concluding that a PPO issued under MCL 600.2950a(2)(b) is the functional equivalent of a criminal conviction.

Ultimately, the trial court did not abuse its discretion when it concluded that petitioner's fear was reasonable and that an extension of the PPO was justified. See *Hayford*, 279 Mich App at 325. Respondent has not identified any authority indicating that the trial court was not permitted to consider its previous findings of fact concerning his conduct when it extended the PPO, and we have found none. Given the trial court's crediting of petitioner's account of the events on January 20, 2012, as well as the subsequent exchange of text messages between the parties and respondent's continuing pattern of interference in petitioner's life, it is reasonable to conclude that she would continue to fear that she might again be sexually assaulted or continually harassed by respondent without the protection provided by the PPO. See MCL 600.2950a(2)(b), (3).

Respondent further argues that the trial court's consideration of his attorney's letter to petitioner's commanding officer was improper for a variety of reasons. He first argues that his attorney's act of sending the letter should not be imputed to him because his attorney was not expressly authorized to write the letter and, therefore, his attorney's conduct exceeded the scope of the agency relationship. It is well established that agency principles apply to the attorney-client relationship, such that actions of an attorney may be imputed to his client. *Everett v Everett*, 319 Mich 475, 482-483; 29 NW2d 919 (1947); *Link v Wabush R Co*, 370 US 626, 633-634; 82 S Ct 1386; 8 L Ed 2d 734 (1962) ("Petitioner voluntarily chose this attorney as his

representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney.") (quotation marks and citation omitted). Respondent fails to recognize that an attorney's authority, "as his client's agent, . . . may be governed by what he is expressly authorized to do as well as by his implied authority." *Uniprop, Inc v Morganroth*, 260 Mich App 442, 447; 678 NW2d 638 (2004); see also *James v Alberts*, 464 Mich 12, 15; 626 NW2d 158 (2001) ("Under fundamental agency law, a principal is bound by an agent's actions within the agent's actual *or apparent* authority.") (emphasis added).

Further, in direct contradiction to his initial claim, respondent effectively concedes that his counsel's decision to send the letter was impliedly or expressly authorized by the agency relationship established through counsel's representation by repeatedly arguing in his brief on appeal that (1) the statements in the letter were accurate and justified, and (2) that sending the letter was an appropriate action in light of the particular circumstances of this case and his attorney's duty to zealously pursue respondent's interests. See MRPC 1.1; Comment, MRPC 1.1; *Bauer v Ferriby & Houston, PC*, 235 Mich App 536, 538; 599 NW2d 493 (1999). As such, the letter was properly imputed to respondent, as "[w]here a principal cloaks his agent with apparent authority to do an act not actually authorized, the principal is bound thereby." *Central Wholesale Co v Sefa*, 351 Mich 17, 26; 87 NW2d 94 (1957) (quotation marks and citation omitted).

Additionally, respondent contends that his attorney's act of sending the letter violated MRPC 1.4. Contrary to respondent's characterization of the rule, nothing in MRPC 1.4 requires an attorney to notify a client each time he sends a letter or communicates with another on the client's behalf.[5] Thus, the trial court did not err in imputing to respondent his attorney's act of sending the letter—which was sent in direct pursuit of respondent's interests—in determining whether petitioner's ongoing fear was reasonable and, accordingly, whether an extension of the PPO was warranted.

Respondent also emphasizes that the amended, ex parte PPO in place when his attorney contacted petitioner's commanding officer "did not bar [r]espondent from communicating with or 'interfering with' [p]etitioner's place of employment." However, regardless of whether contacting petitioner's supervisor violated the PPO in effect at the time, the trial court did not err in considering this incident when it determined that an extension of the PPO was justified under

[5] Additionally, respondent's reliance on *In re Estes*, 390 Mich 585, 598; 212 NW2d 90 (1973), is misplaced. That case is an appeal from the former State Bar Grievance Board's disciplinary suspension of an attorney who settled a case without the client's knowledge or consent and failed to inform and communicate with the client regarding the status of the case for more than two years. Accordingly, that case is not dispositive on the agency issue here. Further, there is no indication in *In re Estes* that an attorney is required to seek his client's express authorization every time he intends to send a letter on a client's behalf.

the circumstances. Respondent has cited no authority, and we have found none, indicating that an extension of a PPO may only be justified based on facts or circumstances that constitute violations of an existing PPO. Additionally, respondent has cited no authority, and we again have found none, indicating that conduct giving rise to an initial PPO and subsequent extensions of that PPO may not be considered in determining whether to further extend the PPO, or that an extension of a PPO must be supported by conduct that would independently satisfy the entry of a new PPO under MCL 600.2950a(1) or (2). Additionally, in reviewing the SCRA, we have not found any provision specifically authorizing an opposing party to contact a servicemember's supervisor in order to confirm the validity of a stay obtained pursuant to 50 USC 3932 (formerly 50 App USC 522).

Nevertheless, even if we assume, without deciding, that respondent, through his attorney, was permitted to contact petitioner's commanding officer to confirm the legitimacy of her request for a stay in accordance with the SCRA, we agree with the trial court's assessment that the additional commentary regarding the purported falsity of petitioner's claims was inappropriate, was unjustified, and would contribute to an individual's reasonable apprehension of future harm.

Next, we reject respondent's claim that the extension of the PPO was erroneous because the court used a "subjective only test" in determining whether petitioner reasonably feared sexual assault, as this claim is not supported by the record and lacks legal support. He relies on the use of "reasonable" in MCL 600.2950a(2)(b), which states, in relevant part, that "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" "[o]ne or more of the acts listed in subsection (3), if the petitioner has been subjected to, threatened with, *or placed in reasonable apprehension* of sexual assault by the individual to be enjoined." (Emphasis added.) However, as previously explained, the requirements of MCL 600.2950a(2)(b) for the initial entry of a PPO do not control PPO extensions, and, moreover, the PPO at issue in this case was entered and extended several times based on allegations of actual sexual assault (as well as the trial court's finding that these allegations were true), and indirect contacts between respondent and petitioner that imposed upon or interfered with petitioner's liberty. The initial PPO was not based on allegations that respondent placed petitioner in reasonable apprehension of sexual assault. Again, we reject respondent's attempts to relitigate the issue of the trial court's finding that he sexually assaulted petitioner. Accordingly, whether petitioner had a reasonable apprehension of future sexual assault is not dispositive here. But, even so, it is apparent from the record that the trial court concluded during the May 28, 2015 hearing that the facts of this case confirmed that petitioner's ongoing fear of respondent was *objectively* reasonable. Thus, reversal is not warranted based on the "test" purportedly used by the trial court when it determined that the circumstances of this case warranted an extension of the PPO.

In sum, we conclude that the trial court's conclusion that petitioner's ongoing fear is reasonable and that an extension of the PPO was warranted under these circumstances was not outside the range of reasonable and principled outcomes. See *Hayford*, 279 Mich App at 325. Respondent has not identified any authority indicating that the trial court was not permitted to consider the court's previous findings of fact concerning respondent's conduct when it determined whether a further extension of the PPO was warranted, and we have found none. Given the trial court's crediting of petitioner's account of the events on January 20, 2012, as well

as the subsequent exchange of text messages between the parties and respondent's ongoing acts of interference in petitioner's life, the trial court did not abuse its discretion in concluding that its May 2015 extension of the PPO was justified. See MCL 600.2950a(2)(b), (3).

IV. JUDICIAL BIAS

Respondent raises numerous arguments in support of his claim that the trial court harbored bias against him and that this bias improperly influenced its factual findings and rulings. We disagree.

A. STANDARD OF REVIEW

Respondent failed to preserve this issue by raising it in the trial court. See MCR 2.003(D); *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011); *Kroll v Crest Plastics, Inc*, 142 Mich App 284, 291; 369 NW2d 487 (1985) ("Where a defendant knows of alleged bias of the trial judge prior to trial and fails to move for disqualification, the issue is not preserved for appeal."). Consequently, our review is for plain error affecting his substantial rights. See *Demski*, 309 Mich App at 426-427.

B. ANALYSIS

"Due process requires that an unbiased and impartial decision-maker hear and decide a case." *Mitchell v Mitchell*, 296 Mich App 513, 523; 823 NW2d 153 (2012). Disqualification for judicial bias or prejudice is necessary on constitutional grounds only "in the most extreme cases." *Cain v Dep't of Corrections*, 451 Mich 470, 498; 548 NW2d 210 (1999). However,

> MCR 2.003(B)(1) provides that a judge is disqualified when the judge is personally biased or prejudiced for or against a party or attorney. Generally, a trial judge is not disqualified absent a showing of actual bias or prejudice. The mere fact that a judge ruled against a litigant, even if the rulings are later determined to be erroneous, is not sufficient to require disqualification or reassignment. [J]udicial rulings, in and of themselves, almost never constitute a valid basis for a motion alleging bias, unless the judicial opinion displays a deep-seated favoritism or antagonism that would make fair judgment impossible and overcomes a heavy presumption of judicial impartiality. [*In re Contempt of Henry*, 282 Mich App 656, 679-680; 765 NW2d 44 (2009) (quotation marks and citations omitted; alteration in original).]

"A trial judge is presumed unbiased, and the party asserting otherwise has the heavy burden of overcoming the presumption." *Mitchell*, 296 Mich App at 523; see also *Cain*, 451 Mich at 497.

Respondent's claims of judicial bias are completely unsupported by the record. He first describes in detail the procedural history of this case, including each of the trial court's rulings, apparently contending that the initial entry of the PPO and subsequent extensions demonstrate that the trial court was biased against respondent. Notably, however, multiple trial court judges presided over the hearings and entered the orders in this case, and there is nothing in the record that indicates "a deep-seated favoritism or antagonism that would make fair judgment

impossible," or that overcomes the "heavy presumption of judicial impartiality." *In re Contempt of Henry*, 282 Mich App at 679-680 (quotation marks and citations omitted).

Additionally, respondent asserts that Judge Garcia should have recused himself on the basis of imputed bias because (1) the judge used to be a member of the law firm in which petitioner's attorney is a shareholder, and (2) the judge "was likely related to" one of petitioner's witnesses in the defamation case who had the last name of "Garcia-Williams" and formerly worked at the same law firm where the judge previously worked and attended the same law school as the judge, albeit years apart. We reject respondent's claims, as these allegations of imputed bias are strikingly attenuated and rest on pure speculation.[6] There is no factual basis in the record to overcome the heavy presumption in favor of judicial impartiality based on imputed bias. See *Cain*, 451 Mich at 495 ("MCR 2.003(B)(1) requires a showing of *actual* bias.").

We similarly reject respondent's claim of judicial bias based on a conversation that allegedly occurred between the parties' attorneys in the presence of the trial court judge and on his vague claims related to an incident involving a sticky note allegedly placed on the case file prior to one of the termination hearings. Nothing in the lower court record demonstrates that these episodes actually occurred and, further, we find no basis for concluding that these instances would overcome the strong presumption of judicial impartiality. See *Mitchell*, 296 Mich App at 523. Similarly, there is no indication in the May 28, 2015 hearing transcript that Judge Garcia "proceeded to yell at [r]espondent and [r]espondent's attorney," or that "[t]his yelling continued during the entire hearing." Respondent appears to claim that his attorney withdrew during this hearing as a result of the "yelling," but it is apparent from the record that his attorney's withdrawal was disconnected from any acts or statements made by the trial court. Instead, the record shows that his withdrawal was related to respondent's decision to address the court at length contrary to the advice of his attorney.

Respondent also appears to contend that the absence of several documents referenced during the May 28, 2015 hearing from the lower court record, and the court clerk's refusal to "fix the record," demonstrates judicial bias, because he "instruct[ed] the clerk that anything that was handed to the Judge should be in the record." This claim fails to establish judicial bias and is based on an erroneous understanding of Michigan civil procedure. The lower court "record consists of the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings in the case appealed, and the exhibits introduced." MCR 7.210(A)(1). However, materials that are intended to be used as evidence in a case must be submitted to a trial court judge in order to be introduced into the evidentiary record as exhibits. MCR 2.518(A). They are not to be filed with the clerk of the court. *Id*. Further, pursuant to MCR 2.518(B):

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[6] Notably, with regard to Garcia-Williams, respondent's claim is based solely on similar professional experiences. He identifies no factual support indicating that Garcia-Williams and Judge Garcia worked at the law firm at the same time, and respondent admits that the two did not attend law school at the same time.

> At the conclusion of a trial or hearing, *the court shall direct the parties to retrieve the exhibits submitted by them* except that any weapons and drugs shall be returned to the confiscating agency for proper disposition. If the exhibits are not retrieved by the parties as directed, within 56 days after conclusion of the trial or hearing, the court may properly dispose of the exhibits without notice to the parties. [Emphasis added.]

Especially in light of these rules, respondent's claim of judicial bias based on the absence of these documents from the lower court record has no merit.[7]

Respondent next argues that the trial court's inclusion of a brief "in another folder" demonstrates judicial bias, because it was filed "as to make it harder for a reviewing court to find." Given the fact that lower court records received on appeal routinely include related documents in separate folders, we reject such a claim.

Finally, respondent contends, in support of his claim of judicial bias, that the court improperly denied his request under the Freedom of Information Act ("FOIA"), MCL 15.231 *et seq*. (1976 PA 442), for a copy of an audio recording of the May 28, 2015 hearing. Accordingly, he requests that we "address . . . whether a recording of an open public hearing should be provided to a party to that hearing by means of the open records act [*i.e.*, FOIA]." While we recognize an individual's general right to request copies of public records, including audio recordings, under FOIA, see, e.g., MCL 15.232 and MCL 15.233, there is no factual basis in the record for us to grant relief here. There is nothing in the lower court record indicating that respondent requested a recording of the hearing or, most importantly, that an audio recording of the hearing actually exists. He also has provided no evidence that his request complied with the procedural requirements under FOIA. Thus, we reject respondent's claims.

We note, however, that respondent states in his brief on appeal that he "sought this recording because it would be helpful to this Court in establishing preservation of the error and to show the transcript and record errors." Respondent fails to recognize that trial transcripts prepared by certified court reporters are presumed to be accurate, and that a party must establish several elements in order to "overcome the presumption of accuracy and be entitled to relief," namely:

> (1) seasonably seek relief; (2) assert with specificity the alleged inaccuracy; (3) provide some independent corroboration of the asserted inaccuracy; [and] (4)

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[7] In support of his claim, respondent proffers as an exhibit on appeal email correspondence between himself and the court that is not present in the lower court record. "This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal." *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). See also MCR 7.210(A)(1). Nevertheless, we note that the e-mail correspondence shows that the court looked into his concerns and determined that the record was accurate and complete, which further undercuts respondent's claim of judicial bias.

> describe how the claimed inaccuracy in transcription has adversely affected the ability to secure postconviction [appellate] relief pursuant to subchapters 7.200 and 7.300 of our court rules. [*People v Abdella*, 200 Mich App 473, 475-476; 505 NW2d 18 (1993 (footnotes omitted).]

Respondent has not overcome the presumption of accuracy, as he has neither identified a single error in the transcript with specificity, nor described how the purported inaccuracy has adversely affected his ability to seek appellate relief.

V. COUNSEL-RELATED ISSUES

Respondent also raises arguments related to the trial court's interactions with his attorney. None of his claims warrant relief.

A. STANDARD OF REVIEW

Because respondent failed to object to the trial court's interactions with his attorney or his attorney's withdrawal at the May 28, 2015 hearing, his claims are unpreserved and reviewed for plain error affecting his substantial rights. See *Demski*, 309 Mich App at 426-427.

B. ANALYSIS

Respondent argues that the trial court erred when it reprimanded his attorney for sending the letter to petitioner's commanding officer seeking information related to the SCRA. The record shows, however, the trial court did not admonish respondent's attorney simply because he contacted petitioner's commanding officer. Rather, it is apparent that the court was concerned about the statements in the letter—in addition to the mere request to confirm the necessity of the previous stay—indicating that petitioner's allegations of sexual abuse were false, and that she sought an extension PPO because she wanted to prevent respondent from being admitted to the Michigan Bar. In any event, respondent has not shown that the court's interactions with his attorney prejudiced his legal position or affected the outcome of the proceeding, see *Demski*, 309 Mich App at 426-427, and without a showing of prejudice, this is not the proper forum to seek admonishment or discipline of the trial judge for his interactions with counsel, see *In re Noecker*, 472 Mich 1, 14; 691 NW2d 440 (2005) (explaining the role of the Michigan Judicial Tenure Commission and the Michigan Supreme Court in disciplining judges).

Respondent also argues that the court should not have allowed his counsel to withdraw during the May 28, 2015 hearing, and that the court committed a procedural error when the order to withdraw was signed by a different judge than the one who presided over the hearing. We deem these claims abandoned because respondent has failed to cite any authority in support of his position. See *Houghton*, 256 Mich App at 339-340. Nonetheless, we note that counsel asked the court for permission to withdraw after respondent rejected, in open court, counsel's advice that respondent refrain from addressing the court and proceeded to commence a lengthy argument on the record. Then, when counsel stated his intention to withdraw, respondent did not protest and, instead, continued to present his arguments to the court himself.

In his brief on appeal, respondent has not shown, or even argued, that he suffered any adverse effect to his interests as a result of his counsel's withdrawal, see MRPC 1.16(B); *In re*

Withdrawal of Attorney, 234 Mich App 421, 431; 594 NW2d 514 (1999), or that he suffered any prejudice based on the fact that the order to withdraw was signed by a judge other than the judge who presided over the hearing. Thus, respondent has failed to establish a plain error affecting his substantial rights. See *Duray*, 288 Mich App at 150.

VI. ADDITIONAL CLAIMS

In addition to the issues previously discussed, respondent raises additional claims that are largely peripheral, and not dispositive, to our determination of the issues raised on appeal. These issues were not properly presented for our review because they are not directly related to the issues identified in his statement of the questions presented. See MCR 7.212(C)(5); *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008), citing *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 543; 730 NW2d 481 (2007), lv gtd in part 480 Mich 910 (2007). Nonetheless, we have reviewed these arguments and conclude that they lack merit.

VII. CONCLUSION

Respondent has failed to establish any error warranting reversal of the trial court's May 28, 2015 denial of his motion to terminate the PPO and concurrent extension of the PPO.

Affirmed.

/s/ Michael J. Riordan
/s/ Patrick M. Meter
/s/ Donald S. Owens