STATE OF MICHIGAN

COURT OF APPEALS

ELISABETH MARIE O'HAGAN, by her Next Friend, JESSICA SUE NORTH, Petitioner-Appellee, v JEFFREY THOMAS KITTLES, Respondent-Appellant.	UNPUBLISHED October 13, 2016 No. 328707 Oscoda Circuit Court LC No. 15-005565-PH

Before: MARKEY, P.J., and MURPHY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals by right from the trial court's order continuing a personal protection order (PPO) against him. We affirm.

Petitioner, acting as next friend to her 12-year-old daughter, sought the PPO. Petitioner alleged five occasions where respondent appeared at the child's softball practices or games. At the hearing on respondent's motion to terminate the order, petitioner testified that she "had asked [respondent] to not have contact with [the child]; to leave her alone," upon which respondent "very rudely told me he didn't have to" and thus "continued to show up at her softball games."

The circuit court issued an ex-parte PPO, and two weeks later defendant moved to terminate it. At the hearing on the motion, the child testified that she felt neither afraid of nor threatened by respondent. The trial court entered an order continuing the PPO, but for eliminating the prohibition on possession of a firearm, explaining as follows:

> [M]other has indicated continuing harassment, request to terminate contact and not have that contact continued with the daughter. And she is within her right to make that request. And the repeated contacts do constitute harassment of [the child], whether or not, in this case because of [the child's] age, a 12-year-old recognizes that behavior.

We review for an abuse of discretion a trial court's decision to continue a PPO. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Id*.

A trial court must issue a PPO if it determines that "there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in [MCL 600.2950(1)]." MCL 600.2950(4); *Hayford*, 279 Mich App at 326. MCL 600.2950(1)(j) specifies as an act subject to being enjoined "conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence." In determining if good cause to issue a PPO exists, the court must consider "[t]estimony, documents, or other evidence." MCL 600.2950(4)(a). "[T]he burden of proof in obtaining [a] PPO, as well as the burden of justifying continuance of the order, is on the applicant for the restraining order." *Pickering v Pickering*, 253 Mich App 694, 701; 659 NW2d 649 (2002).

The United States Supreme Court has determined that the Due Process Clause of the Fourteenth Amendment protects "the fundamental right of parents to make decisions concerning the care, custody, and control of their children." *Troxel v Granville*, 530 US 57, 66; 120 S Ct 2054; 147 L Ed 2d 49 (2000). This right of parents includes the right " 'to direct the upbringing . . . of children under their control.' " *Id.* at 65, quoting *Pierce v Society of the Sisters of the Holy Names of Jesus & Mary*, 268 US 510, 534-535; 45 S Ct 571; 69 L Ed 1070 (1925). We have recognized these principles in determining that parents may restrict with whom their child has contact. See, e.g., *DeRose v DeRose*, 249 Mich App 388, 391-395; 643 NW2d 259 (2002) (concerning a fit parent's right to restrict grandparent visitation).

Respondent contends that because the subject child herself testified that she felt neither afraid of, nor otherwise threatened by, respondent, the PPO should not have been continued, despite her mother's request. However, given that respondent asserts no legal relationship between himself and the child, he has no right to challenge the child's mother's authority to decide with whom the child has contact. See *id.* In accord with applicable caselaw, the trial court correctly determined that "a parent . . . has the right, regardless of the child's position, to restrict who has contact with the child." Further, petitioner's request for a PPO was objectively reasonable in light of respondent's continued attempts to make contact with the child in defiance of petitioner's request that he refrain from doing so. As the trial court noted, petitioner could reasonably regard respondent's persistence as harassment even if the child herself was not sensitive to it.

For these reasons, we conclude that the trial court's decision to continue the PPO fell well within the range of principled outcomes.

We affirm. As the prevailing party, petitioner may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Amy Ronayne Krause