STATE OF MICHIGAN

COURT OF APPEALS

KATHY GOLM,

Petitioner-Appellee,

v

ROBERT GOLM,

Respondent-Appellant.

UNPUBLISHED
September 22, 2016

No. 328950
Livingston Circuit Court
Family Division
LC No. 15-049774-PP

Before: JANSEN, P.J., and K. F. KELLY and O'BRIEN, JJ.

PER CURIAM.

Respondent appeals as of right the order denying his motion to terminate the personal protection order (PPO). We affirm.

Respondent first argues that the trial court abused its discretion when it denied his motion to terminate the PPO. We disagree.

We review for an abuse of discretion a trial court's decision to issue a PPO because a PPO is an injunctive order. *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*. We review for clear error a trial court's findings of fact. *Id*.

A petitioner bears the burden of proof when seeking an ex parte PPO. *Pickering v Pickering*, 253 Mich App 694, 697; 659 NW2d 649 (2002). In addition, a petitioner also bears the burden of justifying the continuation of a PPO at a hearing on a respondent's motion to terminate the PPO. *Id*. at 699. "Hence, the petitioner will have the burden of persuasion in a hearing held on a motion to terminate or modify an ex parte PPO." *Id*. MCL 600.2950 governs the decision to grant the PPO in this case because the parties are husband and wife. MCL 600.2950(1). MCL 600.2950(4) provides:

> The court shall issue a personal protection order under this section if the court 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)]. In determining whether reasonable cause exists, the court shall consider all of the following:

(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in [MCL 600.2950(1)].

The relevant acts include "[a]ssaulting, attacking, beating, molesting, or wounding a named individual," "[t]hreatening to kill or physically injure a named individual," or "[a]ny other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence." MCL 600.2950(1)(b), (c) and (k).[1]

We first note that although the PPO expired in June 2016, the issue is not moot. In general, this Court will not decide a moot issue. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief." *Id*. However, "[a]n issue that will continue to have collateral consequences is not moot, and this Court has previously held that an expired PPO may, in fact, have collateral consequences." *Visser v Visser*, 299 Mich App 12, 15-16; 829 NW2d 242 (2012), vacated in part on other grounds, 495 Mich 862 (2013). In *Hayford*, this Court concluded that although the PPO expired after the filing of the appeal, the appeal was not moot because the respondent built rifles and other firearms for a living, and the PPO could affect his eligibility for a federal firearms license. *Hayford*, 279 Mich App at 325.

In this case, the issue is not moot because it will continue to have collateral legal consequences. The PPO is entered into the Law Enforcement Information Network (LEIN), which could have collateral consequences for respondent. See MCL 600.2950(17). Furthermore, the LEIN must be updated if the PPO is rescinded. See MCL 600.2950(19) and (20). In addition, like the respondent in *Hayford*, respondent owns a gun, and the PPO could affect his eligibility for a firearms license. See *Hayford*, 279 Mich App at 325. Therefore, the issue is not moot even though the PPO expired in June 2016.

However, the trial court properly continued the PPO because respondent's threats toward the President provided reasonable cause to believe that respondent may commit one of the acts listed in MCL 600.2950(1)(b), (c) or (k). Petitioner raised several allegations against respondent in support of her petition for a PPO. However, the court continued the PPO on the sole basis that respondent informed petitioner that he made threats against the President in a gun shop, and the threats prompted the Secret Service to come to the parties' home. Respondent's conduct in threatening the President indicates that he had the potential to threaten harm against petitioner or physically harm petitioner. Furthermore, as noted by the trial court, the parties do not dispute that the Secret Service came to their home, which supports petitioner's contention that respondent threatened harm against the President. Based on this event, there was reasonable cause to believe that the respondent may assault, attack, beat, molest, or wound petitioner, may

[1] Effective August 1, 2016, the content of MCL 600.2950(1)(j) is now located under MCL 600.2950(1)(k). See 2016 PA 94.

threaten to kill or physically injure petitioner, or may commit another act imposing upon or interfering with petitioner's personal liberty or causing a reasonable apprehension of violence.[2]

Respondent contends that the trial court concluded that petitioner was not credible with regard to her other allegations, but then inexplicably found that the allegation that respondent threatened the President was credible and supported continuation of a PPO. This Court gives regard to the trial court's special opportunity to judge credibility. See MCR 2.613(C). The trial court stated while referring to the incident in which respondent threatened the President, "To me that's more credible than what she's telling me about pop on [the] car and that there could be a surveillance and all this other stuff. That alone is a reason to have a PPO against this gentleman." However, the trial court did not conclude that petitioner was not credible. Instead, the court concluded that petitioner lacked evidence to support her allegation regarding the incident involving respondent pouring pop on her car, and the court determined that the incident involving respondent arriving at petitioner's apartment and writing down the license plate numbers for her visitors' cars did not constitute grounds for a PPO. The court also indicated that the incident in which respondent threatened to kill himself was not grounds for a PPO because petitioner did not fear for her safety during the incident and instead feared for respondent's safety. As the court explained, the fact that the Secret Service came to the parties' house provided independent evidence that the incident involving the threats to the President occurred. Therefore, the trial court did not determine that petitioner was not credible with regard to all of her claims, and instead determined that certain claims did not warrant a PPO.

Respondent also argues that the trial court concluded that petitioner was not credible because she engaged in forum shopping. MCR 3.703(E)(1) provides, "If the respondent is an adult, the petitioner may file a personal protection action *in any county* in Michigan regardless of residency." (Emphasis added.) MCR 3.703(D)(1) provides, in part, "The petition must specify whether there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and the case number, if known."

Petitioner filled out a petition and questionnaire, and indicated that there were no other pending actions in the Livingston Circuit Court or any other court regarding the parties, there were never any court proceedings involving the parties, and there were no other orders or judgments regarding the parties. However, it was revealed during the hearing that petitioner filed a petition for a PPO in Genesee County, and the parties had a divorce case pending in Shiawassee County. During the hearing, the trial court stated with regard to the petition for a PPO, "If I had known that another judge had already reviewed it, it would have been denied. And I think she knows that. Not a good situation." Nevertheless, the judge heard arguments and decided to continue the PPO. It was in the trial court's discretion to continue the PPO in spite of the fact that petitioner may have engaged in forum shopping. Respondent does not cite relevant

[2] We note that, contrary to respondent's argument, petitioner's statement regarding what respondent told her did not constitute hearsay because it was a statement offered against a party and was the party's own statement. See MRE 801(d)(2).

law for the proposition that the court was *required* to terminate the PPO because petitioner possibly engaged in forum shopping. Instead, the trial court had the discretion to continue the PPO if there was reasonable cause to believe that respondent may commit one or more of the acts listed in MCL 600.2950(1). MCL 600.2950(4). Therefore, the trial court's decision to continue the PPO in spite of petitioner's potential forum shopping and violation of MCR 3.703(D)(1) did not constitute an abuse of discretion. See *Hayford*, 279 Mich App at 325.

Respondent next argues that the trial court deprived him of due process of law during the hearing on his motion to terminate the PPO. We disagree.

" 'For an issue to be preserved for appellate review, it must be raised, addressed, and decided by the lower court.' " *Mouzon v Achievable Visions*, 308 Mich App 415, 419; 864 NW2d 606 (2014) (citation omitted). Respondent did not raise a due-process challenge in the trial court, and the trial court did not address or decide the issue. Therefore, it is unpreserved. See *id*. We review the unpreserved issue because the issue involves a question of law, and the facts necessary for the resolution of the issue were presented. See *D'Alessandro Contracting Group, LLC v Wright*, 308 Mich App 71, 77; 862 NW2d 466 (2014). We review the issue for plain error affecting respondent's substantial rights. See *Demski v Petlick*, 309 Mich App 404, 426-427; 873 NW2d 596 (2015).

"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). "The opportunity to be heard does not mean a full trial-like proceeding, but it does require a hearing to allow a party the chance to know and respond to the evidence." *Id*. MCL 600.2950(13) permits a respondent to file a motion to modify or rescind the PPO and request a hearing. MCL 600.2950(14) provides, in part, "Except as otherwise provided in this subsection, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind."

Respondent does not contend that he did not receive notice of the nature of the proceedings. In addition, the record reveals that the court afforded respondent an opportunity to be heard in a meaningful time and manner. The trial court held a hearing on respondent's motion to terminate the PPO, and the parties and their attorneys were present at the hearing. The trial court gave each attorney the opportunity to argue for 10 minutes. Respondent's attorney was afforded the opportunity to argue, and he raised arguments regarding the fact that petitioner filed another PPO action and a divorce action in other counties. Contrary to respondent's contention on appeal, the hearing transcript reveals that respondent's attorney was able to speak throughout the hearing. Thus, although respondent himself did not speak during the hearing, his attorney was permitted to do so. Respondent's attorney did not ask the court for permission to question respondent. Furthermore, when respondent attempted to speak, it was his attorney, rather than the judge, who prevented him from doing so:

> *Mr. Golm*: And, ma'am – Your Honor --
>
> [*Respondent's Attorney*]: Ssh.

The Court: I issued the PPO, didn't I?

[*Petitioner's Attorney*]: You did, Your Honor.

The Court: So I'm gonna continue the PPO.

[*Petitioner's Attorney*]: Thank you very much –

The Court: Thank you.

[*Petitioner's Attorney*]: -- Your Honor.

The Court: I think I have this. This says terminate on this one.

Mr. Golm: I got a gun two weeks later.

[*Respondent's Attorney*]: Hmm?

Mr. Golm: They allowed me to get a gun two weeks later.

[*Respondent's Attorney*]: Mm-hmm. (Inaudible). Let's go.

The conversation between respondent and his attorney reveals that it was respondent's attorney, rather than the trial judge, who prevented respondent from speaking. Respondent contends that the trial court did not give him a meaningful opportunity to present evidence or testimony, cross-examine witnesses, or present a defense. However, respondent does not explain what evidence or testimony he intended to present, and petitioner presented no witnesses for him to cross-examine. In addition, respondent *did* present a document of contentions in support of his motion to terminate the PPO, which negates his argument that he was not allowed to present evidence in support of his position. Therefore, the trial court did not deprive respondent of the opportunity to be heard. In addition, respondent's contention that he did not have an impartial judge because the trial judge made disparaging remarks about him is without merit for the reasons discussed below. Accordingly, the trial court did not deny respondent his right to due process of law during the termination hearing. See *Cummings*, 210 Mich App at 253.

Respondent next argues that the trial judge exhibited bias against him and that remand to a different trial judge is therefore warranted. We disagree.

A party preserves the issue whether a trial judge should be disqualified by bringing a motion to disqualify the trial judge in the trial court. See *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009). Respondent did not move to disqualify the judge in the trial court, and the issue is therefore unpreserved. See *id*. Because the issue is unpreserved, and because it is an issue of law and all the facts necessary for its resolution were presented, we review the unpreserved issue for plain error affecting substantial rights. *D'Alessandro Contracting Group*, 308 Mich App at 77.

"Generally, a trial judge is not disqualified absent a showing of actual bias or prejudice." *Contempt of Henry*, 282 Mich App at 679. The fact that a judge ruled against a party, even if the

ruling was erroneous, is not a sufficient ground to require disqualification of a judge or reassignment of a case. *Id*. at 680. "[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." *Id*. (citation and quotation marks omitted; alteration in original). In determining whether to remand the case to another trial judge, the issue "is whether the appearance of justice will be better served if another judge presides over the case." *Bayati v Bayati*, 264 Mich App 595, 602; 691 NW2d 812 (2004). "We may remand to a different judge if the original judge would have difficulty in putting aside previously expressed views or findings, if reassignment is advisable to preserve the appearance of justice, and if reassignment will not entail excessive waste or duplication." *Id*. at 602-603.

Respondent contends that the trial judge exhibited bias against him when she stated, "There's somethin' wrong up here." According to respondent, the trial judge was referring to respondent's head. The record does not reveal whether the trial judge pointed to her head or otherwise indicated that she was talking about respondent's head. However, even assuming that respondent is correct, the trial judge's comment was not sufficient to establish actual bias or prejudice. Instead, the trial judge was commenting on respondent's potential mental health conditions, which were relevant to the issue whether to continue the PPO. See *Contempt of Henry*, 282 Mich App at 656. The manner in which the trial judge concluded that respondent may have a mental health condition does not establish bias or prejudice. Thus, reassignment is not warranted to preserve the appearance of justice. See *Bayati*, 264 Mich App at 602-603.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Colleen A. O'Brien