STATE OF MICHIGAN

COURT OF APPEALS

NEAL TRIMM,

Petitioner-Appellee,

v

SONDRA WOODS,

Respondent-Appellant.

UNPUBLISHED
February 27, 2018

No. 333979
Oakland Circuit Court
LC No. 2016-842739-PP

Before: RIORDAN, P.J., and BOONSTRA and GADOLA, JJ.

PER CURIAM.

Respondent appeals as of right following an order denying her motion to terminate a personal protection order (PPO) against her. We affirm.

I. FACTS

The parties had an eight-year dating relationship that ended sometime in 2014. They had lived together, and when petitioner moved out, some of his belongings were placed in a storage unit. According to respondent, petitioner agreed to retrieve his personal items, but never did so. Respondent claimed that the storage unit contained only petitioner's belongings and that he owed her $4,000 in fees for the storage unit.

In his petition for a PPO, petitioner stated that on May 1, 2016 respondent "threatened me verbally stating that I'm going to get you or get somebody else to physically injure you," and that respondent "comes to my softball games walking up to me trying to talk to me. Starting [arguments]." The court issued an ex parte PPO. Respondent then moved the trial court to terminate the PPO "based on facts of the petitioner that are baseless, as well as meritless, fact." Respondent stated that petitioner is a habitual liar, that he had been avoiding responsibility for the $4,000 debt, which had resulted in a small claims court action, and that he was using the court to circumvent the debt. She further stated that she did not see petitioner on May 1, 2016, that she saw him at a softball game on May 23, 2016, that she had been going to these softball games since the 90's, and that at the May 23rd game he invited her to his church, which she attended on May 29, 2016. She claimed that, while there, she brought up the debt at which point he "exploded" and concocted a story about her bothering and following him. She said that the police were called and that, although she said she would "see him soon," she meant in small claims court.

At the hearing on respondent's motion to terminate the PPO, petitioner stated after the relationship terminated respondent continued to contact him about "[c]lothes and . . . pictures and things" she took from their apartment and placed in her storage unit. He indicated he did not want the items in the storage unit. Petitioner stated he changed his phone number and that respondent "was texting and she would continue to talk about storage. . . ." According to petitioner, respondent is "confrontational" and she "gets angry." Petitioner stated that respondent came to a softball game "ranting and raving."

Respondent presented the trial court with a letter "saying that I had talked to a State Investigator . . . and they asked me about [petitioner] and . . . this goes to show if the Court wanted to contact human resources it would be in his file that he . . . is capable . . . of lying to people." The trial court noted that the "letter" was written by respondent.

The trial court kept the PPO in place, noting that respondent believed "it's a good idea to keep a storage unit with [petitioner's] stuff in it for two and half years. To me that says [defendant is] not letting go." Thereafter, respondent filed a motion for reconsideration, which the trial court denied without a hearing. This appeal followed.

II. DISCUSSION

Respondent raises several challenges to the trial court's decision, all of which lack merit.[1]

Under MCL 600.2950(4), a 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 subsection (1)." The acts listed under subsection 1 include "[a]ssaulting, attacking, beating, molesting, or wounding a named individual," MCL 600.2950(1)(b), "[t]hreatening to kill or physically injure a named individual," MCL 600.2950(1)(c), or "[a]ny other specific act or conduct that imposes upon or interferes with

[1] We note that the PPO was set to expire on June 2, 2017. We further note that in *TM v MZ*, ___ Mich ___ (2017) (Docket No. 155398), the Michigan Supreme Court granted oral argument on an application for leave to appeal from *McGuire v Zoran*, unpublished opinion per curiam of the Court of Appeals, issued January 19, 2017 (Docket No. 329190), in which this Court determined that respondent's appeal was moot because the PPO at issue had expired. However, "[a]n issue is moot if an event has occurred that renders it impossible for the court to grant relief. An issue is also moot when a judgment, if entered, cannot for any reason have a practical legal effect on the existing controversy." *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010) (citation omitted). "Collateral legal consequences" will preclude a finding that an issue is moot. *Mead v Batchlor*, 435 Mich 480, 486; 460 NW2d 493 (1990), abrogated on other grounds, *Turner v Rogers*, 564 US 431, 438-439; 131 S Ct 2507; 180 L Ed 2d 452 (2011). The existence of an expired PPO could affect firearms eligibility, see *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). Moreover, once law enforcement is apprised of the PPO, it is required to enter that information into the Law Enforcement Information Network (LEIN). See MCL 600.2950(17). Accordingly, we conclude that the appeal is not moot.

personal liberty or that causes a reasonable apprehension of violence," MCL 600.2950(1)(k). The trial court, when determining whether reasonable cause exists, must consider "[t]estimony, documents, or other evidence offered in support of the request for a personal protection order," and "[w]hether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1)." MCL 600.2950(4)(a) and (b). "[T]he burden of proof in obtaining the 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 (2003); MCR 3.310(B)(5).

Respondent argues that the trial court improperly considered hearsay testimony. Respondent failed to preserve this issue. Review is therefore for plain error. *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010). "Plain error occurs at the trial court level if (1) an error occurred (2) that was clear or obvious and (3) prejudiced the party, meaning it affected the outcome of the lower court proceedings." *Id*.

"'Hearsay' is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). "Hearsay is not admissible except as provided by these rules." MRE 802. "A 'statement' is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion." MRE 801(a). At the hearing, petitioner testified that respondent "ask[s] people where I am. . . ." Implicit in this testimony is that someone else, i.e., an out of court declarant, asserted to petitioner that respondent was looking for him, and petitioner offered this statement for the truth that respondent was pursuing him. Therefore, this testimony constitutes hearsay under MRE 801(c). However, the trial court stated that "[w]hat's relevant here is you're appearing at his church, softball games, talking to him, to the point where he feels he needs to file a police report." The trial court also pointed to respondent keeping a storage unit for two and a half years as an indication that respondent was "not letting go." The trial court did not consider petitioner's hearsay testimony when it made its determination to keep the PPO in place. Thus, the statement did not "affect[] the outcome of the lower court proceedings." *Duray Dev, LLC*, 288 Mich App at 150. Accordingly, the trial court did not commit plain error.

Respondent next argues that the trial court erred when it refused to consider the letter she offered that she asserted showed that petitioner was "capable of being very deceiving," and thus he must have lied on the petition. "Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion . . . ." MRE 404(a).[2] Because this evidence was offered to show that petitioner lied on

[2] MRE 404(a) contains four exceptions:

> (1) *Character of accused*. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same; or if evidence of a trait of character of the alleged victim of the crime is offered by the accused and admitted under subdivision (a)(2), evidence of a trait of character for aggression of the accused offered by the prosecution;

the petition, it was inadmissible and the trial court did not abuse its discretion when it declined to consider it.

Respondent also argues that she was denied an opportunity to be heard on her motion for reconsideration under MRE 201(d). That section provides that "[a] party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken." MRE 201(d). MRE 201 governs "judicial notice of adjudicative facts." MRE 201(a). Respondent's motion for reconsideration merely recited the same arguments she presented to the trial court and made no mention of judicial notice of adjudicative facts. Moreover, MCR 2.119(F)(2) expressly provides that there is no oral argument on a motion for reconsideration "unless the court otherwise directs." Therefore, this argument lacks merit and the trial court did not abuse its discretion when it cancelled the hearing on respondent's motion to reconsider.

Finally, respondent argues that the trial court abused its discretion when it denied her motion to terminate the PPO because petitioner lacked credibility. However, "[c]redibility is a matter for the trier of fact to ascertain. This Court will not resolve it anew." *Thames v Thames*, 191 Mich App 299, 311; 477 NW2d 496 (1991).

Affirmed.

/s/ Michael J. Riordan
/s/ Mark T. Boonstra
/s/ Michael F. Gadola

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(2) *Character of alleged victim of homicide*. When self-defense is an issue in a charge of homicide, evidence of a trait of character for aggression of the alleged victim of the crime offered by an accused, or evidence offered by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a charge of homicide to rebut evidence that the alleged victim was the first aggressor;

(3) *Character of alleged victim of sexual conduct crime*. In a prosecution for criminal sexual conduct, evidence of the alleged victim's past sexual conduct with the defendant and evidence of specific instances of sexual activity showing the source or origin of semen, pregnancy, or disease;

(4) *Character of witness*. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

None of these exceptions apply.