STATE OF MICHIGAN

COURT OF APPEALS

In re TANYA D. WRINN.

KATHLENE YANCER,

Petitioner-Appellee,

v

TANYA D. WRINN,

Respondent-Appellant.

UNPUBLISHED
April 9, 2019

No. 342557
Oscoda Circuit Court
Family Division
LC No. 15-005638-PH

Before: SWARTZLE, P.J., and CAVANAGH and CAMERON, JJ.

PER CURIAM

Respondent Tanya D. Wrinn appeals the trial court's order holding her in criminal contempt for violating an earlier personal-protection order (PPO) issued against her. Respondent asserts that there was insufficient evidence to support her conviction for criminal contempt. We affirm.

I. BACKGROUND

Respondent and petitioner Kathlene Yancer are neighbors, and respondent uses an easement through petitioner's property to access her own property. Respondent and petitioner have had a contentious relationship since at least 2009, and in September 2015, petitioner requested that the trial court issue a PPO against respondent. As the factual basis, petitioner alleged that respondent had left a threatening voicemail in August 2015 and later "spun tires on Petitioner's grass tearing up her yard." The trial court granted petitioner's request and entered a PPO prohibiting respondent from "stalking" petitioner, as defined under MCL 750.411h and 750.411i, as well as from engaging in prohibited electronic communication, as defined under MCL 750.411s. With respect to the stalking prohibition, the PPO set forth certain acts of stalking, including "following or appearing within the sight of the petitioner" and "approaching or confronting the petitioner in a public place or on private property."

From the time the trial court entered the PPO, petitioner moved several times to show cause why respondent should not be held in criminal contempt for violating the PPO, and respondent for her part moved several times to have the PPO terminated. In February 2016, the trial court held respondent in criminal contempt for three violations of the PPO that she committed in October, November, and December 2015. The trial court also extended the PPO on two occasions, first until September 2017, and then again until September 2018.

Relevant to this appeal, in March 2017, the trial court held a show-cause hearing following petitioner's allegation that respondent violated the PPO. At the hearing, petitioner testified that she was sitting outside her home with her husband, John Yancer,[1] and their neighbor, Paul Remer, when respondent drove by the house and stopped in front of them. Respondent took out a video camera and stated, "The harassment has to stop." She stopped her car for approximately 10 to 15 seconds before she drove away. Petitioner videotaped the interaction, and the trial court admitted the video into evidence. Remer testified at the hearing as well, and he stated that respondent stopped her car in front of the Yancers' house "and yelled out that harassment has to stop." He also stated that respondent had a video camera that she pointed "right at" petitioner, John, and Remer. Petitioner testified that this incident with respondent frustrated her because she thought that respondent would leave her alone once she obtained a PPO, but "[i]t just keeps going and going. It's very frustrating." The prosecutor asked petitioner if it was "fair to say that you would feel harassed as a result of this?" and petitioner responded, "Oh, yeah."

Respondent testified that when she drove by the Yancers' house, petitioner, John, and Remer each had a video camera and, "[b]eing ready for this," respondent also had her camera. Respondent stated that she "taped more of [her] mirror than . . . anything else," but the video "state[d] clearly this harassment has to stop." Respondent stated that she "didn't necessarily stop in front" of the house "because there are ruts in the driveway [on] Yancer's property," and "nobody speeds through there ever." On cross-examination the prosecutor asked respondent if she "admitted to saying the harassment has to stop to the Yancers and Mr. Remer," and she responded, "I said it as I was leaving. Yes, I did."

The trial court found that there was "no issue at all in terms of facts about what occurred," because respondent testified that when she saw petitioner, John, and Remer, she stopped her car and she stated, "[T]his harassment has to stop." Because the PPO prohibited respondent "from approaching or confronting petitioner in a public place or on private property," the trial court found that respondent's conduct was in "clear violation" of the PPO. The trial court sentenced respondent to serve four days in jail and ordered her to pay a $200 fine.

Respondent appealed.

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[1] Because both Kathlene Yancer and her husband, John Yancer, are witnesses to respondent's conduct in this case, we will refer to Kathlene Yancer as petitioner and John Yancer simply as John.

II. ANALYSIS

Respondent argues on appeal that the trial court erred by holding her in criminal contempt because there was insufficient evidence to find that she violated the PPO. As the trial court noted, there is no dispute regarding the facts of this case, and respondent does not dispute that she verbally confronted petitioner outside of petitioner's house. Instead, respondent claims that the PPO expressly prohibited her from "stalking" and therefore all of the elements of that offense would have to be established for there to be a violation of the PPO. And, in respondent's view, a reasonable person would not have been distressed solely by respondent's verbal confrontation outside petitioner's house.

In reviewing the sufficiency of the evidence, this Court must determine whether, viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *In re Contempt of Rapanos*, 143 Mich App 483, 488; 372 NW2d 598 (1985). The Court reviews a trial court's order of contempt for an abuse of discretion and any factual findings for clear error. *In re Kabanuk*, 295 Mich App 252, 256; 813 NW2d 348 (2012). On questions of statutory construction, the Court makes a de novo review. *People v Morey*, 461 Mich 325, 329; 603 NW2d 250 (1999).

Stalking PPOs and Sexual-Assault PPOs. Under MCL 600.2950a, a person can seek an ex-parte PPO to prohibit another person from engaging in certain conduct. A person can obtain a PPO under two distinct provisions: (i) Subsection (1) by alleging facts establishing "stalking" or prohibited electronic communications (a "stalking PPO"); or (ii) Subsection (2) by alleging facts showing that a "sexual assault" or provision of obscene material has occurred (a "sexual-assault PPO"). MCL 600.2950a(1),(2). A person subject to a stalking PPO is prohibited from engaging in conduct specified in MCL 750.411h (stalking), 750.411i (aggravated stalking), and 750.411s (prohibited electronic communications), while a person subject to a sexual-assault PPO is prohibited from engaging in conduct specified in Subsection (3), which includes entering onto a premises, confronting the petitioner in a public place or on private property, or purchasing or possessing a firearm. MCL 600.2950a(1)-(3). If the person against whom the PPO was issued refuses or fails to comply with the order, then that person can be held in criminal contempt. MCL 600.2950a(23).

Subsection (3) Applies to Sexual-Assault PPOs. The prosecutor argues on appeal that it is not necessary to show that a person subject to a stalking PPO actually violated one of the stalking or prohibited-electronic-communications statutes. In support, the prosecutor relies on the expansive list of prohibited activities in Subsection (3) of MCL 600.2950a, as well as an unpublished decision of this Court, *Rastelli v Rastelli*, unpublished per curiam opinion of the Court of Appeals, issued December 16, 2014 (Docket No. 317547). The prosecutor's reliance on Subsection (3) is misplaced, however, as that statutory provision is specifically limited to "an individual against whom a protection order is sought under subsection (2)," i.e., a sexual-assault PPO. MCL 600.2950a(3). To the extent that the panel in *Rastelli* concluded otherwise, *Rastelli*, unpub op at 3, the decision is unpublished and therefore not binding, and the statute is otherwise quite clear—Subsection (3) applies by its plain terms to sexual-assault PPOs and is silent with regard to stalking PPOs.

Respondent Engaged in "Stalking" Under the Relevant Statute and PPO. Under the stalking PPO statutory provision, a trial court can issue a PPO "to restrain or enjoin an individual from engaging in conduct that is prohibited under section 411h, 411i, or 411s of the Michigan penal code," i.e., the stalking and prohibited-electronic-communications statutes. MCL 600.2950a(1). The PPO issued here specifically "prohibited" respondent "from . . . stalking" or engaging in prohibited electronic communications as defined under the penal code. The PPO listed several enumerated acts that were prohibited by the order, including "approaching or confronting the petitioner in a public place or on private property," the conduct at issue here. This PPO language precisely matches one of the examples of "unconsented contact" identified by the Legislature in the stalking statutes. See MCL 750.411h(1)(e)(*ii*) (stalking); MCL 750.411i(1)(f)(*ii*) (aggravated stalking). Thus, under MCL 600.2950a(1) and the PPO's own terms, to show a violation of the PPO, the prosecutor had to prove that respondent had engaged in stalking or prohibited electronic communications.

After reviewing the record, we conclude that there was sufficient evidence to show that respondent violated the PPO. The PPO identifies two separate acts of willful, unconsented prior contact (threatening voicemail; damage to real property). As a willful course of conduct, these two acts were sufficient to establish stalking under MCL 750.411h, as the trial court had previously held on several occasions. The PPO then lists a number of actions that could constitute additional stalking conduct, including confronting petitioner in a public or private place, and respondent does not challenge the substance of the PPO on appeal.

It is undisputed that respondent verbally confronted petitioner while the latter was standing outside of her house. Petitioner testified that she felt "harassed" and "frustrate[ed]" by the confrontation. If this had been a single, isolated event, then maybe a reasonable person might not have felt harassed and frustrated by the comment. But, precisely because the confrontation was part and parcel of a repeated, willful, unconsented course of harassing conduct by respondent, we conclude that a reasonable person would feel harassed and frustrated by respondent's verbal confrontation. This confrontation, together with the prior stalking activity, was sufficient to prove a violation of the stalking PPO and, accordingly, the trial court did not err in holding respondent in criminal contempt. See *McNeill-Marks v MidMich Med Ctr-Gratiot*, 316 Mich App 1, 20; 891 NW2d 528 (2016) ("Thus, viewing the evidence in the light most favorable to plaintiff, [respondent's] conduct, in concert with her prior unconsented contacts with plaintiff, qualified as 'stalking' in violation of the PPO.").

Affirmed.

/s/ Brock A. Swartzle
/s/ Mark J. Cavanagh
/s/ Thomas C. Cameron