STATE OF MICHIGAN

COURT OF APPEALS

RONALD HILL, JR.,	UNPUBLISHED June 11, 2019
Petitioner-Appellee,	
v	No. 343370 Oakland Circuit Court Family Division
REGINA RILEY,	LC No. 2018-860187-PP
Respondent-Appellant.	

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

PER CURIAM.

Respondent appeals by right the trial court's denial of her motion to terminate a personal protection order (PPO) and the trial court's issuance of a modified PPO in favor of petitioner. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On January 29, 2018, petitioner, a Detroit police officer, filed a petition for an ex parte PPO against respondent. The petition stated that petitioner and respondent "have or had a dating relationship." Petitioner asked the trial court to grant a PPO prohibiting respondent from "entering onto the property where [he] live[s]," entering onto the property at the Detroit Police Department (DPS), "assaulting, attacking, beating, molesting, or wounding [petitioner]," stalking petitioner, "threatening to kill or physically injure [petitioner]," "interfering with [him] at [his] place of employment or education or engaging in conduct that impairs [his] employment or educational relationship or environment," "intentionally causing [him] mental distress or exerting control over [him]," and "purchasing or possessing a firearm."

Petitioner attached an addendum to the petition stating that he needed a PPO because respondent has entered his property, threatened him, and interfered with him at his job. Petitioner identified four incidents that made him fear violence or interference with his freedom: (1) on January 26, 2018, respondent contacted DPS's Office of Chief Investigator, stating that petitioner was harassing her; (2) on January 22, 2018, respondent sent petitioner about 15 text messages, stating that she was going to "f**k [his] ex[-]girlfriend up because she thinks she is a

hoe," --and sent him about seven pictures of his girlfriend that respondent had obtained without authorization (i.e., "hacked") from his girlfriend's cellular telephone; (3) on January 14, 2018, respondent sent petitioner about eight text messages containing "screenshots" of his girlfriend's text messages that respondent had obtained via hacking; and (4) on November 15, 2017, respondent hacked petitioner's deactivated Facebook account and reactivated it to "post nude personal photos" that she had hacked from petitioner's cellular telephone.

Petitioner attached to the addendum a case report from the Southfield Police Department (SPD) regarding a PPO violation that occurred on May 26, 2017, which was being investigated by Officer William Smarsty. The report indicated that petitioner and his girlfriend both had previous PPOs against respondent, who had harassed and threatened them via cellular telephone. Respondent had also posted pictures of the girlfriend online.

On June 6, 2017, petitioner made a statement to the SPD that on May 28, 2017, respondent texted him that she was going to "f**k [his] life up." Respondent sent petitioner screenshots of text messages that she had sent to his girlfriend and text messages stating that she had hacked his cellular telephone to get pictures. Petitioner also reported that respondent had hacked petitioner's social media and email addresses. On June 4, 2017, respondent sent him a text message stating that she had come by his house and that his girlfriend was a "hoe."

Petitioner also attached a case report from the SPD for damage to property that occurred on June 12, 2017, which incident was being investigated by Officer Smarsty. The report stated that on June 13, 2017, petitioner came to the SPD to make a police report about an incident in which the power line to his air conditioning unit had been cut. Petitioner stated that he had returned home from a trip to New York and discovered that his and his girlfriend's air conditioner power cords had been cut. Petitioner believed that respondent had cut the cords because they had an ongoing feud and respondent had previously damaged his property. Petitioner also alleged that respondent had found out what hotel petitioner was staying at when he made a trip to New York, and had repeatedly called his hotel room and cellular telephone. However, the case was closed due to insufficient evidence.

On June 26, 2017, petitioner made a statement to the SPD that on June 25, 2017, he received a text message from respondent that said, "I rode bye [sic] your b***h house and saw her buck teeth a** daughter outside[.] I should have ran [sic] that b***h over." Respondent then sent another message stating that she had seen that petitioner's girlfriend was at his house and threatened to "beat her a**." Petitioner subsequently rushed home. Respondent then texted petitioner: "Oh you rushed home to save that ugly bi***h huh."

On January 29, 2018, the trial court entered an ex parte PPO against respondent, finding that (1) "[a] petition requested respondent be prohibited from entry onto the premises, and . . . respondent does not have a property interest in the premises," (2) "[p]etitioner requested an ex parte order, which should be entered without notice," (3) "[r]espondent poses a credible threat to the physical safety of the petitioner and/or a child of the petitioner," and (4) "[r]espondent has or had a dating relationship with the petitioner." The trial court ordered that respondent was prohibited from: (1) "entering onto property where petitioner lives," (2) "assaulting, attacking, beating, molesting, or wounding petitioner," (3) stalking petitioner, (4) "interfering with petitioner's efforts to remove his/her children/personal property from premises solely

owned/leased by respondent," (5) "threatening to kill or physically injure petitioner," (6) "interfering with petitioner at his/her place of employment or education or engaging in conduct that impairs his/her employment or educational relationship or environment," (7) "having access to information in records concerning a minor child of petitioner and respondent that will reveal petitioner's address, telephone number, or employment address or that will reveal the child's address or telephone number," (8) "intentionally causing petitioner mental distress or exerting control over petitioner," and (9) "purchasing or possessing a firearm." This order was effective from January 29, 2018 to January 29, 2019.

On March 16, 2018, respondent filed a motion to terminate the PPO, asking the trial court to conduct a termination hearing because the SPD had found petitioner's allegations to be untrue. Respondent's motion asserted that petitioner had assaulted her friend and was now seeking revenge against her. Respondent noted that petitioner had a previous PPO against her in 2016 that had been terminated.

On March 27, 2018, the trial court held a hearing on respondent's motion to terminate the PPO. Petitioner stated that respondent had eight PPOs against her in Oakland County, and 25 PPOs against her in Wayne County. In 2016, petitioner obtained a PPO against respondent after they briefly had a "physical relationship." Petitioner testified that he obtained the PPO because respondent had keyed his car, as well as his girlfriend's car, and had flooded the first floor of his house by putting a water hose under the front door.

Petitioner testified that he had received "thousands" of text messages from respondent, many of them threatening him, his girlfriend, or his girlfriend's child. He also testified that respondent had posted nude pictures of petitioner's girlfriend, which she had obtained by hacking, on petitioner's Facebook page, forcing him to deactivate the account.

Petitioner testified that respondent created internet telephone numbers to contact him. When asked by the trial court how he knew the messages were from respondent, petitioner stated that respondent referred to his girlfriend, who had red hair, as "Ronald McDonald," and that many of the text messages referred to "Ronald McDonald." Petitioner showed the trial court a screenshot of respondent's Facebook post of a picture of petitioner's girlfriend in July 2016, accompanied by the caption, "Look at Ronald McDonald ugly a**, this ugly hoe."

Petitioner testified that in May 2017, his air conditioner would not turn on and he discovered that the cord had been cut. About a week later, his girlfriend's cord was also cut. On cross-examination, petitioner admitted that the case concerning the air conditioner cords was closed due to lack of evidence.

Respondent's mother also testified at the hearing. She testified that petitioner had assaulted a friend of respondent's at a bowling alley. Petitioner admitted that he had assaulted someone at the bowling alley and had served probation for that offense.

Respondent testified at the hearing and denied hacking petitioner's Facebook account and posting nude pictures. Respondent also denied cutting petitioner's air conditioner cord. When asked, "Does [petitioner] have an air conditioner --?," respondent said, "Not to my knowledge." When asked if she had been to petitioner's house, respondent said, "Several times. He does not

have air." Respondent also denied driving by petitioner's house. Respondent denied getting any other telephone number by which to contact petitioner. Respondent testified that her telephone records showed that she did not send petitioner any text messages or contact him. Respondent testified that the last time she spoke with petitioner was the night of the bowling alley incident in June 2016.

The trial court denied respondent's motion and granted petitioner a modified PPO, stating in relevant part:

> Okay. You know, I had intended on calling Detectives [sic] is it Smarski or Smarski? I -- I don't need to hear from him, quite frankly. It's a credibility decision. Is there enough evidence for reasonable cause to connect [respondent] to [petitioner]'s Facebook in terms of the postings? And there's two things that I believe that [respondent] was not truthful of. Number one, she testified she -- she went too far. She said he's never had air conditioning, he doesn't -- he didn't have air conditioning at the time he made the police report and I believe his testimony that he did have air conditioning and had it for a period of time. So, she went too far in terms of denying that. I'm not making a finding at all that she cut the air conditioning line, although my instincts tell me that she did, but just the fact that she was willing to take the position under oath that he never had air conditioning and didn't have air conditioning and that was a completely false report, lends to his credibility that he had the -- he had air conditioning and somebody, if not her, somebody cut the line to the air conditioning. He's established that he had air conditioning and somebody cut the line and she was willing to testify under oath that he never had the air conditioning. I also -- I don't -- I -- I -- I find that the reference to the girlfriend and the posting of the pictures, there's a handful of people on the planet earth that are going to want to post personal photos that are taken from his phone of a girlfriend. And the connection, the testimony that [respondent] had a particular nickname for this person, referred to her as that nickname and then made postings referencing that nickname is enough for this Court to find reasonable cause to connect her to the postings on his Facebook, the nude photos, the inappropriate photos of a current girlfriend who has nothing to do with this other than dating [petitioner] subsequent to him spending time with [respondent].
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> So, I'm going to find that he's met his burden in terms of reasonable cause to believe that there's a personal protection order that should issue. At some point in time, frankly, there's going to be -- there is going to be a[n] agency --

Respondent interrupted and stated, "This is bullsh*t." The trial court asked, "Did you just say, 'This is --" Respondent said, "This is bull crap." The trial court responded:

> No, actually what you said is "This is bullsh*t." Lied again. There's going to be an agency that's going to be able to connect the dots electronically in terms of who's accessing the phone and whose and from what number and that type of thing. This thing is going to result in criminal charges at some point. There's not a question in my mind that at some point in time, it's going to result

> in criminal charges and then it's going to domino back to all of the allegations that -- so, I -- absolutely there should be a personal protection order in place. And it is going to include language with regard to -- I want to make sure that the original one covered social media. It doesn't -- let me see.

The trial court concluded, "Okay. I -- the -- respectfully, the motion to terminate is denied. All right. So, the PPO stands, but I'm amending it to include social media, because I want the nonsense, the Facebook stuff to stop. It -- it's deactivated now, but you have a right to have a Facebook page."

On that same day, March 27, 2018, the trial court entered an order denying respondent's motion to terminate the PPO, and finding that "[c]ircumstances continue to exist that would require modification of the order." The trial court ordered that "[t]he motion to modify the personal protection order is granted in full" and that "[a]n amended personal protection order shall be issued."[1] The trial court subsequently issued a modified personal protection order.

This appeal followed.[2]

II. STANDARD OF REVIEW

We review for an abuse of discretion a trial court's determination whether to issue a PPO. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). We also review for an abuse of discretion a trial court's determination that justification exists for the continuance of a PPO after a termination hearing. *Id*. at 326. "An abuse of discretion occurs when the decision resulted in an outcome outside the range of principled outcomes. We review a trial court's findings of fact for clear error." *Id*. at 325 (citation omitted).

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[1] The record does not reflect that petitioner filed a written motion to amend the PPO. It appears the trial court either treated petitioner's testimony concerning social media activity as an oral motion to amend the PPO, or amended the PPO on its own motion.

[2] We note that the PPO at issue expired on March 27, 2019. However, our Supreme Court has stated that an "appeal challenging a PPO, with an eye toward determining whether a PPO should be updated in LEIN [a law enforcement database] as rescinded . . . is simply not moot. Consequently . . . the mere fact that the instant PPO expired during the pendency of this appeal does not render this appeal moot." *TM v MZ*, 501 Mich 312, 319-320; 916 NW2d 473 (2018). Although respondent sought to "terminate" rather than "rescind" the PPO, the trial court stated at the beginning of the hearing that "what happens when somebody files a motion to terminate, is we kind of start from scratch. So it's as if one wasn't ever granted, it's a—kind of a blank state and [petitioner has] the burden of proving that there's reasonable cause to believe that [petitioner] need[s] an order of protection." Thus, if the trial court had granted respondent's motion, it likely would have resulted in an updated PPO indicating that it had been rescinded. We accordingly review respondent's claims on appeal regarding whether the PPO should be terminated, notwithstanding that it is currently no longer in effect.

III. ANALYSIS

Respondent argues that the trial court clearly erred in its factual findings and abused its discretion by issuing the modified PPO and denying her motion to terminate the PPO. We disagree.

MCL 600.2950 sets forth the criteria under which a trial court may issue a PPO. MCL 600.2950(4) provides that the trial court must issue a PPO if it "determines that there is reasonable cause to believe that the individual to be restrained . . . may commit 1 or more of the acts listed in subsection (1)." The acts listed in subsection (1) include "any . . . specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence." MCL 600.2950(1)(l). "In determining whether reasonable cause exists," the trial court 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 . . . has previously committed or threatened to commit 1 or more of the acts listed in subsection (1)." MCL 600.2950(4)(a) and (b). "The 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 (2002); MCR 3.310(B)(5).

Respondent argues that there was insufficient evidence to establish reasonable cause to satisfy MCL 600.2950, and that the trial court erred by not crediting respondent's testimony. We disagree. The trial court found that petitioner's factual allegations were sufficient to satisfy MCL 600.2950, and stated that it had made a "credibility decision" about whether there was sufficient evidence constituting reasonable cause to connect respondent to petitioner's Facebook posts. This Court "may not weigh the evidence or the credibility of witnesses." *Brandt v Brandt*, 250 Mich App 68, 74; 645 NW2d 327 (2002); see also MCR 2.613(C).

At the hearing, petitioner testified that he believed that respondent had cut his air conditioner cord and had posted pictures of his girlfriend, who respondent referred to as "Ronald McDonald," on his Facebook page. The trial court believed that respondent had lied about petitioner not having an air conditioner and believed petitioner's testimony that he did have one. The trial court stated that

> the fact that [respondent] was willing to take the position under oath that [petitioner] never had air conditioning and didn't have air conditioning and that was a completely false report, lends to his credibility that he had the -- he had air conditioning and somebody, if not [respondent], somebody cut the line to the air conditioning.

Additionally, petitioner testified that his girlfriend had red hair, and that respondent always referred to her as "Ronald McDonald." Petitioner showed the trial court a screenshot of a post on respondent's Facebook page in which she referred to his girlfriend as Ronald McDonald. Petitioner testified that in November 2017, respondent posted nude pictures of his girlfriend on his Facebook page and that the posts referred to his girlfriend as Ronald McDonald.

The trial court believed that respondent had posted nude pictures of petitioner's girlfriend on his Facebook page, stating

> the reference to the girlfriend and the posting of the pictures, there's a handful of people on the planet earth that are going to want to post personal photos that are taken from his phone of a girlfriend. And the connection, the testimony that [respondent] had a particular nickname for this person, referred to her as that nickname and then made postings referencing that nickname is enough for this Court to find reasonable cause to connect her to the postings on his Facebook, the nude photos, the inappropriate photos of a current girlfriend who has nothing to do with this other than dating [petitioner] subsequent to him spending time with [respondent].

Therefore, the trial court found petitioner's testimony to be credible despite respondent's contrary testimony. The trial court is in a better position to weigh evidence and evaluate witness credibility, and did not clearly err by doing so. *Brandt*, 250 Mich App at 74.

Respondent also argues, however, that petitioner made false statements during the hearing that undermined his credibility, including: (1) a statement about the nature and length of his relationship with respondent, (2) that he had not previously been before the trial court for a PPO, (3) that respondent had 33 previous PPOs against her, (4) about how he met respondent, (5) whether the 15 alleged text messages were sent to him or his girlfriend, (6) that there were thousands of text messages, (7) that all of the police reports that he filed were still pending, (8) that he filed hundreds of police reports against respondent, but later said it was 25 reports, and (9) that he never had an altercation with respondent. Respondent argues that these statements sufficiently undermined petitioner's credibility such that the trial court clearly erred by believing his testimony. We disagree. Although there were some inconsistencies in petitioner's testimony, such as the fact that he initially denied having had a romantic relationship with respondent but later admitted to a brief romantic relationship, and initially testified that "all" police reports against respondents were still open cases, but later acknowledged that the case regarding the air conditioner was closed, petitioner was not so seriously impeached as to render all of his testimony inherently untrustworthy. See *People v Lemmon*, 456 Mich 625, 643-644; 576 NW2d 129 (1998) (quotation marks and citations omitted) (noting that, in the context of a challenge to the weight of the evidence supporting a jury verdict, issues regarding witness credibility do not require reversal unless the "testimony contradicts indisputable physical facts or laws," the "testimony is patently incredible or defies physical realities," the "testimony is material and is so inherently implausible that it could not be believed by a reasonable juror," or the "testimony has been seriously 'impeached' and the case is marked by uncertainties and discrepancies").

Respondent also argues the trial court abused its discretion by not remaining neutral during the hearing, and in so doing violated her right to due process of law. We disagree. Respondent did not include this argument in her statement of questions presented as required by MCR 7.212(C)(5). Even so, the argument is without merit because the record does not support respondent's claim. "[T]he party who challenges a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality." *Cain v Dept of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996). Respondent asserts that the trial court did not consider that respondent was the victim in this case based on petitioner's "forum shopping" and failure to

appear at previous hearings, and also argues that she filed multiple police reports against respondent that the SPD refused to investigate. Respondent also argues that the trial court did not consider that she lives in Detroit where petitioner is a police officer, and that the trial court's order prohibits her from making complaints about him to the DPS. Respondent was not prohibited from raising any of these arguments before the trial court; nor does the record reveal any evidence of bias or prejudice on behalf of the trial judge. Our Supreme Court "has examined the issue of judicial disqualification pursuant to the Due Process Clause and has found that disqualification for bias or prejudice is only constitutionally required in the most extreme cases." *Id*. at 498. Respondent has not presented any evidence or identified any specific examples of conduct that would rise to this level.

Affirmed.

/s/ Michael F. Gadola
/s/ Mark T. Boonstra
/s/ Brock A. Swartzle