

STATE OF MICHIGAN  
COURT OF APPEALS

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KATHARINE LEE BARR,

Petitioner-Appellee,

v

JEFFREY THOMAS HALL,

Respondent-Appellant.

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UNPUBLISHED

January 7, 2016

No. 322684

Wayne Circuit Court

Family Division

LC No. 14-103922-PP

Before: SERVITTO, P.J., and WILDER and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order denying his motion to terminate an ex parte personal protection order ("PPO") entered against him. We vacate the PPO and remand to the trial court for entry of the appropriate orders removing the PPO from the LEIN system.

The petition for the PPO was brought by petitioner, who had previously been engaged in an extra-marital affair with respondent. Petitioner alleged that, after she had attempted to end her relationship with respondent, respondent had verbally assaulted her on at least one occasion, driven past the house she shared with her husband and children, begun showing up at places where she worked and studied, and joined the gym he knew she frequented after asking gym employees for her schedule. Petitioner requested an ex parte order, explaining that she felt afraid for her safety because respondent owned and carried a firearm, made a fake online profile to "stalk" petitioner, and threatened to share private pictures and videos he had taken of petitioner.

The trial court granted the petition on an ex parte basis. Respondent timely moved to terminate the PPO. At a hearing on respondent's motion, the trial judge denied respondent's motion after hearing narrative testimony from petitioner but before respondent had an opportunity to testify or present evidence to rebut petitioner's allegations. Respondent now appeals the trial court's denial, arguing that his procedural due process rights were violated when the trial court denied his motion to terminate the ex parte PPO without granting him a meaningful opportunity to present a defense. We agree.

Procedural due process requires government to "institute safeguards in proceedings that affect those rights protected by due process, such as life, liberty, or property." *Kampf v Kampf*, 237 Mich App 377, 382; 603 NW2d 295 (1999). In civil cases due process:

generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decision maker. 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. [*Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995)(citation omitted)].

Here, respondent was given no meaningful opportunity to defend himself from the allegations against him. The only testimony allowed came from the petitioner. While the burden of persuasion in a hearing held on a motion to terminate or modify an ex parte PPO is on the person who applied for the PPO, *Pickering v Pickering*, 253 Mich App 694, 699; 659 NW2d 649 (2002), and issues of witness credibility present a question for the trier of fact, *In re Clark Estate*, 237 Mich App 387, 395-396; 603 NW2d 290 (1999), respondent was not provided any chance at all to offer witnesses or testimony to rebut petitioner's testimony.

Petitioner requested an ex parte PPO on April 10, 2014, which the trial court signed into effect on that same day. The PPO stated that it would expire on April 10, 2015, and the order denying respondent's motion to terminate the PPO confirmed that the PPO would expire on that date. The parties have not asserted, nor does the record indicate, that the PPO was extended at any time before it was set to expire. See MCR 3.707(B).

"As a general rule, an appellate court will not decide moot issues." *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.* An issue is not moot, however, where it "may have collateral legal consequences" for an individual. *Mead v Batchlor*, 435 Mich 480, 486; 460 NW2d 493 (1990), abrogated on other grounds by *Turner v Rogers*, \_\_\_ US \_\_\_; 131 S Ct 2507; 180 L Ed 2d 452 (2011).

This Court has indicated that an expired PPO may have collateral consequences capable of remedy on appeal. For example, in *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008), a panel of this Court held that the trial court's decision to continue a PPO was not moot even though the PPO had expired because the entry of the PPO may have affected the respondent's eligibility for a federal firearms license. The respondent's livelihood was based upon building rifles and other firearms.

Here, respondent states in his brief on appeal (and provides an affidavit swearing to the truth of the facts asserted in the brief) that, had he been granted a full evidentiary hearing, he would have shown that although the PPO has expired, it has collateral consequences because it remains in the Law Enforcement Information Network (LEIN). Respondent asserts that he is a licensed firearm instructor and needs access to firearms to earn a living and that appearing in the LEIN system could adversely impact his ability to renew his license. Respondent also states that he is currently a candidate for employment with the CIA, which will require renewal of his SECRET security clearance previously held. Appearing in LEIN will adversely impact respondent's ability to renew his security clearance or upgrade it as may be required for his CIA employment. We are satisfied that respondent has demonstrated collateral consequences of the PPO.

Based upon the above and the violation of respondent's due process rights, we vacate the PPO and remand to the trial court for entry of the appropriate orders removing the PPO from the LEIN system. We do not retain jurisdiction.

/s/ Deborah A. Servitto  
/s/ Kurtis T. Wilder  
/s/ Mark T. Boonstra