STATE OF MICHIGAN

COURT OF APPEALS

MARY WORTHY, Petitioner-Appellee,	UNPUBLISHED May 11, 2017
v	No. 331597 Saginaw Circuit Court
ERIC A. KARBIN, Respondent-Appellant.	LC No. 15-028441-PH

Before: GADOLA, P.J., and JANSEN and SAAD, JJ.

PER CURIAM.

Respondent appeals the circuit court's decision to deny his motion to terminate an ex parte personal protection order (PPO) issued against him on December 9, 2015. The court also denied respondent's motions for rehearing and reconsideration. We affirm.

I. BASIC FACTS

Petitioner and respondent were patrons of the Saginaw city bus lines. Petitioner told the court that she only knew respondent in this capacity, and while she exchanged pleasantries with respondent when they saw each other at the bus transit center, she desired no further interaction with him. Petitioner filed a petition for a PPO against respondent on December 8, 2015, and stated that she felt intimidated and harassed by a recent escalation in respondent's "odd" behavior and aggressive and inappropriate acts. Petitioner stated that respondent (1) approached her at the transit center and told her about his "on-going research" about her; (2) attempted to learn where she worked, and (3) searched public records to learn more about her. Also, respondent paid a portion of the taxes on a parcel of real estate owned by petitioner's family, which was also petitioner's residence; wrote a letter to petitioner's mother in Mississippi stating that he planned to visit her soon; and paid the water bill for her residence. Petitioner also stated that respondent made "aggressive and threatening statements" to her and that he had harassed her by inviting her to go to events and other places with him.

The circuit court issued an ex parte PPO based on the petition, and respondent timely filed a motion to terminate the PPO. Following a hearing, the court denied respondent's motion and determined that petitioner had met her burden of proof and demonstrated that respondent had violated the stalking statute, MCL 750.411h.

II. BASIS FOR ISSUING PPO

Respondent argues that the circuit court erred when it issued the PPO. We disagree.

This Court reviews a trial court's decision to deny a motion to dismiss a PPO for an abuse of discretion but reviews the findings in support of the decision for clear error. *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.* This Court reviews de novo whether the trial court properly interpreted and applied the relevant statutory provisions. *Brecht v Hendry*, 297 Mich App 732, 736; 825 NW2d 110 (2012).

Here, the court listed "stalking" as its reason for issuing the PPO. Respondent claims that the court erred when it failed to provide more than one reason for issuing the PPO. Respondent relies on MCL 600.2950a(7), which provides as follows:

> If a court issues or refuses to issue a personal protection order, the court shall immediately state in writing the specific reasons for issuing or refusing to issue the personal protection order. If a hearing is held, the court shall also immediately state on the record the *specific reasons* for issuing or refusing to issue a personal protection order. [Emphasis added.]

Respondent maintains that, because the statute uses the plural term "specific reasons," the court was required to state multiple reasons and, as such, one reason is insufficient to issue a PPO. Respondent reads too much into the statute. Notably, the statue nowhere *requires* a court to have multiple reasons for issuing or denying a PPO. Instead, the clear import of the language merely shows that a court must provide *all* of its reasons for making its decision. The fact that a court may have a single reason in support of its decision—to issue or deny—is of no consequence.[1]

We further reject respondent's view that the circuit court clearly erred when it found that respondent had engaged in stalking. Under MCL 600.2950a(1), petitioner had to show that respondent engaged in behavior that constituted "stalking," as defined in MCL 750.411h or MCL 750.411i, in order to obtain a PPO. Under MCL 750.411h(d), "'Stalking' means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel" this way. MCL 750.411h(1)(a) defines "course of conduct" as "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." This Court has held that in order for a victim to show that stalking has occurred, "[t]here must be evidence of two or more acts of unconsented contact that

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[1] Moreover, the court's reason of "stalking" encompasses multiple acts, or a "course of conduct," which would give rise to multiple reasons in support of the issuance of a PPO. See MCL 750.411h(1)(d).

We also emphatically reject respondent's meritless view that it was not clear if "stalking" referred "to something in the past, in the present[,] or something that may occur in the future[.]" Obviously the premise of the PPO was that respondent had engaged in stalking in the past and its issuance would prevent it from happening in the future.

caused the victim to suffer emotional distress and that would cause a reasonable person to suffer emotional distress." *Hayford*, 279 Mich App at 330. " 'Unconsented contact' means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued." MCL 750.411h(1)(e). Under the statute, "unconsented contact" may include:

> (i) Following or appearing within the sight of that individual.
>
> (ii) Approaching or confronting that individual in a public place or on private property.
>
> (iii) Appearing at that individual's workplace or residence.
>
> (iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
>
> (v) Contacting that individual by telephone.
>
> (vi) Sending mail or electronic communications to that individual.
>
> (vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual. [MCL 750.411h(1)(e).]

Petitioner stated that respondent had spoken to her, followed her, observed her, gone to her residence, tried to learn her place of employment, asked her to accompany him on social outings, invaded her privacy and that of her family, and refused to stop talking to her when asked to do so. Petitioner also stated that a neighbor saw respondent in petitioner's backyard. In addition, petitioner stated that respondent had appeared within her sight and approached her at a public place. Respondent appears to concede that he made contact with petitioner on at least one occasion after she had asked him not to speak to her when he invited her to a Halloween dance, but he argues that this was not sufficient to prove stalking because this was a single act of unconsented contact. However, petitioner did not give her statements in the form of a chronology, with exact dates and times of when she asked respondent not to speak to her and of the contacts that allegedly came before and after that request. But petitioner did indicate at several points that she told respondent *on more than one occasion* that she did not want him to speak to her. Consequently, it was not clear error for the court to find that two or more contacts described by petitioner occurred after she had indicated to respondent that she did not want to have any contact with him.

Respondent also says that the conduct described by petitioner did not constitute stalking because the court did not find that the unconsented contact caused her to feel "terrorized, frightened, intimidated, threatened, harassed, or molested," as required by MCL 750.411h(1)(d). This argument is not supported by the record. The court found that respondent had violated petitioner's rights and "bothered" her and that he had "gone beyond and above what a normal person would do in trying to contact her, finding where she works, go to work, sending letters to her mom without knowing her." Further, in addition to her statements during the hearing that she had repeatedly asked respondent to leave her alone, petitioner stated in her petition and in her verified statement that she felt harassed, threatened, and intimidated by respondent's conduct and

statements to her. The evidence shows that the court did not clearly err when it concluded that petitioner had shown that respondent's conduct caused her to feel "terrorized, frightened, intimidated, threatened, harassed, or molested."

Respondent generally alleges that the court denied his motion to terminate the PPO without finding that petitioner continued to need it. Respondent claims that because petitioner did not state that he had tried to contact her since the issuance of the PPO, the court should have granted his motion to terminate. However, petitioner was not required to show that respondent had violated the PPO in order to show that it should be continued. Rather, she had to show that respondent had "previously engaged" in the prohibited conduct. *Hayford*, 279 Mich App at 326. Petitioner met this burden, and the court did not abuse its discretion when it denied respondent's motion.

III. EX PARTE PPO

Respondent maintains that the court erred when it issued the PPO ex parte because petitioner did not show that immediate injury would have resulted from the delay required to give respondent notice. MCL 600.2950a(12) provides that an ex parte PPO "shall not be issued and effective without" notice to the party enjoined "unless it clearly appears from specific facts shown . . . that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice[.]" The statute does not define what constitutes an "immediate and irreparable injury." "Immediate" may be defined as "[o]ccuring at once; instant," or "[o]f or near the present time." *The American Heritage Dictionary of the English Language* (2000). And *Black's Law Dictionary* (7th ed) defines "irreparable injury" as "[a]n injury that cannot be adequately measured or compensated by money and is therefore often considered remediable by injunction."

Petitioner characterized respondent's behavior as "odd" and "aggressive" in her petition and claimed that it had recently escalated. She recounted how respondent had obtained her mother's address in Mississippi from public records and then sent a letter in which he indicated that he planned to visit her. Respondent invaded petitioner's privacy by learning the address of her residence and paying her water bill, following her around the city, and attempting to learn where she worked. Petitioner also stated that she feared for her life and safety because of respondent's actions, and that he had altered her "sense of freedom." Because the stalking conduct recently escalated, the facts support a finding that the need for the PPO was immediate. Further, because petitioner's fears were based on respondent's conduct and could not be remedied by money, the court did not err when it concluded that she had asserted an irreparable injury. Accordingly, the court did not clearly err when it found that petitioner proved that an immediate and irreparable injury would result from the delay required to effectuate notice and it consequently did not abuse its discretion when it denied respondent's motion to terminate the PPO.

Respondent also argues that the PPO should have expired within 14 days under MCR 3.310(B)(3). MCR 3.310(B)(3) provides, in pertinent part, as follows:

> Except in domestic relations actions, a temporary restraining order granted without notice expires by its terms within such time after entry, not to exceed 14

> days, as the court sets unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period.

However, MCR 3.705(A)(3) provides that an ex parte PPO "is valid for not less than 182 days, and must state its expiration date." Likewise, MCL 600.2950a(13) provides that an ex parte PPO "is valid for not less than 182 days." We hold that the expiration date in the statute and in MCR 3.705 prevail over the expiration date for temporary restraining orders set forth in MCR 3.310(B)(3). See MCR 1.103 (stating that court rules "stated to be applicable only in a specific court or only to a specific type of proceeding apply only to that court or to that type of proceeding and control over general rules"). Thus, respondent's assertion that the PPO should have expired within 14 days is without merit.

Respondent further asserts that the circuit court erred when it failed to schedule and hold a hearing on his motion to terminate within 14 days after he filed the motion. MCR 3.707 provides that where a respondent wishes to modify or terminate a PPO, he or she may "request a hearing within 14 days after being served with, or receiving actual notice of, the order. Any motion otherwise to modify or terminate a personal protection order by the respondent requires a showing of good cause." MCR 3.707(A)(1)(b). The rule further provides that "[t]he court must schedule and hold a hearing on a motion to modify or terminate a personal protection order within 14 days of the filing of the motion" except in cases where a respondent has been convicted of certain sexually based offenses involving the petitioner, or where the petitioner has a "reasonable apprehension" of sexual assault by the respondent. MCR 3.707(A)(2); see also MCL 600.2950a(2). In the instant case, respondent filed his motion to terminate the PPO on December 11, 2015. A hearing was held on January 4, 2016, 24 days later; thus, the hearing was apparently not timely. However, it does not follow that respondent is entitled to any relief. The stated time for performance set forth in a statute should be viewed as directory, rather than mandatory, when there is no language precluding or terminating performance after the specified time. *People v Yarema*, 208 Mich App 54, 57; 527 NW2d 27 (1994). Here, neither the statute nor the court rule contains any provision that states that the failure to hold a timely hearing on a motion to terminate an ex parte PPO results in the automatic termination of the PPO. Further, interpreting the court rule and statute as respondent suggests would punish the petitioner for the (presumed) tardiness of the court itself and would potentially undermine the purpose of PPOs. Additionally, the court heard respondent's motion less than a month after it was filed, and respondent was afforded the opportunity to be heard and to present his case. Respondent has not shown that if the hearing had been held earlier that the result would have been any different. As a result, we do not find that respondent is entitled to relief based on this issue.

IV. DUE PROCESS

Respondent raises a series of arguments asserting that he was denied his right to due process by the court's conduct during the hearing on his motion to terminate. Respondent's arguments are not supported by the record.

According to respondent, the court conducted the hearing as though it was a hearing on whether to issue the PPO rather than on his motion to terminate it. In support of this argument, respondent notes that the court called on petitioner to address the court before he was asked to do

so and that the court explained the purpose of the hearing to petitioner by telling her that it was a hearing to which respondent was entitled "to determine if I should keep [the PPO] in place or not." Respondent asserts that the court should have explained the purpose of the hearing differently by stating, "This is a hearing . . . to determine whether the PPO should have been issued in the first place," or "This is a hearing . . . to have on [respondent's] motion to terminate the PPO." Respondent notes that the court twice stated in its order denying his motion for reconsideration that the hearing was held pursuant to MCR 3.705(B)(6), which relates to a hearing on a petition, rather than pursuant to MCR 3.707(A)(2), which relates to hearings on motions to terminate. Respondent argues that his due process rights were violated because he lacked notice that the hearing would be held on the petition rather than on his motion to terminate the PPO.

The record shows that the court correctly stated the purpose of the hearing. The court stated that respondent was entitled to a hearing on his motion to terminate in order for the court to determine whether the PPO should be continued. MCR 3.310(B)(5) provides that "[a]t a hearing on a motion to dissolve a restraining order granted without notice, the burden of justifying continuation of the order is on the applicant for the restraining order[.]" The court's statement did not indicate that it held the "wrong" hearing, as respondent contends.

While we agree that the court referenced the wrong court rule (i.e., MCR 3.705(B)(6)) in its order denying the motion for reconsideration, it appears to be nothing more than a clerical error and not an indication that the court held the hearing as though it were deciding whether to issue a PPO rather than whether to terminate it pursuant to respondent's motion under MCR 3.707(A)(2). Although the court incorrectly cited the court rule, the record does not indicate that the court held the "wrong" hearing or that it was unaware that the purpose of the hearing was to determine whether the PPO should be terminated pursuant to respondent's motion. Accordingly, appellate relief is not warranted. See MCR 2.613(A).

Respondent argues that it is not clear from the record that the court was aware whether the petition was filed under MCL 600.2950 or MCL 600.2950a. This argument has no merit.

Respondent notes that MCL 600.2950(4) contains a mandatory provision under which the court must issue a PPO if it "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)," but that there is no similar provision in MCL 600.2950a. The court did not state that the PPO was issued pursuant to MCL 600.2950a. However, the PPO provided that it was a nondomestic, ex parte PPO. MCL 600.2950 governs PPOs related to domestic situations, see MCL 600.2950(1), while MCL 600.2950a addresses the issuance of PPOs in nondomestic matters, see *Lamkin v Engram*, 295 Mich App 701, 706; 815 NW2d 793 (2012). We have no reason to conclude from the record that the court was "confused" or in error about which statute was applicable or that it believed petitioner had filed her petition pursuant to MCL 600.2950. There is no indication in the record that the court believed there was a relationship between the parties, nor is there any support for respondent's assertion that the court believed the petition arose under MCL 600.2950 rather than MCL 600.2950a, or that it believed circumstances required it to issue a PPO under MCL 600.2950(4).

Respondent also argues that the court "clearly showed partiality in favor of" petitioner. The record does not support respondent's arguments.

First, respondent maintains that the court showed partiality when it asked respondent to state his address for the record but did not ask petitioner to state hers. We note that MCL 600.2950a(6) permits a petitioner to omit her address from documents filed with the court related to the PPO. The statute does not explicitly state that a petitioner may also be exempted from providing an address during a court hearing related to the petition; however, it would be inconsistent with the statute for a court to require a petitioner to do so when the statute permits omission from documents filed with the petition. In any event, respondent does not explain why this constituted partiality, or how being asked to state his address adversely affected him.

Next, respondent asserts that the court used "conclusory language" to describe respondent's conduct. Respondent does not cite any of the language he finds objectionable, nor does he explain why the use of such language constituted partiality. Respondent may not assert a claim and then leave it to this Court to create an argument for him. See *Kubicki v Mortgage Elec Registration Sys*, 292 Mich App 287, 291; 807 NW2d 433 (2011). We consider this claim abandoned by respondent. See *Newton v Bank West*, 262 Mich App 434, 437 n 2; 686 NW2d 491 (2004).

Respondent claims that the court "exaggerated" respondent's conduct towards petitioner when, for instance, it stated that respondent had paid petitioner's "bills" and sent "letters" to her mother. Respondent notes that he paid only one bill and sent just one letter. While the court's plural use of "bills" and "letters" may have been technically inaccurate, the statements do not evidence bias. Rather, the record indicates that the court was casually summarizing the evidence when it referred to respondent's actions in this way. Moreover, we have no reason to believe that the court was confused about these facts.

Respondent also claims that the court displayed bias in favor of petitioner when it asked her to present her case first, when it was his motion that was before the court. Respondent argues that that it was his "turn to go forward" and that he had the burden of "going forward with the evidence." Respondent's statement of the law is incorrect. Although it was respondent's motion before the circuit court, it nonetheless was petitioner's burden to justify the continuance of the PPO. MCR 3.310(B)(5); *Pickering v Pickering*, 253 Mich App 694, 699; 659 NW2d 649 (2002). Accordingly, it was reasonable for the court to ask her to explain why she felt the PPO should be continued before it asked respondent to respond to her argument. See *People v Jackson*, 292 Mich App 583, 598; 808 NW2d 541 (2011) ("Michigan case law provides that a trial judge has wide discretion and power in matters of trial conduct.") (quotation marks and citations omitted).

Likewise, we find no merit to respondent's contention that other aspects of how the circuit court conducted the hearing exhibited bias.[2] Again, the court has wide discretion in how

[2] In pertinent part, respondent takes exception to (1) how the court gave petitioner "free rein" to present her statement to the court, (2) how the court questioned petitioner, (3) how the court

it handles the proceedings before it, see *id.*, and we see no signs of judicial bias. Moreover, to the extent respondent's claims are premised on the fact that he received adverse decisions from the circuit court, adverse decisions alone do not indicate bias, even if the decisions were otherwise erroneous.[3] *Band v Livonia Associates*, 176 Mich App 95, 118; 439 NW2d 285 (1989).

Respondent additionally asserts that the judge showed bias when he directed petitioner to give an exhibit to the deputy but "was not so quick" to instruct respondent to do the same for his exhibits. If this were true, we are not sure how it exhibits judicial bias. In any event, the record does not support his assertions.

Finally, respondent takes exception to the court telling respondent, "I think you're stalking her," before he had finished presenting his case. However, at this point in the hearing, the court had already heard from petitioner, and respondent was well into the presentation of his case. Petitioner had recounted numerous instances of unconsented contact with respondent sufficient to support the conclusion that respondent had violated MCL 750.411h(e). Because the court's opinion and eventual decision to continue the PPO were based on the evidence presented, the court's statement did not demonstrate bias in favor of petitioner.

V. VAGUENESS OF MCL 750.411h(1)(c)

Respondent argues that the definition of harassment at MCL 750.411h(1)(c) is unconstitutionally vague. We review this unpreserved issue for plain error affecting substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). In *People v White*, 212 Mich App 298, 311-312; 536 NW2d 876 (1995), this Court stated:

> The United States Supreme Court has stated that "the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v Lawson*, 461 US 352, 357; 103 S Ct 1855; 75 L Ed 2d 903 (1983). "In determining the sufficiency of the notice a statute must of necessity be examined in the light of the conduct with which a defendant is charged." *United States v Nat'l Dairy Products Corp*, 372 US 29, 33; 83 S Ct 594' 9 L Ed 2d 561 (1963); see also *West Bloomfield Twp v Karchon*, 209 Mich App 43, 48-49; 530 NW2d 99 (1995). Further, a statute does not provide fair notice of proscribed conduct if it " 'either forbids or requires the doing of an act in terms so vague that

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required respondent to pose his questions for petitioner to the court, which would then ask petitioner, and (4) how the court interrupted his questioning after it determined that his questions were not relevant. In addition to the wide latitude a judge has in controlling the proceedings before it, a judge is allowed to ask questions. MRE 614; *In re Forfeiture of $1,159,420*, 194 Mich App 134, 153; 486 NW2d 326 (1992); *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 24; 436 NW2d 70 (1989). And with respect to respondent's fourth contention here, it is black letter law that in order to be admissible, evidence must be relevant. MRE 402.

[3] To be clear, respondent has not proven the existence of any erroneous decisions.

> men of common intelligence must necessarily guess at its meaning and differ as to its application.' " *Id.* at 49, quoting *Allision v City of Southfield*, 172 Mich App 592, 596; 432 NW2d 369 (1988).

Here, MCL 750.411h(1)(c) provides as follows:

> "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

According to respondent, the first sentence of the statute "features 3 adjective clauses" that all begin with the word "that." He claims that while the first clause undeniably modifies "conduct," it is not clear what the second and third clauses refer to, which makes it "possible that conduct can be considered to fall within the definition of harassment even though that conduct would cause a reasonable individual to suffer emotional distress and actually does not cause the victim emotional distress." We are not persuaded by respondent's argument, as his interpretations distort the plain language of the statute. Indeed it is clear that "harassment must also cause a reasonable individual to suffer emotional distress, an objective standard." *Staley v Jones*, 239 F3d 769, 792 (CA 6, 2001).

In fact, this Court has already held that this statute is constitutional:

> Applying the law to the facts of this case, we believe that the stalking statutes provide fair notice of the prohibited conduct. A person of reasonable intelligence would not need to guess at the meaning of the stalking statutes, nor would his interpretation of the statutory language differ with regard to the statutes' application, in part because the definitions of crucial words and phrases that are provided in the statutes are clear and would be understandable to a reasonable person reading the statute. Also, the meaning of the words used to describe the conduct can be ascertained fairly by reference to judicial decisions, common law, dictionaries, and the words themselves because they possess a common and generally accepted meaning. We therefore conclude that the statutes are not void for vagueness on the basis of inadequate notice. [*White*, 212 Mich App at 312-313 (citations omitted).

Respondent also claims that the language "but not limited to" further adds to the vagueness of the statute. While it does not appear that the *White* Court focused on the phrase "but not limited to," we agree with the federal district court in *Staley*,[4] which stated:

[4] Although decisions of a federal district court interpreting Michigan law are not binding on Michigan courts, we may consider the reasoning of a federal court decision for its persuasive value. *Linsell v Applied Handling, Inc*, 266 Mich App 1, 16; 697 NW2d 913 (2005).

> The Court does not believe that the phrase "includes, but is not limited to," found in . . . the harassment definition, renders the statute unconstitutionally vague. There are two possible interpretations of this portion of the definition.
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> On the one hand, [it] could be read to mean that harassing conduct includes either: (a) repeated unconsented contacts that would cause a reasonable person to suffer emotional distress, *or* (b) some other type of unspecified contact. This reading interprets the words following the phrase "includes, but is not limited to" as providing examples of the types of contact that may constitute harassing conduct, while explicitly recognizing that there are other unspecified types of contact which might also constitute harassment. This reading places greater significance on the "but is not limited to" modifying clause than it does on the word "includes." If this were the only possible interpretation of part-two of the harassment definition, Staley would be correct that the harassment definition is unclear as to what types of contact constitute harassing conduct.
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> On the other hand, this portion of the definition can also be read to mean that harassing conduct *requires* repeated unconsented contacts that cause emotional distress and that it *may also* include other types of contact. This reading focuses on the word "includes" and interprets the "but is not limited to" clause to mean simply that, assuming the existence of repeated unconsented contacts, other types of contact may be present as well.
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> This second reading of the harassment definition has the advantage of providing meaning to part-two of the definition, and avoids the vagueness concerns that attach to the first interpretation. Under the well-settled rules of statutory construction, where an otherwise acceptable construction of a statute would raise serious constitutional problems, the [courts should] construe the statute to avoid such problems unless such construction is plainly contrary to the intent of [the legislature]. In order to give meaning to . . . the harassment definition, the Court interprets the definition to require that harassing conduct include repeated unconsented contact that causes emotional distress and that other types of contact may be present as well.
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> Interpreted in this manner, the phrase "includes, but is not limited to" does not render the harassment definition, or the statute, unconstitutional in light of the First or Fourteenth Amendments. [*Staley v Jones*, 108 F Supp 2d 777, (WD Mich, 2000) (citations, footnote, and some quotation marks omitted), reversed on other grounds 239 F3d 769 (2001).]

Therefore, respondent has not proven any plain error, as the definition of harassment in MCL 750.411h(1)(c) defines the prohibited conduct in terms clear enough that a person of common intelligence can understand what is forbidden. *White*, 212 Mich App at 312.

Affirmed.

/s/ Michael F. Gadola
/s/ Kathleen Jansen
/s/ Henry William Saad