

STATE OF MICHIGAN
COURT OF APPEALS

NANCY J. FRYE,

Petitioner-Appellee,

v

JEROME PAUL VAN NESTE,

Respondent-Appellant.

UNPUBLISHED

June 22, 2017

No. 331982

Washtenaw Circuit Court

LC No. 15-002928-PH

Before: TALBOT, C.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Respondent, Jerome Paul Van Neste, appeals by right the trial court order denying his motion to terminate a personal protection order (PPO). For the reasons explained below, we affirm.

Van Neste only argues that the trial court violated his constitutional right to keep and bear arms when it failed to terminate the provision in the PPO that prohibited him from possessing or purchasing a firearm. He suggests that the provision is unconstitutional because there was no evidence that he was physically violent with the petitioner, Nancy Frye, or that he threatened her with physical violence. The decision to issue or terminate a PPO is reviewed for an abuse of discretion. *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.* A trial court’s findings of fact are reviewed for clear error. *Id.* “Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made.” *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008) (citation and quotation marks omitted). Questions of statutory interpretation are reviewed de novo. *Hayford*, 279 Mich App at 325. We also review de novo claims of constitutional error. *People v Unger*, 278 Mich App 210, 242; 749 NW2d 272 (2008). However, unpreserved claims of constitutional error are reviewed for plain error affecting a defendant’s substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

Van Neste argues that the trial court erred in restricting him from purchasing or possessing a firearm because there was no evidence of threats of violence, actual violence, and Van Neste had not been in Frye’s proximity for 18 years. However, under the relevant statutory law, an individual may petition the court to enter a PPO that restrains another individual from continued contact—including sending mail or gifts—in disregard of the petitioner’s expressed

desire that the contact be discontinued, and which would cause a reasonable person to feel, and in fact causes the petitioner to feel, terrorized, frightened, intimidated, threatened, harassed, or molested. MCL 600.2950a(1); MCL 750.411h. If the court issues such a PPO, then the court may enjoin or restrain respondent from purchasing or possessing a firearm. MCL 600.2950a(26).

The trial court found that Van Neste had engaged in a pattern of conduct by contacting Frye when such contact was unwanted. The court based its finding on Van Neste's admissions that he contacted Frye once or twice per year for the last 18 years. Van Neste admitted that he sent emails to Frye, sent letters to Frye and her husband at their house, and caused flowers to be left at Frye's house. Although a letter with the subject line "Gauntlet" was addressed to Frye's husband, the court took judicial notice that Van Neste had no expectation that the letter would remain private, i.e., Van Neste knew that Frye was bound to read or be aware of the letter to her husband. Additionally, Van Neste knew that the contact was unwanted because he had been told by multiple people not to contact Frye again.

Van Neste does not dispute that a reasonable person would feel terrorized, frightened, intimidated, threatened, or harassed when receiving multiple unwanted communications from someone a couple of times a year over the course of 18 years, especially considering that Van Neste had to track down Frye's old and new home addresses in order to contact her. Additionally, Frye testified that she actually felt threatened by his persistent and unwanted contacts. Therefore, with regard to the court's findings of fact, we are not "left with a definite and firm conviction that a mistake has been made," *Miller*, 482 Mich at 544, especially considering that Van Neste does not contest the facts or the general validity of the PPO.

Once the trial court issued the PPO, the court had the authority to restrict Van Neste from purchasing or possessing a firearm. Further, MCL 600.2950a does not require the court to make any additional findings of fact regarding threats of violence, actual violence, or even physical proximity before imposing a restriction on a respondent's right to purchase or possess firearms. Therefore, the trial court did not abuse its discretion in denying respondent's motion to terminate the PPO, specifically with regard to the prohibition against purchasing or possessing a firearm. See *IME v DBS*, 306 Mich App 426, 440; 857 NW2d 667 (2014) (discussing that, when issuing a PPO under MCL 600.2950a, the trial court "may restrain or enjoin a variety of conduct," including "purchasing or possessing a firearm") (quotation marks and brackets omitted).

Despite the legislative authorization, Van Neste argues that the trial court infringed on his Second Amendment rights when it restricted his right to purchase or possess a firearm without finding that there had been threats or acts of violence against Frye. The United States Supreme Court has held that the Second Amendment confers an individual right to keep and bear arms. *Dist of Columbia v Heller*, 554 US 570, 595; 128 S Ct 2783; 171 L Ed 2d 637 (2008). Further, the Court held that the Second Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. *McDonald v City of Chicago*, 561 US 742, 791; 130 S Ct 3020; 177 L Ed 2d 894 (2010). However, the right conferred by the Second Amendment is not unlimited. *Heller*, 554 US at 595, 626. "[T]he right [is] not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. Accordingly, "the right may yield to a legislative enactment that represents a reasonable

regulation by the state in the exercise of its police power to protect the health, safety, and welfare of Michigan citizens.” *Kampf v Kampf*, 237 Mich App 377, 383 n 3; 603 NW2d 295 (1999).

Van Neste attempts to support his constitutional claim by distinguishing *Kampf* and *IME*. Although the facts of *Kampf* and *IME* involved actual violence and threats of violence, those cases do not require a trial court to find that a respondent threatened or was actually violent toward a petitioner as a prerequisite to restraining a respondent’s right to purchase or possess a firearm. All that is required in order to restrain a respondent’s right to purchase or possess a firearm as a condition of a PPO is that the petitioner meet his or her burden of demonstrating that he or she was entitled to a PPO under MCL 600.2950a(1). See *IME*, 306 Mich App at 442 (“[A] petitioner can obtain a restraining order under MCL 600.2950a(1) by alleging that the person to be restrained engaged in acts that constitute stalking without the need to show that the person to be restrained has actually been charged or convicted of violating the applicable statutes.”). Once the petitioner has done that, MCL 600.2950a(26) provides that the trial court may exercise its discretion in restraining a respondent’s right to purchase or possess a firearm. Further, with regard to a person’s right to bear arms under the Second Amendment, this Court has held that,

the analogous statutory scheme found under MCL 600.2950 is a reasonable exercise of the state’s police power because it allows the trial court to “make a judgment” regarding whether and to what extent the PPO should include a restriction on the right to bear arms. *Kampf*, 237 Mich App at 383 n 3. Because the statute does not on its face impair a fundamental right, this Court must uphold the statute if there is a “reasonable relationship between the government purpose and the means chosen to advance that purpose.” *Bonner [v Brighton]*, 495 Mich 209, 230; 848 NW2d 380 (2014).] [*IME*, 306 Mich App at 441.]

In this case, the governmental purpose is to protect victims of stalking from continuing to feel terrorized, frightened, intimidated, threatened, or harassed. The Legislature chose to advance that purpose by allowing the trial court to restrict a respondent’s right to purchase or possess a firearm. In this manner, the PPO statute is clearly addressed to protecting the health, safety, and welfare of victims of stalking. See *Kampf*, 237 Mich App at 383 n 3. Moreover, because a firearm can cause a petitioner to feel terrorized, frightened, intimidated, threatened, or harassed, there is a reasonable relationship between the government purpose and the means chosen to advance that purpose. See *IME*, 306 Mich App at 443. The restriction on the right to bear arms as a condition of a PPO is, therefore, a reasonable exercise of the police powers of the state.

Additionally, contrary to Van Neste’s argument on appeal, the trial court did “make a judgment” regarding whether and to what extent the PPO should include a restriction on the purchase and possession of firearms. Van Neste alleges that the trial court did not make a judgment because it did not determine if there had been threats or acts of violence against Frye. But the statute and caselaw do not require the court to make a separate judgment after considering whether there were threats or acts of violence warranting the issuance of a PPO. Again, the statute only requires the court to exercise its discretion when making a judgment. See MCL 600.2950a(26); *IME*, 306 Mich App at 441. Here, the trial court restricted Van Neste’s right to purchase and possess a firearm after finding that he engaged in a pattern of unwanted

contact and that such contact would cause a person to feel objectively and subjectively terrorized, frightened, intimidated, threatened, or harassed. Van Neste filed a motion to modify or terminate the PPO, which was denied. During that motion the trial court stated that its ruling included continuing the restriction against the purchase and possession of a firearm. Van Neste filed a motion to reconsider addressing the restriction on firearms, which the trial court denied. Therefore, the trial court made a judgment regarding whether and to what extent the PPO should include the firearms restriction.

On this record, the trial court did not err in denying the motion to terminate the PPO.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly