

STATE OF MICHIGAN  
COURT OF APPEALS

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ALFONSO IGNACIO VIGGERS,  
Petitioner-Appellant,

UNPUBLISHED  
February 22, 2018

v

MARIA VIGGERS,  
Respondent-Appellee.

No. 336419  
Washtenaw Circuit Court  
LC No. 15-000941-PH

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Before: MURPHY, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Petitioner, Alfonso Ignacio Viggers, appeals as of right the trial court's order terminating the personal protection order (PPO) entered against respondent, Maria Viggers. We affirm.

I. BACKGROUND

Viggers first sought an ex parte PPO against Maria Viggers, his stepmother, in April 2015, alleging that she contacted Viggers's coworkers and made false accusations about him in an attempt to sabotage his employment. The trial court issued a PPO on May 1, 2015, effective until May 1, 2017, that prohibited Maria Viggers from contacting Viggers or his employer. Maria Viggers was served with the order on July 21, 2015.

In November 2016, Viggers filed a motion to show cause, asking the trial court to find Maria Viggers guilty of criminal contempt and to sentence her to 93 days' imprisonment for violating the PPO. Viggers argued that Maria Viggers called him twice from her telephone and left voiceless messages in his voicemail, which constituted aggravated stalking under MCL 750.411i(2)(a) because the calls violated the PPO.

In response, Maria Viggers filed a motion to terminate the PPO because she did not physically harm Viggers. She further denied calling Viggers or contacting his employer. The trial court terminated the PPO in December 2016.

II. STANDARD OF REVIEW

A PPO is a type of injunction. *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002). We review a trial court's decision on injunctive relief, including a decision on whether to terminate a PPO, for an abuse of discretion. *Id.* at 700. This Court also reviews a

trial court's decision to hold someone in contempt for an abuse of discretion. *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714; 624 NW2d 443 (2000). "An abuse of discretion occurs when the decision resulted in an outcome falling outside the range of principled outcomes." *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). We review questions of statutory interpretation de novo and fact findings for clear error. *Id.*

### III. DISCUSSION

Viggers argues that the trial court erred by terminating the PPO and by failing to hold Maria Viggers in criminal contempt for violating the PPO by calling him. We disagree.

MCL 600.2950a(1) provides for the entry of a PPO "to restrain or enjoin an individual from engaging in conduct that is prohibited under . . . MCL 750.411h [stalking], 750.411i [aggravated stalking], and 750.411s [posting messages through electronic medium without consent]." MCL 750.411i(e) defines "stalking" as "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 terrorized, frightened, intimidated, threatened, harassed, or molested." If any of these actions violates a restraining order, the individual is guilty of aggravated stalking. MCL 750.411i(2)(a).

The respondent may ask the trial court to modify or terminate a PPO but only on a showing of good cause if the respondent makes the request more than 14 days after service or actual notice of the order. MCR 3.707(A)(1)(b). When the respondent moves to terminate an ex parte PPO, MCR 3.310(B)(5) places "the burden of justifying continuation of a PPO granted ex parte" on the petitioner. *Pickering*, 253 Mich App at 699.

"If the respondent violates the personal protection order, the petitioner may file a motion, supported by appropriate affidavit, to have the respondent found in contempt." MCR 3.708(B)(1). "If the petitioner's motion and affidavit establish a basis for a finding of contempt," the trial court should schedule a hearing for the respondent to answer the charge or issue a warrant for the respondent's arrest. MCR 3.708(B)(1)(a) and (b). Therefore, Viggers bore the burden of establishing both that the PPO should remain in effect and that Maria Viggers should be held in criminal contempt for violating the PPO.

Viggers first argues that the trial court erroneously ruled that PPOs are only available to women who have been beaten by men. This argument mischaracterizes the trial court's statements. The trial court mentioned that PPOs were originally designed to protect women who have been beaten by men, but the trial court ultimately concluded that Viggers did not establish a basis for a PPO. Therefore, contrary to Viggers's argument, the trial court did not conclude that PPOs were only available in cases that involve violence against women.

Viggers contends that Maria Viggers did not establish good cause to terminate the PPO. In her motion, Maria Viggers argued that the PPO was unwarranted because she had never threatened Viggers or contacted him by phone, mail, e-mail, or in person. At the hearing on the parties' respective motions, Viggers told the trial court that he feared Maria Viggers would continue to file false reports against him with the police and that her communications with his

employer caused him to lose his job. When the trial court asked Viggers whether Maria Viggers had done anything since Viggers last appeared in court, Viggers answered no. In addition, Maria Viggers further agreed not to communicate with Viggers or his employer. Viggers's denial that Maria Viggers had done anything since their last court appearance demonstrated that the PPO was not warranted. Accordingly, the trial court did not abuse its discretion by rejecting Viggers's allegations as insufficient to justify continuation of the PPO.

Viggers maintains that Maria Viggers violated the PPO by calling him, which constituted aggravated stalking under MCL 750.411i and required the trial court to hold Maria Viggers in criminal contempt. This Court held that a repeated pattern of unwanted telephone and in-person contact that caused the petitioner emotional distress rose to the level of stalking and warranted a PPO. *Hayford*, 279 Mich App at 330-332. On the other hand, a single assault during which the respondent physically harmed the petitioner and threatened him with future harm did not constitute stalking and did not warrant entry of a PPO. *Pobursky v Gee*, 249 Mich App 44, 48; 640 NW2d 597 (2001). In this case, two missed calls do not reflect a pattern of repeated, unwanted, distressing contact that constitutes stalking. Therefore, Viggers did not establish a basis for finding Maria Viggers guilty of contempt.<sup>1</sup>

We affirm.

/s/ William B. Murphy  
/s/ Peter D. O'Connell  
/s/ Kirsten Frank Kelly

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<sup>1</sup> Viggers argues that the trial court erred by not making any factual findings or legal conclusions on the record as required by MCR 3.708(H)(4). Although the trial court did not specifically state its findings of fact, it is clear from the transcript that the trial court found Viggers's allegations insufficient to warrant continuation of the PPO, which also demonstrated the inadequacy of Viggers's allegation that Maria Viggers violated the PPO. Moreover, the trial court's rulings were not "inconsistent with substantial justice," MCR 2.613(A), so we will not disturb them on appeal.