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**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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*In re* LARRY ALDON THORINGTON.

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KATHRYN WONG,

Petitioner-Appellee,

v

LARRY ALDON THORINGTON,

Respondent-Appellant.

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UNPUBLISHED

March 7, 2019

No. 341044

Gladwin Circuit Court

LC No. 17-008906-PH

Before: METER, P.J., and SERVITTO and REDFORD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court’s order holding respondent in criminal contempt of court for his violation of a personal-protection order (PPO). MCL 600.1701. We reverse and remand for further proceedings.

**I. BACKGROUND**

In March 2017, petitioner filed a nondomestic petition for a PPO against respondent, requesting an *ex parte* order and alleging that respondent repeatedly showed up at her place of employment and threatened her. The trial court issued an *ex parte* PPO prohibiting respondent from following petitioner, appearing at her workplace, or otherwise approaching her. Respondent subsequently filed a motion to terminate the PPO, which the trial court denied.

On August 3, 2017, petitioner filed a motion to show cause, alleging that respondent violated the PPO when he repeatedly showed up around her place of employment on August 2, 2017. According to petitioner, respondent was “always finding ways to torment [her].”

At the show-cause hearing, the trial court began by providing a brief history of the case and reading the allegations contained in petitioner’s show-cause motion. The trial court then proceeded:

*The Court.* Mr. Thorington, if you are found to have violated the Personal Protection Order, then you could be found to be in criminal contempt of court for doing so. And if that happens, you could be sentenced to spend up to 93 days in the county jail.

Do you understand that?

*Respondent.* I understand that, sir.

*The Court.* Okay. Ms. Wong, do you have a lawyer?

*Petitioner.* I do not, I'm pro per.

*The Court.* Mr. Thorington, do you have a lawyer?

*Respondent.* No, I don't.

*The Court.* All right. Ms. Wong, do you have any witnesses you want to call in support of your motion?

Petitioner called a witness to discuss the events of August 2, 2017. Petitioner also submitted photos that depicted respondent sitting in his truck near her place of employment at various times throughout 2017. When questioned by the trial court, petitioner described another incident in which she was at the business mailbox and respondent drove by, stopped, backed up, and "flipped [her] off" in either August or September 2017. Respondent called several witnesses who testified concerning the events of August 2, 2017. At the conclusion of the show-cause hearing, the trial court found "beyond a reasonable doubt" that respondent had violated the PPO, stating:

After the Respondent, Larry Thorington, was served with a copy of the Personal Protection Order on March 20th, 2017 . . . , specifically, during August and September of 2017 on at least a dozen occasions the Respondent drove his truck and parked his truck within 50 to 150 feet of the Petitioner.

She made eye contact with him or she saw him at least and he saw her on more than one occasion. He said some things, as she put it, he mumbled some things that appeared to be directed at her.

In any event, the Court is convinced that this was not accidental contact between Mr. Thorington and the Petitioner, but instead deliberate contact.

In addition, there was one occasion in August of 2017 when the [respondent] was driving his motor vehicle . . . and passed by [petitioner's place of employment] at a point in time when the Petitioner, Kathryn Wong, had walked out . . . to get mail from the mailbox at the bar.

The Petitioner saw Mr. Thorington. Mr. Thorington saw her. Mr. Thorington stopped his truck and parked it in the road, looked over at the Petitioner, made eye contact with her and as she put it, “flipped her off.”

That was not an accidental contact. That incident as well as the other incidents were violations of the Personal Protection Order which . . . prohibits the Respondent from stalking the Petitioner and from appearing at the workplace or residence of the Petitioner or approaching or confronting her in a public place or on private property, et cetera.

The trial court then ordered respondent to serve 18 months of probation, with various conditions, and five days in the county jail. This appeal followed.

## II. ANALYSIS

A PPO is an injunctive order issued by the circuit court which restrains the respondent from engaging in certain activities. MCL 600.2950(30)(d). The failure to comply with such an order subjects the person in violation to the criminal-contempt powers of the court and, upon a finding of guilt, permits imprisonment for up to 93 days. MCL 600.2950(23). A criminal-contempt proceeding requires “some, but not all, of the due process safeguards of an ordinary criminal trial.” *DeGeorge v Warheit*, 276 Mich App 587, 592; 741 NW2d 384 (2007) (internal citation and quotation marks omitted).

### A. RESPONDENT’S RIGHT TO COUNSEL

On appeal, respondent first argues that the trial court infringed upon his constitutional right to the assistance of counsel by allowing him to proceed *in pro per* without first obtaining a knowing and intelligent waiver of his right to counsel. The Sixth Amendment to the United States Constitution guarantees the accused the right “to have the Assistance of Counsel” in all criminal prosecutions. US Const, Am VI. This right extends to every critical step of the proceedings. *People v Williams*, 470 Mich 634, 641; 683 NW2d 597 (2004). In a criminal-contempt case, the respondent must be given “adequate opportunity . . . to secure the assistance of counsel.” *In re Contempt of Henry*, 282 Mich App 656, 672; 765 NW2d 44 (2009) (internal citation and block notation omitted). “It is well established that a total or complete deprivation of the right to counsel at a critical stage of a criminal proceeding is a structural error requiring automatic reversal.” *People v Willing*, 267 Mich App 208, 224; 704 NW2d 472 (2005).

Proceedings to enforce a PPO issued against an adult are governed by MCR 3.708. In pertinent part, MCR 3.708(D) requires the trial court to:

- (1) advise the respondent of the alleged violation,
- (2) advise the respondent of his right to contest the charge at a contempt hearing,
- (3) advise the respondent that he or she is entitled to a lawyer’s assistance at the hearing and, if the court determines it might sentence the respondent to jail, that the court will appoint a lawyer at public expense if the individual wants one and is financially unable to retain one, [and]

(4) if requested and appropriate, appoint a lawyer.

The respondent can waive his right to counsel, but that waiver must be unequivocal, “knowing, intelligent, and voluntary.” *Williams*, 470 Mich at 642. “Presuming waiver from a silent record is impermissible. The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer. Anything less is not waiver.” *Willing*, 267 Mich App at 220 (internal citations and quotation marks omitted).

In this case, the trial court appropriately informed respondent of the allegations against him and the possible criminal penalties attached thereto. The trial court questioned whether respondent was represented by an attorney, but never informed respondent of his right to representation or the public’s obligation to pay for this representation in the event of respondent’s indigence. Moreover, there is no indication in the record that respondent made any affirmative waiver of his right to counsel—yet alone a knowing and intelligent waiver. Accordingly, because respondent was deprived of his constitutional right to counsel, we are required to reverse the trial court’s contempt order. *Id.* at 224.

#### B. RESPONDENT’S DUE-PROCESS RIGHT TO NOTICE

Next, respondent argues that the trial court infringed upon his due-process right to notice by not limiting its consideration of the evidence to those events alleged in petitioner’s motion to show cause. No person may be deprived of life, liberty, or property without due process of law. US Const, Am V. When a contempt is committed outside the presence of the court, a respondent is entitled to notice of the charges against him. *In re Contempt of Robertson*, 209 Mich App 433, 438; 531 NW2d 763 (1995). This notice need not be set forth in the form and detail of a criminal information. *Henry*, 282 Mich App at 672. The notice, however, must be sufficient to inform the respondent of the nature of the allegations and to give him an adequate opportunity to prepare a defense. *Id.* See also MCR 3.708(D)(1) (requiring the trial court to inform the respondent of the alleged violation at the first hearing).

Here, petitioner limited her show-cause motion to allegations of respondent’s violation of the PPO on August 2, 2017. Despite an assertion that respondent was “always finding ways to torment” petitioner, petitioner did not allege any specific violations occurring on any day other than August 2, 2017. The trial court read these allegations into the record, thereby informing respondent of the charges against him. Nevertheless, the trial court received evidence regarding respondent’s alleged violations of the PPO throughout August and September 2017. When finding that respondent had violated the PPO, the trial court specifically cited incidents occurring on days other than August 2, 2017. Respondent did not have adequate notice of these other alleged PPO violations and therefore did not have an adequate opportunity to defend against them. Accordingly, due process requires that the trial court’s order be reversed. See *In re Contempt of Rochlin*, 186 Mich App 639, 648-649; 465 NW2d 388 (1990).

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ Deborah A. Servitto

/s/ James Robert Redford