

STATE OF MICHIGAN
COURT OF APPEALS

BRITTANY HARRELL,

Petitioner-Appellant,

v

NATHANIEL LATHAM,

Respondent-Appellee.

UNPUBLISHED

December 20, 2018

No. 342049

Ingham Circuit Court

LC No. 17-002770-PP

Before: SWARTZLE, P.J., and SAWYER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Petitioner appeals as of right the circuit court’s order granting respondent’s motion to terminate an ex parte domestic-relations personal-protection order (PPO) against respondent. We vacate the order and remand to the circuit court to review the motion to terminate under the proper standard of proof.

A circuit court’s determination whether to issue or rescind 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.* The circuit court necessarily “abuses its discretion when it makes an error of law.” *People v Giovanni*, 271 Mich App 409, 417; 722 NW2d 237 (2006) (cleaned up).

Petitioner first argues that the circuit court erred by applying the preponderance of the evidence standard instead of the applicable reasonable-cause standard set forth in MCL 600.2950(4). We agree.

A domestic-relations PPO is appropriate when the petitioner and the respondent have or have had a “dating relationship” and certain adverse circumstances arise. MCL 600.2950(1). Under MCL 600.2950(4), the circuit court shall issue a PPO “if the court 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 [MCL 600.2950(1)].” Among the acts prohibited by MCL 600.2950(1) are assaulting, attacking, or molesting the petitioner. “The petitioner bears the burden of establishing reasonable cause for issuance of a PPO and of establishing a justification for the continuance of a PPO at a hearing on respondent’s motion to terminate the PPO.” *Hayford*, 279 Mich App at 326 (cleaned up). “The trial court must consider the testimony, documents, and other evidence proffered and whether the respondent had previously engaged in the listed acts.” *Id.*, citing MCL 600.2950(4).

In this case, the circuit court stated on the record that it could not “find, by a preponderance of the evidence, that there is a need for a personal protection order.” As already discussed, the proper evidentiary standard for the issuance and continuance of a PPO is reasonable cause. Because the trial court applied the wrong evidentiary standard, it necessarily abused its discretion. Moreover, because the preponderance of the evidence standard is more stringent than the reasonable-cause standard, we are unable to conclude that this error was harmless. Thus, we must vacate the circuit court’s order and remand for further consideration of respondent’s motion to terminate the PPO.

Petitioner also argues that the circuit court abused its discretion by deferring to credibility determinations made by the district court in a criminal prosecution against respondent arising from the same allegations raised in the PPO petition. The statute governing domestic-relationship PPOs outlines what the circuit court should consider when deciding to issue a PPO:

(4) The court shall issue a personal protection order under this section if the court 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). In determining whether reasonable cause exists, the court shall consider all of the following:

(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1). [MCL 600.2950(4).]

After a PPO is entered, “the individual restrained or enjoined may file a motion to modify or rescind the [PPO] and request a hearing under the Michigan court rules.” MCL 600.2950(13).

While the district court’s opinion dismissing the criminal charges may be considered by the circuit court as relevant to petitioner’s credibility, the circuit court may not delegate its duty to make credibility determinations to the district court. See MRE 201. The record is unclear as to whether the circuit court made independent credibility determinations or simply deferred to the district court’s findings. Given that we are remanding this case because the circuit court applied the incorrect evidentiary burden, we need not decide this additional ground for remand. Rather, we note that, when making its findings on remand, the circuit court must make its own factual findings without deferring to those made by the district court.

Vacated and remanded for further proceedings consistent with this opinion. We do retain jurisdiction.

/s/ Brock A. Swartzle
/s/ David H. Sawyer
/s/ Amy Ronayne Krause

Court of Appeals, State of Michigan

ORDER

Brittany Harrell v Nathaniel Latham

Docket No. 342049

LC No. 17-002770-PP

Brock A. Swartzle
Presiding Judge

David H. Sawyer

Amy Ronayne Krause
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 21 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the circuit court shall reconsider respondent's motion to terminate the personal protection order in this case under the proper reasonable cause standard set forth in MCL 600.2950(4) and with its own factual findings. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

/s/ Brock A. Swartzle



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

December 20, 2018
Date


Chief Clerk