

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

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MICHELE RUFFINO,

Petitioner-Appellee,

v

DAVID F. BARTON,

Respondent-Appellant.

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UNPUBLISHED

March 19, 2019

No. 343153

Washtenaw Circuit Court

LC No. 17-002823-PP

Before: SAWYER, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals by right an order denying his motion to rescind or vacate a personal protection order (“PPO”). Finding no errors warranting reversal, we affirm.

**I. BASIC FACTS**

Petitioner and respondent had a two-year romantic relationship when petitioner was married to someone else. After their relationship ended, they enjoyed friendly communications for a few months and then an extended period of no contact. However, respondent unexpectedly approached petitioner while she was exercising at the Health and Fitness Center at Washtenaw Community College (“HFC”). Respondent yelled at petitioner, insulting her appearance and degrading her for cheating on her husband before walking away. Respondent returned and yelled at petitioner again. The following day, respondent began another argument with petitioner at the HFC and followed her toward the women’s locker room. At one point, respondent texted petitioner, asking for her husband’s contact information. Petitioner later pulled respondent aside at the HFC and asked him not to contact her husband or go to her home. Despite this request, respondent later went to petitioner’s home while she was at the HFC and confessed the affair to petitioner’s husband.

Petitioner successfully obtained an ex parte PPO. Respondent moved to vacate the PPO and the trial court conducted an evidentiary hearing. The trial court denied respondent’s motion and extended an amended PPO. Respondent now appeals by right.<sup>1</sup>

## II. ANALYSIS

A petitioner in a PPO action bears the burden of establishing reasonable cause for the issuance of an ex parte PPO. *Kampf v Kampf*, 237 Mich App 377, 386; 603 NW2d 295 (1999). A petitioner also has “the burden of persuasion in a hearing on a motion to terminate or modify an ex parte PPO.” *Pickering v Pickering*, 253 Mich App 694, 699; 659 NW2d 649 (2002); MCR 3.310(B)(5).

We review a trial court’s decision to deny a respondent's motion to rescind or terminate a PPO for an abuse of discretion. *Pickering*, 253 Mich App at 700–701. An abuse of discretion occurs when the trial court’s decision results in an outcome falling outside the range of principled outcomes. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008). The trial court’s findings of fact are reviewed for clear error. *Id.* Additionally, “[t]his Court affords great deference to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *Lumley v Bd of Regents for Univ of Mich*, 215 Mich App 125, 135; 544 NW2d 692 (1996).

### A. SUFFICIENT EVIDENCE TO SUPPORT THE PPO

Respondent first argues that the trial court erred when it issued the modified PPO because the PPO was supported by insufficient evidence. We disagree.

MCL 600.2950(1) authorizes PPOs for specified persons, including those who have been in a dating relationship. Under MCL 600.2950(4), the trial court must order a PPO if it finds that “there is reasonable cause to believe the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1).” The trial court relied on Subsections (a), (g), (j), and (l), which prohibit:

(a) Entering onto premises.

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(g) Interfering with petitioner at petitioner’s place of employment or education or engaging in conduct that impairs petitioner’s employment or educational relationship or environment.

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<sup>1</sup> Although the PPO has expired, this Court can hear a challenge to its validity because “identifying an improperly issued PPO as rescinded is a live controversy and thus not moot.” *TM v MZ*, 501 Mich 312, 319; 916 NW2d 473 (2018).

(j) Engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

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(l) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence. [MCL 600.2950(1).]

The relevant sections of MCL 750.411h and MCL 750.411i cited in MCL 600.2950(1)(j) are the definitions of stalking and harassment. MCL 750.411h(1)(d) and MCL 750.411i(1)(e) define 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.” MCL 750.411h(1)(c) defines harassment as “conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact<sup>2</sup> that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress,” but it notes that “[h]arassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.”

The trial court found petitioner’s testimony about the incidents at the HFC credible, despite respondent’s testimony that the conversations were civil or, at most, argumentative. The trial court found that a repeated course of behavior occurred that would cause a reasonable person emotional distress, and that petitioner actually felt emotionally distressed. Moreover, the

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<sup>2</sup> MCL 750.411h(1)(e) defines unconsented contact:

“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. Unconsented contact includes, but is not limited to, any of the following:

- (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.

trial court aptly noted that respondent had threatened to visit petitioner's home and speak with her husband and he followed through with that threat. The trial court found that respondent's history of following through with threats combined with the confrontations at the HFC created a reasonable fear that the situation might escalate to violence, establishing the need for a PPO.

## B. PROTECTED COMMUNICATIONS

Respondent next argues that his contacts with petitioner were constitutionally protected communications and therefore cannot form the basis for a PPO. We disagree and conclude that respondent has (1) failed to identify any valid purpose for his contact with petitioner and (2) failed to cite legal authority for his argument.

"Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose." MCL 750.411h(1)(c). Our Supreme Court "has interpreted the phrase 'conduct that serves a legitimate purpose' to mean 'conduct that contributes to a valid purpose that would otherwise be within the law irrespective of the criminal stalking statute.'" *Hayford*, 279 at 332-333, quoting *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 723; 691 NW2d 1 (2005). But, this Court has rejected the idea that conduct that amounts to harassment can be justified by the legitimate purpose of achieving reconciliation. See *People v White*, 212 Mich App 298, 311; 536 NW2d 876 (1995).

Respondent fails to establish that his actions were either constitutionally protected or served a legitimate purpose. Respondent simply repeatedly cites the definition of "conduct that serves a legitimate purpose" in *Nastal*, 471 Mich at 723. Therefore, respondent has abandoned this argument, and we need not address the issue further. *Joerger v Gordon Food Serv, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997) ("A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for the claim.")

## C. DUE PROCESS

Finally, respondent argues that his due-process rights were violated because information about the PPO continues to exist in the Law Enforcement Information Network (LEIN) after the PPO itself expired, and respondent was not on notice that the PPO would have "potentially indefinite" consequences. We disagree.

When a PPO is issued, it is entered into LEIN. MCL 600.2950(15)(a) and (16); MCR 3.706(A)(6). The governing statute provides that a PPO shall be removed from LEIN if it is rescinded. MCL 600.2950(19)(b) and (20); MCR 3.707(A)(3). However, there are no statutory grounds for removing a properly granted PPO from LEIN upon its expiration. See MCL 600.2950(19)(b).

Our Supreme Court recently held that a PPO can have a practical legal effect after expiration because information about the PPO remains in LEIN after its expiration. *TM*, 501 Mich at 319. As such, a respondent is "entitled" to have LEIN corrected if a PPO is found to have been improperly granted; this interest in correcting LEIN prevents appeals from becoming moot upon the expiration of the PPO. *Id.* Here, the PPO was properly granted. Its existence in LEIN is statutorily mandated and cannot itself be a collateral consequence.

Additionally, respondent's argument that his due-process rights were violated for lack of notice is without merit. Respondent was served with the PPO. Accordingly, respondent had notice of the PPO. See MCL 600.2950(13); *Kampf*, 237 Mich App at 384 (noting that the period in which a respondent may move to rescind a PPO begins on the date of service, because service constitutes notice). The PPO states on its face that it will be entered into LEIN. Therefore, respondent was on notice that LEIN would be updated to include information about the PPO, and respondent's due-process rights were not violated.

Affirmed.

/s/ David H. Sawyer  
/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly