STATE OF MICHIGAN

COURT OF APPEALS

JANE METCALF,

Petitioner-Appellee,

v

LORIS TOMPKINS,

Respondent-Appellant.

UNPUBLISHED
October 1, 2002

No. 228011
Livingston Circuit Court
LC No. 00-029589-PH

Before: Holbrook, Jr., P.J., and Zahra and Owens, JJ.

PER CURIAM.

Respondent appeals as of right a restraining order that prohibits her from contacting petitioner's minor daughter. We affirm.

Respondent asserts that she is the fiancée of Bradford Metcalf, who is petitioner's ex-husband and the father of petitioner's minor daughter. In January 2000, the judgment of divorce between petitioner and her ex-husband was modified to award petitioner sole legal custody of the minor girl. The court also ordered that Bradford Metcalf "is hereby restrained from interfering with" petitioner's parenting of the minor girl. Among other things, Bradford Metcalf was specifically ordered to refrain from encouraging his daughter to stop taking her prescribed ADHD medication. In March 2000, petitioner sought an ex parte personal protection order (PPO) against respondent under MCL 600.2950a. Petitioner alleged that respondent had been engaging in activities that constituted stalking, as defined and prohibited by MCL 750.411h. The circuit court denied the ex parte petition and scheduled a hearing on the PPO motion to determine, in part, if this was "a matter for the domestic[] file."

Proceeding in pro per, respondent filed a motion to dismiss with the clerk one day prior to the hearing on petitioner's motion for a PPO. In her motion to dismiss, respondent alleged that the court lacked personal jurisdiction over her. At the hearing held on petitioner's motion for a PPO, the circuit court began by hearing petitioner's arguments regarding the PPO. At the end of those augments, petitioner addressed respondent's jurisdictional challenge. Respondent then began by addressing the merits of petitioner's case before turning to her jurisdictional challenge. After additional exchanges regarding the merits of petitioner's motion, the court responded to the jurisdictional challenge by noting that it believed it had personal jurisdiction over respondent because she had appeared and argued the merits of the PPO motion, and because respondent had purposefully availed herself of the privilege of conducting activities in Michigan. Then, the court determined that under the circumstances, it would issue a restraining order

instead of a PPO. The court made no specific findings on the record regarding the issue of stalking.

Respondent first argues that MCL 750.411h is unconstitutionally overbroad in that it punishes her innocent and casual contact with petitioner's daughter. However, the only authority cited by respondent in support of this assertion, *Staley v Jones*, 108 F Supp 2d 777 (2000), was reversed by the United States Court of Appeals for the Sixth Circuit, *Staley v Jones*, 239 F 3d 769 (CA 6, 2001). Respondent offers no other argument in support of her overbreadth claim. Therefore, we conclude that respondent's constitutional challenge is without merit.

Second, respondent argues that the trial court did not have personal jurisdiction over her. We disagree. Whether a court has personal jurisdiction over a party is a question of law reviewed de novo. *Oberlies v Searchmont Resort, Inc*, 246 Mich App 424, 426; 633 NW2d 408 (2001).

Citing MCL 600.701, respondent argues that the circuit court lacked personal jurisdiction because (1) she was not present in Michigan, nor was her domicile in Michigan when process was served, and (2) she did not consent to jurisdiction. Petitioner replies that respondent waived her jurisdictional challenge by arguing the merits of the PPO motion below. We need not reach the merits of petitioner's argument on appeal because the record is clear that the court does have personal jurisdiction over respondent. We agree with the circuit court that respondent has purposefully availed herself of the privilege of conducting activities in Michigan. *Mozdy v Lopez*, 197 Mich App 356, 359; 494 NW2d 866 (1992). Further, petitioner's cause of action arose from these contacts. *Id.* Finally, after reviewing the relevant circumstances, we conclude that the exercise of jurisdiction is reasonable. Clearly, Michigan has a "manifest interest in providing effective means of redress" to petitioner, who is domiciled in this state with her minor daughter. *McGee v Int'l Life Ins Co*, 355 US 220, 223; 78 S Ct 199; 2 L Ed 2d 223 (1957).

Third, respondent argues that reversal is warranted because the circuit court judge was biased against her. Respondent, however, has failed to preserve this issue for review by following the procedure set forth in MCR 2.003(C). *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 23; 436 NW2d 70 (1989). In any event, respondent has failed to establish that the judge was actually and personally biased against her, MCR 2.003(B)(1), or that the judge should be disqualified because of his prior handling of a motion to change the custody provisions of the judgment of divorce, *People v Coones*, 216 Mich App 721, 726-727; 550 NW2d 600 (1996), or that the judge held a personal animus against respondent that required disqualification, *People v Lobsinger*, 64 Mich App 284, 290-291; 235 NW2d 761 (1975). There are simply no circumstances in the record "'of such a nature to cause doubt as to [the judge's] partiality, bias or prejudice.'" *People v Lowenstein*, 118 Mich App 475, 482; 325 NW2d 462 (1982), quoting, *Merritt v Hunter*, 575 P2d 623, 624 (Okla, 1978).

Further, given the nature of the relationship between respondent and Bradford Metcalf, and given petitioner's assertion that respondent, acting at the behest of her ex-husband, was assisting Bradford Metcalf to evade the court's order modifying the judgment of divorce, we find no error in the judge's decision to hear evidence concerning Bradford Metcalf and his incarceration in federal prison. See *Cain v Dep't of Corrections*, 451 Mich 470, 496; 548 NW2d 210 (1996); *Armstrong v Ypsilanti Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001).

Fourth, respondent argues that the trial court denied her due process. Again, we disagree. Whether a party has been afforded due process is a question of constitutional law that we review de novo. *In re Carey*, 241 Mich App 222, 226; 615 NW2d 742 (2000).

Initially, we note that respondent was provided adequate notice, and fully availed herself of the opportunity to be heard at the hearing. Additionally, contrary to respondent's assertion, the court indicated on the record that it had read her motion to dismiss. As for respondent's assertion that she was denied the opportunity to "confront" the minor child, we note that nowhere in the record is there any evidence that respondent took or attempted to take any steps to have the minor present and available to testify. The only time the subject was even touched on was when respondent was claiming that petitioner's rendition of the relevant circumstances was "biased." "If you want to get the straight story," respondent stated, "I suggest we subpoena [the minor child]. This is all biased." It is not reasonable to characterize this remark as any sort of request to have the minor appear at the hearing. Under these circumstances, we see no violation of respondent's due process rights.

Finally, we find no merit to respondent's assertion that the trial court allowed perjurious testimony by petitioner. In her brief on appeal, respondent failed to identify which of petitioner's statements were perjurious. "It is not enough for an appellant . . . simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for [the] . . . claims, or unravel and elaborate [the] . . . arguments, and then search for authority either to sustain or reject his position." *Goolsby v Detroit*, 419 Mich 651, 655, n 1; 358 NW2d 856 (1984). In her reply brief, respondent seems to be arguing that petitioner lied when she indicated that respondent had told the minor child not to take her ADHD medication, which respondent allegedly characterized as being "poison." However, respondent's reply argument does not address whether this allegation was true; rather, citing to an article in *US News and World Report*, respondent argues that there is support for the assertion that the ADHD mediation is harmful. Further, respondent admitted at the hearing to mailing the minor child information about "natural herbal products," which she characterized as being nothing like "the cocaine drugs that they do give to kids." We also find nothing in Bradford Metcalf's affidavit or the affidavit of Celia and Keith Metcalf, the minor's paternal grandparents, that would support respondent's assertions. Indeed, the grandparents' affidavit actually supports petitioner's assertion. "As Candace's' friend," they aver, "Loris Tompkins did apparently attempt to make Candace aware of the dangers of these drugs." Finally, while these affidavits do in some instances contradict petitioner's evidence, this fact alone does not support the conclusion that petitioner committed perjury. With nothing to offer other than these affidavits, respondent is asking us, in essence, to re-judge the credibility of the witness. Deferring to trial court's superior position to observe and evaluate witness credibility, we will not question the court's resolution of factual issues that involve the credibility of witnesses. *Lasser v George*, ___ Mich App ___; ___ NW2d ___ (2002) (Docket No. 226920, issued 07/02/2002).

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Brian K. Zahra
/s/ Donald S. Owens