STATE OF MICHIGAN

COURT OF APPEALS

CASSANDRA FAHNDRICH,

Petitioner-Appellee,

v

BRIAN PATRICK COATES,

Respondent-Appellant.

UNPUBLISHED
June 15, 2004

No. 247514
Calhoun Circuit Court
LC No. 03-000285-PH

Before: Hoekstra, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

Respondent appeals of right from an amended personal protection order (PPO). He challenges the denial of his motion to terminate or modify the original PPO, which was issued ex parte, and the trial court's extension of the PPO's original termination date. We affirm. The petition arose when the parents of the twelve-year-old petitioner detected numerous romantic emails from respondent, her thirty-two-year-old soccer coach. One of the e-mails from respondent discussed "naughty" pictures petitioner took of herself on a digital camera and referred to petitioner as a "dirty girl." Respondent also called petitioner's home, secretly arranged hours alone with her at his home, and sat in his car at her school watching her play basketball. A personal protection order is injunctive relief, MCL 600.2950a(29)(c), so we review for abuse of discretion a trial court's decision to issue one. *Thermatool Corp v Borzym*, 227 Mich App 366, 372; 575 NW2d 334 (1998).

If an individual has been stalked, as defined in MCL 750.411h, the individual may petition the court for a PPO to restrain the stalker from continuing the harassing conduct. MCL 600.2950a(1). Under MCL 750.411h(1)(d), stalking is defined 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 petitioner to feel terrorized, frightened, intimidated, threatened, harassed, or molested." The phrase "course of conduct" is defined as "a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose." MCL 750.411h(1)(a). "Harassment" is "conduct directed toward a victim *that includes, but is not limited to,* repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress." MCL 750.411h(1)(c) (emphasis added).

Respondent argues that petitioner failed to establish two or more noncontinuous acts that evidence a continuity of purpose. We disagree. Even if the e-mails were not "separate," the evidence established other qualifying actions that were distinct from one another and indicated respondent's romantic fixation on petitioner. Therefore, the evidence established two or more separate acts showing a continuity of purpose.

Respondent next argues that the e-mails were consensual, so they could not constitute harassment. We disagree. While the statute states that harassment includes nonconsensual contact, it expressly allows a trial court to find "harassment" based on other compelling acts, presumably even if the acts were consensual. Although consensual contact rarely amounts to harassment, the trial court correctly determined that these repeated, inappropriate e-mails from a 32-year-old man to a 12-year-old girl qualify as conduct that would cause emotional distress in a reasonable girl of that age. The disparity in the parties' ages and positions of authority make the existence of "consent" a peripheral consideration. The facts of this case bolster this conclusion. At the hearing, petitioner's mother testified that petitioner had grown to fear respondent, despite the fact that she had no contact with him since her parents' discovery of the e-mails. While the young victim may have initially encouraged the inappropriate contact, further experience and maturity revealed the relationship's gravity and impropriety. With the revelation came a rational and predictable fear for her safety related directly to respondent's conduct. Therefore, the trial court did not err when it found that respondent harassed petitioner.

Respondent also argues that there was no need for a PPO since he voluntarily ceased communication between himself and petitioner. We disagree. It could be inferred from the facts that respondent did not withdraw his affections because of any personal reformation, but because of a contemporary criminal investigation into his conduct. Moreover, a stalker's promise to refrain from stalking pales in comparison to a court order. The trial court did not abuse its discretion by concluding that an order was necessary to keep respondent from resuming contact with petitioner.

Respondent next argues that the scope of the PPO is excessive because it prohibits him from being on any property owned or operated by the Gull Lake Schools or Soccer Zone. He asserts that this prohibition is unreasonable because it prevents him from attending his own daughter's school activities and precludes him from coaching soccer. We disagree. Given the level of inappropriate contact and respondent's failure to appreciate that the contact could have detrimental consequences, we are not left with the conviction that the trial court violated reason and logic when it imposed these restrictions. For these same reasons, the trial court correctly extended the original order until petitioner reaches the age of eighteen. Finally, because the facts originally presented to the court fit the description of stalking and demonstrated an immediate threat to petitioner, the trial court properly entered the original order ex parte. MCL 600.2950a(9).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Pat M. Donofrio