

STATE OF MICHIGAN
COURT OF APPEALS

DAWN OTTEVAERE,

Petitioner-Appellee,

v

ANDREW MICHAEL TWEDDLE,

Respondent-Appellant.

UNPUBLISHED

December 20, 2005

No. 259078

Ingham Circuit Court

LC No. 04-001101-PP

Before: Fitzgerald, P.J., and O'Connell and Kelly, JJ.

PER CURIAM.

Respondent appeals as of right from the November 12, 2004, criminal contempt order committing him to thirty days in jail and ordering him to pay \$500 for violation of a personal protection order (PPO). This is one of two cases being heard by this Court involving respondent's alleged violation of this PPO.¹ As in the other appeal, we affirm.

Petitioner and respondent were divorced after a six-year marriage that produced two children. Subsequent to their divorce, petitioner alleged that respondent physically threatened her, made harassing and intimidating phone calls, repeatedly threatened to not return the children after visitation, and battered her during a visitation exchange. Petitioner sought a PPO, which was issued after a hearing.

The court issued a PPO that in relevant part prohibited respondent from "stalking as defined by MCL 750.411h and MCL 750.411i which includes but is not limited to . . . appearing at petitioner's work place or residence."² Several months later, and after respondent had been found in contempt in for a prior violation of the PPO, petitioner's fiancé witnessed respondent drive slowly past petitioner's house with the car window rolled down. Respondent's son who was playing in the front yard also recognized his father. Petitioner's house is located in back of a

¹ *Ottevaere v Tweddle*, unpublished opinion per curiam of the Court of Appeals, issued _____ (Docket No. 255776). Docket No. 255776 involves a prior found violation of the PPO, for which respondent served four days in jail. *Id.*

² Docket No. 255776 involves a violation of the PPO's prohibition against contacting petitioner by telephone. *Id.*

private subdivision with only one entrance, a dead-end that ran within twenty-five yards of petitioner's home. After a show-cause hearing, respondent was found to be in criminal contempt of the PPO.

Respondent argues that the court improperly concluded that he violated the PPO. We disagree. "A trial court's findings in a contempt proceeding must be affirmed on appeal if there is competent evidence to support them. However, the issuance of an order of contempt rests in the sound discretion of the trial court, and is reviewed only for an abuse of discretion." *Brandt v Brandt*, 250 Mich App 68, 73; 645 NW2d 327 (2002) (citations omitted). To support a finding of criminal contempt, "an alleged contemnor's 'willful disregard or disobedience' of a court order and a clearly contemptuous act must be proved beyond a reasonable doubt." *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714; 624 NW2d 443 (2000), quoting *People v Boynton*, 154 Mich App 245, 248, 397 NW2d 191 (1986); see also MCR 3.708(H)(3).

Respondent argues on appeal that the order only prohibited him from statutory stalking, so the court was required to find beyond a reasonable doubt that he committed a course of conduct involving two or more instances of harassment before it could hold him in contempt. However, the court originally granted the PPO because it found that petitioner had established a course of harassing conduct by respondent. Therefore, any further violation, including respondent's arrival at petitioner's home, would merely add to the established series and continue the harassment, contrary to both the statute, MCL 750.411h, and the very plain language of the PPO. The specific restriction against respondent going to petitioner's home was also reinforced in the court's verbal instructions to respondent at the hearing to enter the PPO, so the trial court correctly found that respondent's appearance at petitioner's home on the one occasion sufficed to constitute contempt.

Respondent also argues that he did not violate the order because petitioner was not at home and he therefore did not "contact" her. However, the PPO plainly enjoined respondent from appearing at petitioner's home without reference to contact. Moreover, applying the common use of the language employed, people at and around petitioner's home plainly saw respondent drive along the dead-end access road within twenty-five yards of her house, so he "appeared at" her home.

Next, respondent argues that the order is unconstitutionally vague because it is impossible to tell how near respondent must be to petitioner's residence before he has appeared "at" her residence. This argument is also without merit. The language of the PPO was sufficiently clear to allow respondent to understand that driving within twenty-five yards of petitioner's home on a drive with no outlet is close enough to be considered "appearing at" her residence and a violation of the PPO.

Respondent also argues that the court did not specifically find beyond a reasonable doubt that respondent intended to violate the PPO. Respondent cites the trial court's comment during sentencing that "respondent is apparently, I guess, trying to get as close to the edge of behaviors as he possibly thinks he might be able to do." However, respondent omits the second half of the sentence, where the trial court concludes that respondent "easily can be understood by me to have stepped over the line and ignored a clear order." Accordingly, the trial court appropriately concluded that respondent intentionally violated the plain terms of the PPO. Competent evidence was presented to prove respondent's intent to violate the PPO, especially the evidence

showing that respondent slowly drove by petitioner's back-lot residence with his window down on a dead-end access road.

Finally, respondent argues that his thirty-day jail sentence was disproportionately high. However, because respondent has already served his sentence, the issue is moot. *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003). In any event, we conclude that the sentence was proportionate under the circumstances.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Peter D. O'Connell

/s/ Kirsten Frank Kelly