

STATE OF MICHIGAN
COURT OF APPEALS

SHARON CAMPBELL,

Petitioner-Appellee,

v

TIMOTHY WOLANIN,

Respondent-Appellant.

UNPUBLISHED

October 13, 2009

No. 286331

Oakland Circuit Court

LC No. 08-747233-PH

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Respondent appeals by right from a personal protection order (PPO) entered against him. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Petitioner was leasing a house from respondent. At some point, respondent lost his landlord's license because he was behind on making necessary repairs to the rental property. According to petitioner, respondent had several months to complete the repairs but did not do so. Petitioner testified that during the period just before the re-inspection of the house, respondent came in and out of the house without providing her notice and without her knowledge. Respondent testified that he had tried and failed to contact petitioner in an effort to complete the necessary repairs.

Petitioner was behind on rent, and respondent began the eviction process sometime before the proceedings at issue here. According to petitioner, because respondent did not have his landlord's license, she was at risk of losing her Section 8 housing.¹ Petitioner sought a PPO against respondent alleging that he had entered her house without notice, had screamed at and threatened her, and had left intimidating messages on her voicemail. She also stated that she was losing her Section 8 status and needed some time to get organized and stop respondent from entering the house. The lower court granted the PPO, precluding respondent from entering petitioner's rental unit for 60 days.

¹ See 42 USC 1437f.

We will first address respondent's argument that the circuit court lacked subject matter jurisdiction over the case because petitioner's claim centered on a landlord/tenant dispute, which should have been heard in district court. We disagree. When "determining jurisdiction, this Court will look beyond a plaintiff's choice of labels to the true nature of the plaintiff's claim." *Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 589 (1998). When discerning the true nature of the claim, courts do not look to the "truth or falsehood of the charge, but upon its nature: it is determinable on the commencement, not at the conclusion, of the inquiry." *Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992). Here, petitioner's petition alleged that respondent threatened her, screamed at her, swore at her, entered her home without permission or notice, and left intimidating messages on her voicemail. Thus, despite the fact that the case involves on a dispute between the parties in their capacities as tenant and landlord, the nature of petitioner's claim comports with that of a personal protection claim over which the circuit court had subject matter jurisdiction. Accordingly, the case was properly before the circuit court.

But, we do agree with respondent that the court erred in granting the PPO. We review the granting of a PPO for an abuse of discretion. *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 749 (2002). A trial court's factual findings are reviewed for clear error. MCR 2.613(C).

MCL 600.2950a(1) makes clear that a circuit court may grant a PPO only if the "petition alleges facts that constitute stalking" as defined by MCL 750.411h or 750.411i. Subsections 411h(1)(d) and 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."

Looking at the evidence and making some basic assumptions about the reasoning of the trial court, we could conclude that the evidence adduced was sufficient to establish that respondent's actions constituted stalking as statutory defined. Still, we are leery about wading into such an analysis in light of the dearth of relevant findings by the court, and we are mindful of the well-established roles of the trial and appellate courts in our system of jurisprudence. Because there is a question as to whether the trial court considered all the necessary elements of stalking, we believe it prudent to remand to the trial court for further consideration consistent with this opinion.

We acknowledge that because the PPO terminated on August 10, 2008, a question arises as to whether this appeal is moot. An issue is moot when an event occurs that makes it impossible for a reviewing court to grant relief. *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). However, an issue is not moot if "it will continue to affect the party in some collateral way." *Id.* MCL 600.2950a(14) requires a law enforcement agency that is provided with a copy of a PPO to enter it on the Law Enforcement Information Network (LIEN). If a PPO is rescinded, that information must also be entered on the LIEN. See MCL 600.2950a(17). Accordingly, respondent may be granted relief, so the issues presented here are not moot.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. As the prevailing party, defendant may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello