STATE OF MICHIGAN

COURT OF APPEALS

HEATHER LYNN VISSER, Petitioner-Appellee,	FOR PUBLICATION December 18, 2012 9:00 a.m.
v	Nos. 301864; 305900
DONOVAN J. VISSER, Respondent-Appellant.	Kent Circuit Court LC No. 10-000897-PP

Before: MARKEY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

RONAYNE KRAUSE, J.

In this consolidated appeal, stemming from one underlying case, respondent Donovan J. Visser raises a number of challenges to the personal protection order (PPO) entered against him. We find that the original PPO was properly issued. Therefore, we affirm.

Petitioner filed a petition for a "domestic relationship" PPO, MCL 600.2950, against respondent on January 27, 2010. The petition was granted, and orders extending the PPO were subsequently entered on July 16, 2010 and January 18, 2011. The PPO expired on July 19, 2011. Respondent filed motions to terminate each order. His first motion was denied after a hearing. The latter motions were denied without hearings.

We agree with respondent that the issue of the propriety of the initial PPO entry is not necessarily moot. An issue that will continue to have collateral consequences is not moot, and this Court has previously held that an expired PPO may, in fact, have such collateral consequences. *Hayford v Hayford*, 279 Mich App 325, 325; 760 NW2d 503 (2008). We note that respondent does not actually articulate what collateral consequences are likely to befall him. Ordinarily, we do not believe it is the duty of this Court to contemplate potential collateral consequences for a party. See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). But we do not doubt that having a PPO on one's record may have some adverse consequences. In contrast, any of the challenges respondent brings to the *extensions* of the PPO, as distinct from its initial entry, *are* moot. The last extension of the PPO has expired, and we are unable to conceive of any possible collateral consequences that respondent might suffer arising solely out of the duration of the PPO. Therefore, there is no relief this Court could provide to respondent arising out of any possible impropriety in the extensions. Because they are moot, we decline to consider any of respondent's arguments pertaining to the extensions. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Statutory interpretation and construction of court rules are questions of law subject to review de novo. *Ballard v Ypsilanti Twp*, 216 Mich App 545, 549; 549 NW2d 885 (1996); *Bruwer v Oaks*, 218 Mich App 392, 397; 554 NW2d 345 (1996).

MCL 552.507 is part of the Friend of the Court Act (FCA), MCL 552.501 *et seq.* MCL 552.507(2)(a) allows a referee to, "[h]ear all motions in a domestic relations matter, except motions pertaining to an increase or decrease in spouse support, referred to the referee by the court." The FCA defines "domestic relations matter" as:

> [A] circuit court proceeding as to child custody, parenting time, child support, or spousal support, that arises out of litigation under a statute of this state, including, *but not limited to*, the following:
>
> (i) 1846 RS 84, MCL 552.1 to 552.45.
>
> (ii) The family support act, 1966 PA 138, MCL 552.451 to 552.459.
>
> (iii) The child custody act of 1970, 1970 PA 91, MCL 722.21 to 722.31.
>
> (iv) 1968 PA 293, MCL 722.1 to 722.6.
>
> (v) The paternity act, 1956 PA 205, MCL 722.711 to 722.730.
>
> (vi) The revised uniform reciprocal enforcement of support act, 1952 PA 8, MCL 780.151 to 780.183.
>
> (vii) The uniform interstate family support act, 1996 PA 310, MCL 552.1101 to 552.1901. [MCL 552.502(m)(i)-(vii) (emphasis added).]

Thus, MCL 552.502(m) enumerates a number of statutory provisions, litigation arising out of which will be considered "domestic relations matters." MCL 552.502(m) explicitly states that matters that will be considered "domestic relations matters" are "not limited to" that list. By its own terms, therefore, the list is not exclusive. "Courts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory." *State Farm Fire and Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002). Interestingly, MCL 522.502(m) does not mention MCL 600.2950, the domestic relations PPO statute pursuant to which the instant PPO was issued, which unambiguously applies to domestic relations cases. Likewise, the Domestic Violence Prevention and Treatment Act, MCL 400.1501 *et seq.*, clearly also implicates domestic relations, as does the domestic assault status, MCL 750.81a(2).

MCR 3.215 implements MCL 552.507 and provides further guidance for the conduct of referee hearings. MCR 3.201(A) explains that "[s]ubchapter 3.200," within which MCR 3.215(B) permits "specified types of domestic relations motions to be heard initially by a referee," applies to:

> (1) actions for divorce, separate maintenance, the annulment of marriage, the affirmation of marriage, paternity, family support under MCL 552.451 *et seq.*, the

custody of minors under MCL 722.21 *et seq*., and visitation with minors under MCL 722.27b, and to

(2) proceedings that are ancillary or subsequent to the actions listed in subrule (A)(1) and that relate to

(a) the custody of minors,

(b) visitation with minors, or

(c) the support of minors and spouses or former spouses. [MCR 3.201(A)(1)-(2).]

The phrase "relate" is not defined by the court rule, nor could we find binding precedent interpreting the relevant provisions; therefore, it is proper to consult a dictionary. See *Mich Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 485; 637 NW2d 232 (2001). "Relate" is defined in relevant part to mean "to have reference or relation (often fol. by to)." *Random House Webster's College Dictionary* (1997).

It is clear, bordering on axiomatic, that PPO proceedings between individuals who have a minor child in common "have reference or relation" to custody or visitation proceedings. Therefore a referee is authorized to conduct a hearing. Subchapter 3.700 expressly references how a PPO relates to existing custody and parenting time orders. MCR 3.706(C)(1) requires the court issuing the PPO to:

contact the court having jurisdiction over the parenting time or custody matter as provided in MCR 3.205, and where practicable, the judge should consult with that court, as contemplated in MCR 3.205(C)(2), regarding *the impact upon custody and parenting time rights* before issuing the personal protection order. [Emphasis added.]

The rule plainly references the custody of minor children and appears to recognize that a PPO may relate to an already entered custody or parenting time order. This interpretation is further reinforced by MCR 3.706(C)(2), which provides:

If the respondent's custody or parenting time rights will be adversely affected by the personal protection order, the issuing court shall determine whether conditions should be specified in the order which would accommodate the respondent's rights or whether the situation is such that the safety of the petitioner and minor children would be compromised by such conditions.

Further, MCR 3.706(C)(3) provides that a PPO "takes precedence over any existing custody or parenting time order until" the PPO expires or until "the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order to accommodate the conditions of the personal protection order." The foregoing language appears to establish that a PPO proceeding may relate to a matter involving custody or visitation. MCR 3.201(A)(2).

Further, while not directly addressing the issue, this Court, in several unpublished opinions has noted, without critical comment, that a referee conducted a PPO hearing. We remind the bench and bar that unpublished opinions are not binding, MCR 7.215(C)(1). Nevertheless, this Court *may* consider them to be persuasive. *People v Green*, 260 Mich App 710, 720 n 5; 680 NW2d 477 (2004). For the sake of completely addressing the parties' arguments, we recognize that respondent claims that *Baker v Holloway*, unpublished opinion per curiam of the Court of Appeals issued January 26, 2010 (Docket No. 288606), supports his argument that a referee cannot conduct a PPO hearing. Even if *Baker* were considered binding, respondent would be incorrect. The *Baker* Court found that a referee could not order the parties to mediation and the court was required to conduct a hearing; by necessary implication, *Baker* actually held that the referee *could* have properly conducted the hearing. Therefore, respondent's reliance on *Baker* is doubly misplaced.

Respondent's second argument is that the trial court's referral of the PPO hearing to a referee, even if authorized by statute or court rule, was an unconstitutional delegation of authority. Our Supreme Court has held that judicial power is not improperly delegated as long as the ultimate decision making responsibility remains with a judge. *Underwood v McDuffee*, 15 Mich 361, 367 (1867); *Johnson v Kramer Bros Freight Lines*, *Inc*, 357 Mich 254, 258; 98 NW2d 586 (1959) ("[t]he judicial power referred to is the authority to hear and decide controversies, and to make binding orders and judgments respecting them."). Here, the trial court signed the challenged orders, and the orders were entered under the trial court's authority, not that of the referee. Because a referee makes no final binding order or adjudication and the referee was authorized by statute to conduct PPO hearings relating to child custody and visitation as discussed above, the referee does not exercise judicial power. Therefore, respondent's argument that the trial court unconstitutionally delegated its authority is incorrect.

Respondent next argues that the failure of the trial court to hold a hearing within 14 days of his motion to terminate the PPO should automatically result in dismissal of the PPO. MCL 600.2950(14) provides, in relevant part, that, "the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind." See also MCR 3.707(A)(2). However, the stated time for performance set forth in a statute should be viewed as directory, rather than mandatory, when there is no language precluding or terminating performance after the specified time. *In re Forfeiture of Bail Bond (On Remand)*, 276 Mich App 482, 495–496; 740 NW2d 734 (2007). Here, neither the statute nor the court rule contains any provision suggesting that the failure to hold a timely hearing on a motion to terminate a PPO results in the automatic termination of the PPO. Indeed, such a rule would punish the person who sought the PPO for the tardiness of the court itself, over which the parties have little, if any, control and would potentially undermine the purpose of PPOs altogether.

Respondent next argues that the January 27, 2010 petition for an ex parte PPO was facially invalid. Petitioner's affidavit stated she was afraid of respondent and had been "threatened by him for over a year." The affidavit reflected that respondent had recently attempted to commit suicide, and there had been a "struggle to get a gun from the basement" of the parties residence. At a meeting with the parties' pastor following the suicide attempt, respondent indicated he was not certain what he would have done if he had obtained the gun. After this response petitioner indicated "felt very much like intimidation and made" her "very

scared." Additionally, the affidavit reflected that petitioner frequently told respondent she was afraid of him when he was angry, and in response to these comments, respondent told petitioner, "you haven't seen me angry." The day before petitioner sought the PPO, respondent called her while she was at her mother's house and threatened her.

An ex parte PPO is properly entered where petitioner demonstrates a "reasonable apprehension of violence." *Pickering v Pickering*, 253 Mich App 694, 701; 659 NW2d 649 (2002), citing MCL 600.2950(1)(j). Respondent's threats and visible displays of anger that left petitioner frightened were a sufficient basis for the trial court to issue an ex parte PPO. See *id.* at 702. Further, the history of recent threats, including the day before the petition was filed, was sufficient to justify an ex parte order because the affidavit demonstrated "immediate or irreparable injury, loss, or damage" could result from delay in issuing the PPO. MCR 3.705(A)(2); see also *Kampf v Kampf*, 237 Mich App 377, 385; 603 NW2d 295 (1999). The trial court did not abuse its discretion in granting an ex parte PPO based on the January 27, 2010 petition.

Respondent also objects that the order granting the January 27, 2010 PPO did not contain the reasons for the issuance of the order, citing MCR 3.705(A)(2). That court rule states in part, "In a proceeding under MCL 600.2950a, the court must state in writing the specific reasons for issuance of the order." Respondent fails to note that MCL 600.2950a was not the basis of the PPO in the present case. MCL 600.2950a governs PPOs issued for stalking. Instead, MCL 600.2950 was the basis for the PPO because it involved a spouse and a child in common. The plain language of MCR 3.705(A)(2) only requires written findings for "a proceeding under MCL 600.2950a;" consequently, this argument also fails.

Again, we decline to address any of respondent's arguments pertaining to the extensions of the PPO because that issue is moot.

Affirmed. Petitioner, being the prevailing party, may tax costs.

/s/ Amy Ronayne Krause
/s/ Jane E. Markey