

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY ROBERT O'BANNON,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2002

No. 224202

Wayne Circuit Court

LC No. 98-900035

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie\*, JJ.

PER CURIAM.

This case is before us on leave granted by order of the Michigan Supreme Court following the circuit court's order affirming defendant's conviction. Defendant was convicted of stalking, MCL 750.411h, following a bench trial held in district court. He was sentenced to seventeen days' imprisonment and two years' probation. We affirm.

Defendant first contends that the trial court failed to make specific findings of fact or set forth conclusions of law as required by MCR 6.403 and MCR 2.517. We disagree.

Specifically, MCR 6.403 provides in pertinent part:

When trial by jury has been waived . . . [t]he court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

In addition, MCR 2.517(2), which is applied via MCR 6.001(D), provides:

Brief, definite, and pertinent findings and conclusions on the contested matters are sufficient, without overelaboration of detail or particularization of facts.

The trial court's factual findings are adequate for appellate review so long as it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v*

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

*Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). In this case, we find the trial court adequately disclosed its findings and remand for additional findings is not necessary.

In this case, the trial court found there were “two or more wilful, separate and non-continuous acts of unconsented-to contact” by defendant that was “causing the distress” of the complainant. While the court observed that the complainant sent mixed signals to defendant, it elaborated that some of the contact was clearly nonconsensual and that defendant knew the complainant did not desire the contact. The trial court also found that the contact resulted in “this distress, this harassed feeling, this perhaps molested feeling, certainly a frightened feeling.”

It is evident, when the court’s findings are reviewed in the context of the testimony and the specific and factual issues raised by the parties, that the court was aware of the issues in the case. *Legg, supra* at 134-135. The court’s specific findings that defendant engaged in two or more wilful, separate and non-continuous acts of nonconsensual contact that caused the complainant distress and resulted in her feeling harassed and frightened indicates that the court was aware of the issues and correctly applied the law.

Defendant specifically complains that the trial court’s findings were inadequate for appellate review because the court (1) failed to specifically identify which contacts it found to be nonconsensual, (2) failed to specifically find that defendant’s conduct would have caused a reasonable person to suffer emotional distress or to feel terrorized, frightened, intimidated, threatened, harassed or molested, and (3) failed to reconcile the conflicting evidence or address which party it found to be credible. We disagree. As noted above, the trial court is not required to make specific findings of fact regarding each element of the crime so long as it is manifest that the court was aware of the factual issues in the case, that it resolved the issues, and further explication would not facilitate appellate review. *Id.*, citing *People v Jackson*, 390 Mich 621, 627 n 3; 212 NW2d 918 (1973). Where it is obvious from the result reached who the court found credible and how the court reconciled the conflicting evidence, the court need not make further specific findings of credibility on the record. *People v Darden*, 132 Mich App 154, 163-164; 346 NW2d 915 (1984). We conclude that the trial court’s findings on the record indicate that it was aware of the issues and they are adequate in light of the substantial testimony and arguments devoted to the various contacts between defendant and the complainant, including whether the contacts were consensual. The court, with sufficient clarity, revealed the law applied in this case through its discussion of the elements of stalking. We find the trial court’s findings of fact sufficient for appellate review in accordance with MCR 6.403. Further explication would not facilitate appellate review.

Defendant also contends that the trial court’s factual findings and conclusions were clearly erroneous. We disagree. The court’s finding of guilt was adequately supported by the testimony. We review the court’s findings for clear error. MCR 2.613(C); MCR 6.001(D). A finding of fact is clearly erroneous if, after review of the entire record, we are left with a definite and firm conviction that a mistake has been made. *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996).

Contrary to defendant’s contentions, we are not left with a definite and firm conviction that the trial judge erred in finding that defendant’s contacts with the complainant were nonconsensual, that the complainant actually suffered emotional distress, or that a reasonable

person would have suffered emotional distress under the circumstances. We find that the testimony supported the court's factual findings. Although much of the testimony conflicted regarding these issues, giving due regard to the trial court's special opportunity to judge the credibility of the witnesses appearing before it, we cannot say that the court clearly erred. MCR 2.613(C); *People v Snell*, 118 Mich App 750, 756; 325 NW2d 563 (1982).

Defendant also contends that the trial court erroneously based its finding of guilt on defendant's violation of the personal protection order. We disagree. Although the trial court made numerous references to, and may have placed undue emphasis on, the existence of a personal protection order in this case, it is also evident that the court properly considered and made sufficient findings with respect to the requisite elements of stalking. It cannot be said that the court clearly erred in finding defendant guilty as review of the entire record indicates that the violation of the personal protection order did not form the basis for defendant's guilt.

Defendant finally claims that the prosecution failed to present sufficient evidence to support his conviction. We disagree. When reviewing a challenge to the sufficiency of the evidence, the reviewing court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Toole*, 227 Mich App 656, 658; 576 NW2d 441 (1998). The elements of stalking are: (1) the defendant engaged in a wilful course of conduct, (2) the defendant's conduct involved repeated or continuing harassment, (3) the defendant's conduct would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested, and (4) the defendant's conduct actually caused the complainant to feel terrorized, frightened, intimidated, threatened, harassed or molested. MCL 750.411h(1)(d).

We conclude that the record in this case supports defendant's conviction. First, defendant's conduct amounted to a wilful course of conduct, as he "engaged in a series of two or more separate noncontinuous acts evidencing a continuity of purpose," in effect attempting to reconcile with his estranged wife.<sup>1</sup> MCL 750.411h(1)(a). There was testimony by both the complainant and defendant establishing that, after the complainant vacated the marital residence, defendant engaged in numerous contacts with her over a period of several months.

Second, there was sufficient evidence that defendant's conduct on at least two of these occasions amounted to "repeated or continuing unconsented contact" with the complainant. MCL 740.411h(1)(c) and (d). A rational trier of fact could conclude, based on the testimony that defendant's conduct – driving around the complainant's apartment, parking across the street from her apartment, entering her cars, arriving unannounced at her apartment after being served with

<sup>1</sup> Although the statute specifically exempts constitutionally protected activity or conduct that serves a legitimate purpose, MCL 750.411h(1)(c), this Court has held that repeated telephone calls and verbal threats do not serve a legitimate purpose, even if that purpose is to attempt to reconcile. *People v White*, 212 Mich App 298, 311; 536 NW2d 876 (1995). Likewise, violations of a restraining order forbidding contact with the complainant cannot be justified as legitimate, where the purpose of the contact was to communicate to save the marriage. *People v Coones*, 216 Mich App 721, 725; 550 NW2d 600 (1996).

notice of the divorce, and calling her numerous times – amounted to nonconsensual contact. The complainant testified that during several of these contacts she expressly told defendant not to contact her. Moreover, defendant's testimony established his awareness of the complainant's desire that defendant discontinue contact with her, yet he continued to contact her. Further, there was an outstanding personal protection order against defendant prohibiting certain types of contact with the complainant.

Third, there was sufficient evidence, based on the complainant's testimony, that defendant's conduct caused the complainant to actually suffer emotional distress. Additionally, although there was no specific testimony or evidence that defendant's contacts would cause a reasonable person in the complainant's situation to suffer emotional distress, reasonable inferences arising from the evidence may constitute satisfactory proof of the element of an offense. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Defendant's conduct raises an inference that his nonconsensual contact would cause a reasonable person to suffer significant emotional distress, and cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or molested. MCL 750.411h(1)(d). A rational trier of fact could reasonably infer that a reasonable person in the complainant's situation would have suffered emotional distress and experienced fright, terror and intimidation, where her husband, from whom she was seeking a divorce and against whom the court had issued a personal protection order, confronted her without her consent.

Finally, there was sufficient evidence that defendant's conduct actually caused the complainant to feel terrorized, frightened, intimidated, threatened, harassed or molested. The complainant testified several times that she was afraid of defendant.

We conclude that there was sufficient evidence to support defendant's conviction. Viewing the testimony in the light most favorable to the prosecution, a rational trier of fact could conclude that the essential elements of stalking were proven beyond a reasonable doubt. *Toole*, *supra* at 658.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Janet T. Neff  
/s/ Barbara B. MacKenzie