

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES A. LONDO,

Petitioner-Appellee,

V

JAN JAY,

Respondent-Appellant.

UNPUBLISHED

March 22, 2002

No. 227691

Monroe Circuit Court

LC No. 00-011180-PH

Before: Whitbeck, C.J., and Wilder and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the circuit court's order amending a personal protection order (PPO) entered in favor of petitioner. We reverse.

Respondent argues that the trial court erred in denying his motion to rescind the PPO.¹ A PPO is an injunctive order issued by the circuit court or the family division of the circuit court, which precludes a person from engaging in specific types of conduct. MCL 600.2950a(29)(b). The grant of injunctive relief is within the sound discretion of the trial court. *Kernen v Homestead Development*, 232 Mich App 503, 509-510; 591 NW2d 369 (2000). However, to the extent that this issue involves statutory interpretation, our review is de novo. *Oakland Co Bd of Co Rd Comm'rs v Michigan Property and Casualty Guaranty Ass'n*, 456 Mich 590, 610; 575 NW2d 751 (1998). The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). Legislative intent is derived by first examining the words used in the statute. If the plain and ordinary meaning of a statute is clear, judicial construction is neither necessary nor permitted. *Elia v Hazen*, 242 Mich App 374, 381; 619 NW2d 1 (2000). We may not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. *Chop v Zielinski*, 244 Mich App 677, 680; 624 NW2d 539 (2001).

¹ The PPO was to remain in effect until April 20, 2001. However, this issue is not moot because MCL 600.2950a does not provide for automatic removal of a PPO from the law enforcement information network (LEIN) upon expiration. The statute provides that after an order is issued rescinding, terminating, or modifying a PPO, that order shall be entered into the LEIN. MCL 600.2950a(16) and (17).

“A person may file an independent action in the family division of circuit court to enter a PPO to restrain another person ‘from engaging in conduct that is prohibited under section 411h [stalking] or 411i [aggravated stalking] of the Michigan penal code’” *Pobursky v Gee*, __ Mich App __; __ NW2d __ (Docket No. 226550, issued December 21, 2001), slip op p 2, quoting MCL 600.2950a(1). When an ex parte PPO is sought “the court must make a positive finding of prohibitive behavior by the respondent before issuing a PPO.” *Pobursky, supra*, quoting *Kampf v Kampf*, 237 Mich App 377, 386; 603 NW2d 295 (1999).

In this case, petitioner sought and obtained an ex parte PPO in accordance with MCL 600.2950a, on the ground that respondent appeared in his presence and made untrue and false accusations regarding a secret bank account allegedly held by petitioner and another. Petitioner claimed the statements could be considered libelous and slanderous, were harassing in nature, and caused petitioner severe emotional distress.²

Under MCL 750.411h(1)(d), “Stalking” is defined as “a willful course of conduct^[3] 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^[4] to feel terrorized, frightened, intimidated, threatened, harassed, or molested.” The statute defines “harassment” as “conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact^[5] that would cause a reasonable

² Petitioner filed an amended petition further claiming that “respondent has been seen carrying a firearm on [respondent’s] property thus causing petitioner to be concerned about his personal safety; and, therefore, requests that the Court amend the Original Order to preclude respondent from purchasing or possessing firearms.” The trial court considered that amended petition and denied petitioner’s request to prohibit respondent from purchasing or possessing a firearm.

³ MCL 750.411h(1)(a) provides: “‘Course of conduct’ means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.”

⁴ MCL 750.411h(1)(f) provides: “‘Victim’ means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.”

⁵ MCL 750.411h(1)(e) provides:

"Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

- (i) Following or appearing within the sight of that individual.
- (ii) Approaching or confronting that individual in a public place or on private property.
- (iii) Appearing at that individual's workplace or residence.
- (iv) Entering onto or remaining on property owned, leased, or occupied by that individual.
- (v) Contacting that individual by telephone.

(continued...)

individual to suffer emotional distress⁶] and that actually causes the victim to suffer emotional distress.” MCL 750.411h(c). “Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.” *Id.*

At two separate meetings of the Monroe County Board of Commissioners (the Board), respondent raised the issue of an alleged secret bank account held between petitioner and another party. At the first board meeting, respondent mentioned the secret bank account once, and then reverted to other matters. Respondent merely addressed his comments to the commissioner and did not specifically direct any comments to petitioner. At the second board meeting, respondent discussed the secret account in more depth, but again, he did not specifically address petitioner or direct any comments to petitioner. Respondent merely requested that the Board investigate the alleged secret bank account. We conclude that under these circumstances, respondent’s conduct did not constitute “harassment,” which could form the basis for “stalking.” Respondent’s conduct was not specifically directed toward petitioner as required by the statute. MCL 750.411h(1)(c). Respondent’s conduct was not repeated or unconsented contact with petitioner. Moreover, the conduct was not of the type that would cause a reasonable person to suffer significant mental suffering or distress. MCL 750.411h(1)(b). Because respondent’s conduct was not prohibited under MCL 750.411h or MCL 750.411i, the trial court erred in denying respondent’s motion to rescind the PPO.

Given our conclusion, we need not address respondent’s additional argument that the stalking statutes, MCL 750.411h and MCL 750.411i, are unconstitutionally overbroad. However, we note that respondent’s reliance on *Staley v Jones*, 108 F Supp 2d 777 (WD Mich, 2000), is misplaced given its reversal by the Sixth Circuit Court of Appeals, see *Staley v Jones*, 239 F3d 769 (CA 6, 2001).

Reversed.

/s/ William C. Whitbeck
/s/ Kurtis T. Wilder
/s/ Brian K. Zahra

(...continued)

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

⁶ MCL 750.411h(1)(b) provides: “‘Emotional distress’ means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.”