

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN JEAN SARTI,

Petitioner-Appellant,

v

ANDREW J. LAMB,

Respondent-Appellee.

UNPUBLISHED

June 15, 2004

No. 245756

Macomb Circuit Court

LC No. 2002-005949-PP

Before: Murphy, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Petitioner appeals as of right from the trial court's order granting respondent's motion to terminate an ex parte personal protection order (hereinafter "PPO"). We affirm.

Petitioner and respondent were formerly involved in a relationship that lasted approximately six years, and also worked at the same place of employment. On October 4, 2002, following an incident at the workplace, petitioner filed a petition for an ex parte PPO, alleging that respondent had assaulted her and was also stalking her. A PPO was entered that day, effective until October 4, 2003. Respondent was served with a copy of the PPO on October 29, 2002.

On November 25, 2002, respondent filed a motion to terminate the PPO. At a hearing on December 2, 2002, the trial court learned that on October 4, 2002, respondent quit his job at the company where petitioner also worked, subsequently obtained a new job, and was engaged to be married to another woman. Petitioner admitted that respondent had not contacted her since leaving the company they both worked for on October 4, 2002, and respondent stated that he had no desire to see any of his former co-workers, including petitioner. After hearing testimony from the parties and arguments from counsel, the trial court granted respondent's motion to terminate the PPO.

On appeal, petitioner first argues that the trial court was without authority to terminate the PPO because respondent failed to timely file his motion to terminate the PPO. We disagree. MCR 3.707(A)(1)(b) provides:

The respondent may file a motion to modify or terminate the personal protection order and request a hearing within 14 days after being served with, or

receiving actual notice of, the order unless good cause is shown for filing the motion after the 14 days have elapsed.

Although the trial court erred when it stated that a motion to set aside a PPO could be filed at any time, this misstatement does not require reversal. See MCR 2.613(A) (an error or defect in a ruling or action by the trial court is not grounds for disturbing a judgment or order, unless refusal to take this action appears inconsistent with substantial justice).

MCR 3.707(A)(1)(b) allows the court to entertain a motion to terminate a PPO if the motion is filed within fourteen days after being served with, or receiving actual notice of, the order, or the motion is filed after the fourteen-day period and good cause is shown for the late filing. At the hearing on respondent's motion, petitioner's counsel stated that respondent was served with a copy of the PPO on October 29, 2002. Respondent's motion was filed approximately two weeks after the fourteen-day prescribed in MCR 3.707(A)(1)(b) expired. Respondent stated that, after receiving the PPO, he attempted to contact petitioner by letter, dated November 5, 2002, in order to amicably resolve the matter without a hearing, and only filed his motion when petitioner did not respond to the letter. Given that MCR 3.707(A)(1)(b) allows a motion to terminate a PPO to be filed beyond the fourteen-day period for good cause shown, that respondent's motion was filed just two weeks beyond this time period, that facts supportive of good cause for the short delay existed, and that the short delay did not prejudice petitioner in her ability to argue why the PPO should be continued; we conclude that reversal is not warranted. The trial court's decision to entertain respondent's motion was not inconsistent with substantial justice.

Next, the trial court did not abuse its discretion in deciding to terminate the PPO. A PPO is an injunctive order. MCL 600.2950(1); *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002). An order granting or denying injunctive relief is reviewed for an abuse of discretion. *Id.*; *Kerman v Homestead Development Co*, 232 Mich App 503, 509-510; 591 NW2d 369 (1998).

MCL 600.2950(4) provides:

The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1). In determining whether reasonable cause exists, the court shall consider all of the following:

(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).

The burden of proof in obtaining a PPO, as well as the burden of justifying continuance of the order, is on the applicant. *Pickering, supra* at 699; *Kampf v Kampf*, 237 Mich App 377, 385-386; 603 NW2d 295 (1999).

In this case, the parties were formerly involved in a personal relationship. After that relationship ended, the parties continued to work at the same place of employment, which presented the source of their continuing discord. But respondent resigned from the company on October 4, 2002, and petitioner admitted that respondent had not contacted her since then. Additionally, respondent subsequently obtained a new job and was involved in a relationship with another woman to whom he was engaged to be married. In light of this record, the trial court did not abuse its discretion in granting respondent's motion to terminate the PPO.

We reject petitioner's argument that the trial court violated her right to due process by precluding her from introducing a police report and five witness statements about the October 4, 2002, incident at work. Constitutional questions are reviewed de novo by this Court. *Vicencio v Ramirez*, 211 Mich App 501, 503; 536 NW2d 280 (1995). As this Court noted in *Vicencio*, *supra* at 504:

Generally, due process in civil cases requires notice of the nature of the proceeding. In any proceeding involving notice, due process requires that the notice given be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citations omitted.]

Here, petitioner received notice of the hearing on respondent's motion and was given an opportunity to present evidence. The trial court received testimony from the parties and heard arguments from counsel. Contrary to what petitioner asserts, the trial court did not decline to consider the witness statements and police report offered by petitioner, but rather acknowledged its awareness of those documents. Petitioner's right to due process was not violated.

Affirmed.

/s/ William B. Murphy
/s/ Kathleen Jansen
/s/ Jessica R. Cooper