

STATE OF MICHIGAN
COURT OF APPEALS

JILL MARIE ZIEGLER,

Plaintiff-Appellee,

v

MICHAEL JAMES ZIEGLER,

Defendant-Appellant.

UNPUBLISHED

August 6, 2013

No. 310220

Lenawee Circuit Court

LC No. 12-037626-PP

Before: JANSEN, P.J., and CAVANAGH and MARKEY, JJ.

PER CURIAM.

Defendant appeals by right the circuit court's order denying his motion to terminate the personal protection order (PPO). Although the PPO was properly issued and continued, the circuit court erred by failing to modify the PPO in accordance with its oral decision. However, because the PPO has since expired and we are unable to afford defendant any relief, we affirm.¹

Defendant's wife sought a PPO after a series of unfortunate events in the parties' lives. Defendant moved to set aside the PPO, arguing that the allegations were "[f]alse and incorrect," but challenged only minor details in the petition. He primarily opposed the order because it affected his ability to see his children and prevented him from entering the family home. At a hearing on defendant's motion, the circuit court agreed that defendant would be permitted to enter the former family home because the property had been vacated by plaintiff, but its order denying defendant's motion did not clearly remove or modify that restriction in the original PPO.

The circuit court's decision to issue or continue a PPO is reviewed for an abuse of discretion. *Pickering v Pickering*, 253 Mich App 694, 700; 659 NW2d 649 (2002). Questions of law are reviewed de novo on appeal. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002). Unpreserved issues are reviewed for plain error affecting substantial rights. *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008).

¹ Despite the expiration of the PPO, issues relating to its initial entry are not moot. *Visser v Visser*, 299 Mich App 12, 15; 829 NW2d 242 (2012).

A PPO can be issued if there is reasonable cause to believe that the defendant may commit one or more of the acts listed in § 2950(1). MCL 600.2950(4). The circuit court is required to consider testimony, documents, and other proffered evidence, and whether defendant previously engaged in the listed behaviors. MCL 600.2950(4). The petitioner bears the burden of establishing reasonable cause for issuing a PPO, *Kampf v Kampf*, 237 Mich App 377, 385-386; 603 NW2d 295 (1999), and of establishing a justification for continuing the PPO if the opposing party moves to terminate it, *Pickering*, 253 Mich App at 699.

A PPO can be issued on an ex parte basis. MCL 600.2950(12); MCR 3.703(G); MCR 3.705(A). If an ex parte order is requested, “the petition must set forth specific facts showing that immediate and irreparable injury, loss, or damage will result to the petitioner from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued.” MCR 3.704(G). Absent such specific facts, an ex parte order cannot be issued. See MCL 600.2950(12). An order issued on an ex parte basis does not violate the defendant’s procedural due process rights “when the petition . . . is supported by affidavits that demonstrate exigent circumstances justifying entry of an emergency order without prior notice . . . and where there are appropriate provisions for notice and an opportunity to be heard after the order is issued.” *Kampf*, 237 Mich App at 383-384 (citations omitted). The statute and court rules provide for notice and an opportunity to be heard. See MCL 600.2950(13), (14), (18); MCR 3.705(A)(4); MCR 3.707(A).

To the extent defendant challenges the entry of the order on procedural grounds, his claims are unpreserved because he did not raise them in the circuit court. We conclude that defendant has not shown plain error. Defendant contends that the petition was defective because it was not signed under oath or supported by affidavits. But both the court rule and the statute indicate that an ex parte PPO can be issued on the basis of facts alleged in a verified complaint, a written petition or motion, or an affidavit. MCL 600.2950(12); MCR 3.705(A)(2). Plaintiff’s request for a PPO was supported by a written petition, which was sufficient.

As explained earlier, a PPO can be issued if there is reasonable cause to believe that the defendant may commit one or more of the acts listed in § 2950(1). MCL 600.2950(4). The acts listed in § 2950(1) include harming or threatening to harm another named person or stalking the petitioner. MCL 600.2950(1)(b), (c), and (i). It is true that the petition did not indicate that defendant had ever engaged in or threatened to engage in such behaviors. However, a PPO can be issued for reasons other than the threat of physical harm. The acts listed in § 2950(1) also include possessing a firearm and any act or conduct “that causes a reasonable apprehension of violence.” MCL 600.2950(1)(e) and (j). The petition alleged that defendant had access to guns and that he had threatened to commit suicide in front of his children due to the loss of his job and the possibility of bankruptcy and divorce. He was also upset with petitioner because she had contacted emergency services and tried to keep defendant out of the house. Such evidence created reasonable cause to believe that petitioner harbored a reasonable apprehension of violence. It also established that notice of an impending PPO might precipitate adverse action before the PPO could be issued. Therefore, the circuit court did not abuse its discretion by issuing an ex parte PPO. Moreover, the evidence presented at the hearing to terminate the order did not show that the reasons for the issuance of the PPO had been resolved such that there was no further apprehension of violence. Accordingly, the circuit court did not abuse its discretion by denying the motion to terminate the PPO.

We note that the circuit court's statements on the record indicate that it intended to modify the PPO to lift the prohibition against entry into the family home, which was located on Tipton Highway. The PPO prohibited defendant in general from entering the property where petitioner lived, and specifically from entering the Tipton Highway property. At the hearing, petitioner disclosed that she had moved out of the Tipton Highway home, and the circuit court suggested that it would correct the matter. The court denied defendant's motion to terminate the PPO, but noted in its order that "Tipton Hwy has been vacated by Ms. Ziegler as of 4-2, 2012." While this notation removed the general prohibition against defendant's entry into the home where petitioner lived, it did *not* remove the separate, more specific prohibition against entering the Tipton Highway property itself. In other words, the notation did not lift the restriction as apparently intended by the circuit court.

The circuit court erred to the extent that it entered an order conflicting with its ruling. Nevertheless, because the PPO has since expired and defendant is no longer prohibited from entering any property, this Court is unable to grant defendant any relief with respect to this issue. See *Visser v Visser*, 299 Mich App 12, 16; 829 NW2d 242 (2012).

Affirmed. No taxable costs for either party.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Jane E. Markey