

STATE OF MICHIGAN
COURT OF APPEALS

NICOLE SONJA WEBER,

Petitioner-Appellee,

v

ANTOINE DION DRAPER, a/k/a
ANTOINE DION WILLIAMS,

Respondent-Appellant.

UNPUBLISHED
December 12, 2013

No. 312031
Ottawa Circuit Court
LC No. 12-072877-PP

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Respondent appeals as of right an order of the trial court granting a personal protection order (PPO) to petitioner. Because the trial court did not abuse its discretion in granting the PPO, we affirm.

The parties in this matter dated for a number of months in 2011. Petitioner subsequently sought a PPO in June 2012, alleging that respondent engaged in harassing and intimidating behavior in late 2011 and the first half of 2012. After a hearing, the trial court granted petitioner's request for a PPO. Respondent first argues that the PPO should be dismissed because he was not served with the petition. We disagree. A trial court's determination whether to issue or rescind a PPO is reviewed for abuse of discretion. *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008); *Pickering v Pickering*, 253 Mich App 694, 700-701; 659 NW2d 649 (2002). An abuse of discretion occurs when a trial court's decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). "Statutory interpretation and construction of court rules are questions of law subject to review de novo." *Visser v Visser*, 299 Mich App 12, 16; 829 NW2d 242 (2012), vacated in part on other grounds ___ Mich ___; 836 NW2d 693 (2013). "Service-of-process rules are intended to satisfy the due process requirement that a defendant be informed of the pendency of an action by the best means available, by methods reasonably calculated to give a defendant actual notice of the proceeding and an opportunity to be heard and to present objections or defenses." *Hill v Frawley*, 155 Mich App 611, 613; 400 NW2d 328 (1986); MCR 2.105(J)(1). "Neither errors in the content of the service nor in the manner of service are to result in dismissal unless the errors are so serious as to cause the process to fail in its fundamental purpose." *Bunner v Blow-Rite Insulation Co*, 162 Mich App 669, 674; 413 NW2d

474 (1987) (citation omitted). MCR 3.705(B) governs PPO hearings, and provides in relevant part:

(2) The petitioner shall serve on the respondent notice of the hearing along with the petition as provided in MCR 2.105(A)¹¹. . . . One day before the hearing on a petition seeking a PPO under MCL 600.2950 or MCL 600.2950a(1) is deemed sufficient notice. Two days before the hearing on a petition seeking a PPO under MCL 600.2950a(2) is deemed sufficient notice.

In PPO hearings, “[i]f the petitioner fails to attend the hearing, the court may adjourn and reschedule the hearing or dismiss the petition.” MCR 3.705(B)(4). “If the respondent fails to appear at a hearing,” however, “and the court determines the petitioner made diligent attempts to serve the respondent, whether the respondent was served or not, the order may be entered without further notice to the respondent if the court determines that the petitioner is entitled to relief.” MCR 3.705(B)(5).

Here, respondent actually appeared at the PPO hearing. The rules do not state that dismissal is required in such a scenario. Additionally, respondent received the notice of the hearing and was clearly aware of the nature of the proceeding as evidenced by a prepared affidavit he read to the trial court. MCR 2.105(J)(3) states that “[a]n action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.” Thus, because defendant was informed of the action, and there is no indication this did not occur within the time period provided, MCR 3.705(B)(2), the “action *shall not* be dismissed . . .” MCR 2.105(J)(3) (emphasis added); *Lamkin v Engram*, 295 Mich App 701, 709; 815 NW2d 793 (2012) (use of the word “shall” indicates mandatory action). While failure to receive a copy of the petition may have inhibited respondent’s ability to prepare for the hearing, the trial court recognized this and announced that although it would issue the PPO based on petitioner’s testimony, it would also grant respondent a hearing should he move to modify or terminate the newly issued PPO. Because “[t]he petitioner bears the burden of establishing reasonable cause for issuance of a PPO, and of establishing a justification for the continuance of a PPO at a hearing on the respondent’s motion to terminate the PPO,” *Hayford*, 279 Mich App at 326, granting such a hearing would adequately account for any prejudice respondent suffered by petitioner’s failure to properly serve the petition.

¹ MCR 2.105(A) provides in relevant part:

Process may be served on a resident or nonresident individual by

(1) delivering a summons and a copy of the complaint to the defendant personally; or

(2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. . . .

Defendant argues that the PPO should nevertheless be dismissed because it was granted after respondent announced to the trial court that he had tried but been unable to retain counsel. A party to a civil case is generally not entitled to appointed counsel. See *Sword v Sword*, 399 Mich 367, 379-384; 249 NW2d 88 (1976), overruled on other gds *Mead v Batchlor*, 435 Mich 480 (1990). Respondent, however, had the right to representation by legal counsel. *Rocky Produce, Inc v Frontera*, 181 Mich App 516, 517; 449 NW2d 916 (1989), citing Const 1963, art 1, § 13. MCR 2.117(B)(1) allows an attorney to perform acts required by a party whom the attorney is representing. However, a party's failure to retain counsel does not necessarily require an adjournment. See, e.g., *Wykoff v Winisky*, 9 Mich App 662, 668-669; 158 NW2d 55 (1968) ("The right to representation by counsel contemplates the allowance of a reasonable opportunity to obtain counsel.") Here, the record reflects that respondent had a reasonable opportunity to obtain counsel and had not found counsel. He was not entitled to an adjournment, much less was he entitled to dismissal.

While respondent could have sought an adjournment to continue his search for counsel, such a motion "must be based on good cause," and then "a court, in its discretion, may grant an adjournment to promote the cause of justice." *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991), citing MCR 2.503; *In re Krueger Estate*, 176 Mich App 241, 247; 438 NW2d 898 (1989). The trial court's ruling that it would provide respondent a hearing to argue for termination of the PPO gave respondent additional opportunity to retain counsel and present a fully informed challenge to the petition without meaningfully altering the parties' respective burdens. See *Hayford*, 279 Mich App at 326. Therefore, the trial court's decision to issue the PPO was not an abuse of discretion.

Affirmed.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Cynthia Diane Stephens