

DA 17-0728

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 178N

IN RE THE MARRIAGE OF:

CHAD STONE,

Petitioner and Appellant,

v.

LINDSEY STONE,

Respondent and Appellee.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DR-15-117
Honorable Brenda Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Jami L. Rebsom, Jami Rebsom Law Office, P.L.L.C.,
Livingston, Montana

For Appellee:

Karl Knuchel, Karl Knuchel, P.C., Livingston, Montana

Submitted on Briefs: May 2, 2018

Decided: July 17, 2018

Filed:



Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Chad Stone (Chad) appeals from a November 15, 2017 District Court order granting Lindsey Stone's (Lindsey) motion for an order of protection. We affirm.

¶3 The record shows that Chad and Lindsey were divorced in June 2017 and share one minor child. In January 2016, due to the contentious divorce proceedings, the parties filed a stipulated civil no contact order. The order restricted the parties from communicating, except regarding their child. All communication was required to be written texts or emails and "strictly limited to matters concerning parenting." In addition to distributing the marital assets, the order dissolving their marriage continued the civil no contact order indefinitely.¹ On July 12, 2017, Lindsey filed a motion for contempt asserting Chad failed to make the court ordered distribution of marital assets. Specifically, that Chad had destroyed items including her gun, purchased garage sale items in lieu of giving her marital property, and had written "liar," "pig," "disgusting," on their wedding photo.

¹ Chad appealed the District Court's findings of fact, conclusions of law, and divorce decree. That appeal was subject to mediation, was settled, and the appeal dismissed. The issues on appeal in the instant case were not subject to mediation.

¶4 On October 24, 2017, Lindsey filed a sworn petition for temporary order of protection asserting she was in danger of physical harm from Chad. Specifically, Chad had been violent during their marriage, once flipping over a table during an argument, and once broke the back window of her vehicle scattering shards of broken glass on their infant child who was in the car. Chad had violated the stipulated civil no contact order by texting Lindsey not regarding their child. Lindsey further alleged Chad had texted a mutual friend stating that he was going to kill Lindsey, that he was going to make the rest of her life a financial struggle, and that she would regret she ever messed with him. The petition stated Chad was in possession of firearms. The District Court issued a temporary restraining order on October 26, 2017.

¶5 On November 13, 2017, the District Court held a hearing on both requests. Lindsey and Chad were present with counsel. Lindsey testified that Chad did not cooperate with the distribution of marital assets, and violated the no contact order by texting her about reconciliation, threatened her on a dating website, and told her that she would never see a penny from him. Lindsey testified that Chad had a history of being violent and verbally abusive toward her. Lindsey testified that she was afraid for her life, that Chad was violent and aggressive, and was disregarding the court orders.

¶6 Chuck Tanner, a friend and employer, testified on behalf of Chad. Tanner testified that Chad worked for him a few days a week chopping wood, and that Tanner had accidentally run over Lindsey's gun. Caroline Ryan, whose nephew was employed by Chad, testified on his behalf. She testified that she and Chad had been in almost daily

communication for the past year, and she never found him to be violent or threatening. She stated she didn't have anything bad to say about Chad.

¶7 Chad testified that he did not have and did not destroy any of the marital or personal property designated for Lindsey. During direct examination, Chad testified he was upset, beyond belief, that the divorce decree required he give Lindsey the sewing machine. Chad testified that he never physically threatened Lindsey in person, through text or messaging, and that Lindsey did not need an order of protection from him. During cross-examination, Chad was asked about text messages he sent to a friend, Simone Sampson, stating he was going to kill Lindsey, and the sexual assault allegations he made against Simone. After objections to the text message questions were overruled, Chad became aggressive. Chad disregarded Lindsey's attorney's questions, the court's direction to answer the question, and called Lindsey's attorney depraved and a "prick." When asked about the text messages again Chad admitted to texting Simone, but asserted that Simone had "mirrored" his phone and was contacting people, reproducing text messages, and using his words out of context. Chad denied texting Simone that he was going to kill Lindsey. When asked if he sent the message stating he was going to make Lindsey's life miserable and cost her financially, Chad stated that he didn't know if he wrote the message. He refused to directly answer questions about the marital property that he failed to distribute to Lindsey, even when prodded by the District Court.

¶8 On redirect, Chad testified that he missed Lindsey and he wanted to restore their family and stop living under the lie that he is abusive. He continued to be disruptive, and the District Court asked Chad if he would like to leave the courtroom. Chad said no, but

attempted to defend himself, so the District Court told him to leave. Chad apologized, but the District Court was unmoved and demanded Chad take his stuff and leave as she would not tolerate his conduct.² Chad's attorney made a closing statement indicating that she was unable to call Chad's last witness, that she was surprised the temporary protection order was issued, that Chad would not be able to keep the gun he used to hunt for sustenance if a protection order was issued, and that there is no evidence indicating that Lindsey should have a permanent order of protection. Lindsey's attorney concluded by stating that Chad was obviously very dangerous with a temper he cannot control and very emotional about Lindsey.

¶9 Following the hearing, the District Court issued an order of contempt, awarded attorney fees to Lindsey, and took the order of protection under advisement. On November 14, 2017 (amended on November 15, 2017), the District Court issued a three-year order of protection. The order restricted communication between Chad and Lindsey to only matters concerning their child. Chad was ordered not to harass or disturb Lindsey, to stay 1500 feet away from Lindsey at all times, and was prohibited from owning or possessing any firearms or ammunition. Chad appeals.

¶10 The decision to continue, amend or make permanent an order of protection is for the district court to determine, and we will not overturn its decision absent an abuse of discretion. *Keller v. Trull*, 2007 MT 108, ¶ 7, 337 Mont. 188, 158 P.3d 439 (citing *Bock v. Smith*, 2005 MT 40, ¶ 29, 326 Mont. 123, 107 P.3d 488). A district court abuses its

² For the record, the District Court stated that Chad was removed from the courtroom with five minutes left in the hearing for making defamatory remarks towards Lindsey's counsel.

discretion when it acts arbitrarily without the employment of conscientious judgment, or exceeds the bounds of reason resulting in substantial injustice. *State v. Sage*, 2010 MT 156, ¶ 21, 357 Mont. 99, 235 P.3d 1284.

¶11 Chad asserts he was denied the ability to be fully heard at the order of protection hearing because he was removed from the courtroom and his final witness was not allowed to testify. Due process requires the opportunity to be heard “at a meaningful time and in a meaningful manner.” *In re Marriage of Stevens*, 2011 MT 124, ¶ 18, 360 Mont. 494, 255 P.3d 154.

¶12 The District Court conducted a hearing before issuing the permanent order of protection, as required by § 40-15-202(1), MCA. Chad was present with counsel, two witnesses testified on his behalf, and Chad was examined, cross-examined, and allowed redirect testimony prior to being removed from the courtroom. The District Court removed Chad with five minutes remaining in the hearing. Chad was removed because he continued to make derogatory and defamatory remarks regarding Lindsey’s counsel. Chad was given the opportunity to be heard. The District Court did not act arbitrarily or exceed the bounds of reason. The District Court did not abuse its discretion by excluding him.

¶13 Chad also asserts that Lindsey failed to provide evidence of Chad’s threatening or abusive communication since the dissolution decree in June 2017. Upon a showing of good cause, a district court may continue, amend, or make permanent a temporary order of protection. Section 40-15-202(1), MCA. Under Montana law, if a person is otherwise

entitled to an order of protection the length of time between an abusive incident and an application for an order of protection is irrelevant. Section 40-15-102(6), MCA.

¶14 The District Court determined, based on the evidence presented at the hearing, that good cause existed to modify the temporary order of protection and issue a permanent order of protection. The record shows Chad violated the civil no contact order in the divorce decree, attempted to contact Lindsey through numerous means, was violent in the past toward Lindsey, acted aggressively at the hearing, and had to be removed from the courtroom. The District Court did not act arbitrarily or exceed the bounds of reason. The District Court did not abuse its discretion.

¶15 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the District Court's ruling was not an abuse of discretion.

¶16 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ INGRID GUSTAFSON