

FILED: September 24, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

L. M. M.,
Petitioner-Respondent,

v.

PATRICK MICHAEL TANNER,
Respondent-Appellant.

Multnomah County Circuit Court
110506910

A149428

Jerry B. Hodson, Judge.

Submitted on August 21, 2014.

Kelly M. Doyle filed the brief for appellant.

No appearance for respondent.

Before Duncan, Presiding Judge, and Wollheim, Judge, and Lagesen, Judge.

PER CURIAM

Reversed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Appellant

- No costs allowed.
 Costs allowed, payable by Respondent.
 Costs allowed, to abide the outcome on remand, payable by
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1 PER CURIAM

2 In the trial court, petitioner obtained a stalking protective order (SPO)
3 against respondent pursuant to ORS 30.866. Respondent appeals, asserting that petitioner
4 failed to carry her burden of presenting sufficient evidence to prove that the statutory
5 prerequisites for an SPO were met. We agree and reverse.

6 Under ORS 30.866, a court may issue an SPO against a person if (1) the
7 person "intentionally, knowingly or recklessly engages in repeated and unwanted contact
8 with [another] person or a member of that person's immediate family or household
9 thereby alarming or coercing the other person," (2) the other person's alarm or coercion
10 was objectively reasonable, and (3) the unwanted contacts caused the other person
11 "reasonable apprehension regarding the personal safety of [the other person] or a member
12 of the [other person's] immediate family or household." ORS 30.866(1).

13 "In the case of an alleged speech-based contact, Article I, section 8, of the
14 Oregon Constitution requires the petitioner to prove that the contact constitutes a threat--
15 that is, 'a communication that instills in the addressee a fear of imminent and serious
16 personal violence from the speaker, is unequivocal, and is objectively likely to be
17 followed by unlawful acts.'" *Langord v. Langford*, 262 Or App 409, 412, 324 P3d 623
18 (2014) (quoting *State v. Rangel*, 328 Or 294, 303, 977 P2d 379 (1999)). The threat must
19 be "so unambiguous, unequivocal, and specific to the addressee that it convincingly
20 expresses *to the addressee* the intention that it will be carried out * * * and that the actor
21 has the ability to do so." *Rangel*, 328 Or at 306 (emphasis in original). Threats do not
22 include "the kind of hyperbole, rhetorical excesses, and impotent expressions of anger or

1 frustration that in some contexts can be privileged even if they alarm the addressee." *Id.*
2 at 303 (quoting *State v. Moyle*, 299 Or 691, 705, 705 P2d 740 (1985)).

3 A detailed discussion of the facts of this case would not benefit the bench,
4 bar, or public. Suffice it to say that petitioner and respondent are neighbors and, at the
5 hearing on her SPO petition, petitioner presented evidence of statements respondent
6 made, and actions he took, on and after the day she had a tree house built on her property.
7 All but one of respondent's actions involved speech, and none of the speech constituted
8 threats of the kind required under *Rangel*. Therefore, the record contains, at most, one
9 qualifying contact. Because two or more qualifying contacts are required, the trial court
10 erred in entering the SPO against respondent.

11 Reversed.