

STATE OF MICHIGAN
COURT OF APPEALS

RUDOLPH ANTHONY SERRA and THOMAS
COLLINS as Next Friend of RACHEL COLLINS
and THOMAS COLLINS, and DONNA COLLINS
and RACHEL COLLINS, individually,

UNPUBLISHED
August 23, 1996

Plaintiffs-Appellants,

v

No. 174499
LC No. 94-403282 CZ

WALLY S. MAHAR,

Defendant-Appellee.

Before: Reilly, P.J., and Cavanagh, and R.C. Anderson,* JJ.

PER CURIAM.

Plaintiffs appeal as of right a circuit court order dismissing their complaint and request for injunctive relief “pursuant to MCL 750.411, MCL 600.2950a ‘Stalking.’”. We reverse and remand for further proceedings before a different judge.

On February 24, 1994, plaintiffs Serra and Thomas Collins, but not defendant appeared for a status conference. The court asked Serra to present facts justifying the imposition of a stalking injunction. Serra referred to letters that defendant sent to the Collins family in violation of a restraining order. The court stated, “So what. What’s a letter going to do to you in this life? Don’t open it. Throw it away.” The court pressed Serra for further facts justifying defendant’s arrest. Thereafter, the following exchange occurred on the record:

THE COURT: (Interposing) Excuse me. Anything else that would justify having this man arrested, sir? Besides a couple of letters to your client.

MR. SERRA: A couple of letters, your Honor? Those boxes there are full of letters –

* Circuit judge, sitting on the Court of Appeals by assignment.

THE COURT: (Interposing) Counselor.

MR. SERRA: -- has read the letters?

THE COURT: It's not just full [of] letters, he's in pro per, they'll be plenty of communication.

MR. SERRA: (Interposing) Has the court --

THE COURT: -- because there are federal cases pending, circuit court cases pending, and district court case pending's [sic]. He--

MR. SERRA: (Interposing) Has the Court read any of the letters, your Honor?

THE COURT: I will give you one more chance. There will be communication when someone is in pro per.

MR. SERRA: Not with my clients, your Honor.

THE COURT: Oh really?

MR. SERRA: With me.

THE COURT: I'm dissolving any injunctions and dismissing this lawsuit. Good day.

The order of dismissal does not explain the basis of the court's ruling.

Under the anti-stalking law, an individual may petition the circuit court to enter an injunctive order, e.g. "a personal protection order", to restrain or enjoin an individual from engaging in conduct that is prohibited under the penal statutes prohibiting stalking, MCL 750.411h and 750.411i; MSA 28.643(8) and 28.643(9). MCL 600.2950a(1); MSA 27A.2950(1)(1). The definition of stalking requires "repeated or continued harassment" MCL 750.411h(1)(d); MSA 28.643(8)(1)(d). The definition of harassment includes "repeated or continuing unconsented contact" MCL 750.411h(1)(c); MSA 28.643(8)(1)(c). Sending mail is specifically identified as an included form of unconsented contact. MCL 750.411h(1)(e)(vi); MSA 28.643(8)(1)(e)(iv).

The grant or denial of an injunction is committed to the sound discretion of the circuit court. *Dafter Township v Reid*, 159 Mich App 149, 163; 406 NW2d 255 (1987). However, in this case, the court denied the injunction and dismissed the case on its own motion without an evidentiary hearing and without an explanation of its ruling. The court's summary dismissal of the case was an abuse of discretion.¹ The order of dismissal is reversed.

In light of the fact that Serra filed a grievance against the judge and the Judicial Tenure Commission issued an admonitory letter, we remand this case for further proceedings before a different judge.

Reversed and remanded for further proceedings before a different judge. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly

/s/ Mark J. Cavanagh

/s/ Robert C. Anderson

¹ We note that 1994 PA 404, effective April 1, 1995, amended MCL 600.2950a; MSA 27A.2950(1) and requires a court that refuses to grant a personal protection order to state in writing its reasons for its refusal.