

STATE OF MICHIGAN
COURT OF APPEALS

GWENDOLYN THOMAS

Plaintiff-Appellant,

v

AZZIEM SHAH,

Defendant-Appellee.

UNPUBLISHED
February 18, 1997

No. 187582
LC No. 94-426585 DZ

Before: Cavanagh, P.J., and Gage and D.A. Burrell,* JJ.

PER CURIAM.

In this domestic relations action, plaintiff appeals as of right the trial court's order vacating the permanent injunction issued against defendant pursuant to MCL 600.2950; 27A.2950 and MCL 600.2950a; MSA 27A.2950(1). We affirm.

Pursuant to MCL 600.2950; MSA 27A.2950, an individual may petition the trial court to enter an order restraining or enjoining a former spouse from engaging in an act of domestic violence. At the time this case was decided, the trial court was authorized to issue an order prohibiting the defendant from (1) entering onto premises; (2) assaulting, beating, molesting, or wounding the petitioner; (3) threatening to kill or physically injure the petitioner; (4) removing minor children from the individual having legal custody; and (5) possessing a firearm. See MCL 600.2950(1); MSA 27A.2950(1).¹

Under Michigan's anti-stalking law, an individual may petition the trial court to enter an order restraining or enjoining a defendant from engaging in conduct that is prohibited under MCL 750.411h; MSA 28.643(8) and MCL 750.411i; MSA 28.643(9). MCL 600.2950a(1); MSA 27A.2950(1)(1). Stalking occurs where the defendant engages in a willful course of conduct involving repeated or continuing harassment which would cause a reasonable person to feel terrorized, threatened, or harassed, and would cause a reasonable person in the victim's situation to suffer emotional distress. MCL 750.411h(1)(d); MSA 28.643(8)(1)(d), MCL 750.411i(1)(e); MSA 28.643(9)(1)(e).

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

The anti-stalking law defines harassment in part as “repeated or continuing unconsented contact.” MCL 411h(1)(d); MSA 28.643(8)(1)(d), MCL 411i(1)(c); MSA 28.643(9)(1)(c). Unconsented contact includes, but is not limited to, the following: (1) following or appearing within the sight of the victim; (2) approaching or confronting the victim in a public place or on private property; (3) appearing at the workplace or residence of that individual; (4) entering onto or remaining on property owned, leased, or occupied by that individual; (5) contacting that individual by telephone; (6) sending mail or electronic communications to that individual; or (7) placing an object on, or delivering an object to, property owned, leased, or occupied by the victim. MCL 411h(1)(e); MSA 28.643(8)(1)(e), MCL 411i(1)(f); MSA 28.643(9)(1)(f).

On appeal, plaintiff contends that the trial court failed to properly consider and evaluate the evidence in vacating the injunction. First, plaintiff argues that an injunction was warranted based on the fact that defendant made harassing telephone calls to her residence. We disagree. Although the trial judge “suspected” that defendant was making the harassing calls, the court was not satisfied with the evidence presented at the hearing and wanted independent verification that defendant was the caller. Absent such evidence, the court held that an injunction would be based on mere speculation. Given the fact that the trial court did not find plaintiff to be a credible witness, it was not improper for the trial court to have denied plaintiff an injunction on this basis.

Next, plaintiff argues that an injunction was warranted based on the fact that defendant made derogatory comments to her friends and family. The trial court held that the testimony of Horace Sheffield III and Carlston Jackson would not support the issuance of an injunction because the incidents did not involve any direct contact with plaintiff. We agree. Under the anti-stalking law, harassment is defined as “conduct *directed toward a victim.*” MCL 411h(1)(c); MSA 28.643(8)(1)(c), MCL 411i(1)(d); MSA 28.643(9)(1)(d) (emphasis added). The statute defines victim as the “target” of the harassment. MCL 411h(1)(f); MSA 28.643(8)(1)(f), MCL 411i(1)(g); MSA 28.643(9)(1)(g). Because there was no evidence indicating that plaintiff, the target of the harassment, was present when defendant made the defamatory remarks to Sheffield and Jackson, defendant did not engage in conduct which would support the issuance of an injunction. For the same reason, an injunction was not warranted based on statements allegedly made to members of plaintiff’s family.

Plaintiff argues that she was entitled to an injunction because defendant used their child for purposes of harassment. In particular, plaintiff cites an incident in which defendant allegedly threatened to take the child to Chicago in contravention of the custody agreement between the parties. Plaintiff went to the police station and filed a report concerning defendant’s failure to bring the child home. Plaintiff alleges that defendant followed her home and got into an argument with her in the driveway of her mother’s house. On appeal, plaintiff contends that this incident establishes that defendant engaged in stalking and harassment. We disagree.

In granting defendant’s motion to vacate the injunction, the trial court held that plaintiff’s testimony with regard to this incident was not credible. The court believed that plaintiff lied about the Chicago threat and filed a police report in order to harass defendant. The trial court made this determination after listening to the testimony and judging the demeanor of the parties. There is nothing in

the record which would suggest that the court's finding was implausible in light of the record reviewed in its entirety. *Beason v Beason*, 435 Mich 791, 803, 805; 460 NW2d 207 (1990). Accordingly, reversal is not warranted on this basis.

Next, plaintiff contends that she was entitled to an injunction based on the fact that defendant attempted to register plaintiff's business in his own name. In support of this contention, plaintiff relies on MCL 600.2950(1)(g); MSA 27A.2950(1), which authorizes the trial court to issue an injunction prohibiting the defendant from interfering with the petitioner at her place of employment or engaging in conduct that "impairs petitioner's employment relationship or environment. That provision was added to § 2950 pursuant to 1994 PA 402, which did not become effective until after this case was decided. In her brief on appeal, plaintiff did not address the issue of whether MCL 600.2950(1)(g); MSA 27A.2950(1)(g) should be given retroactive effect.

However, we conclude that even if the statute does apply retroactively, plaintiff's argument is without merit. MCL 600.2950(1)(g); MSA 27A.2950(1)(g) was not intended to prevent the harm which allegedly occurred in the instant case. See House Legislative Analysis, HB 5804, 5805, January 4, 1995 (stating that the amendment was intended to prevent "disruptions in the workplace," including harassment, threats and violence). In the present case, plaintiff does not allege that defendant did anything to hinder her "employment relationship or environment." Rather, defendant simply took advantage of the fact that plaintiff's registration expired. Nor does this incident warrant an injunction under the anti-stalking law. To constitute stalking, an individual must engage in a pattern of conduct composed of a series of two or more separate, noncontinuous acts evidencing a community of purpose. MCL 411h(1)(a); MSA 28.643(8)(1)(a), MCL 411i(1)(a); MSA 28.643(8)(1)(a). There is nothing else in the record which would suggest that defendant interfered with plaintiff's business.

Finally, the trial court did not improperly consider evidence of the mutual injunction previously issued against the parties. At the conclusion of the evidentiary hearing, the trial court indicated that it would grant a mutual injunction. The court expressed its belief that both plaintiff and defendant were at fault for the breakdown in their relationship. In so holding, the court referred to the 1991 injunction and indicated that a mutual injunction appeared to be the best way to keep the tension between plaintiff and defendant from escalating. However, the court abruptly changed its mind and decided against the issuance of a mutual injunction. The court held that neither party was entitled to an injunction in light of the evidence presented at the hearing. Thus, reversal is not warranted on this basis.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burress

¹ The statute was amended by 1994 PA 402.