

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MARY HOWARD STOLBERG,

Plaintiff-Appellee,

v

DOREEN CARTER,

Defendant-Appellant.

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UNPUBLISHED

October 3, 2000

No. 212370

Oakland Circuit Court

Family Division

LC No. 98-605988

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Defendant appeals as of right from the family court's order denying her motion to rescind a personal protection order (PPO). We vacate the family court's order and remand for reconsideration in accordance with this opinion. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a petition pursuant to MCL 600.2950a; MSA 27A.2950(1) seeking a non-domestic PPO against defendant. Plaintiff alleged that defendant entered the mall where her business was located, and impaired her business by telling other proprietors both lies about her personal life and that she was closing her business. The family court issued an ex-parte PPO prohibiting defendant from contacting plaintiff in any way or from communicating with plaintiff's customers or adjoining business owners.

Defendant moved to rescind the PPO. At the hearing, plaintiff testified that defendant frightened her by monitoring her activities at the store, and that defendant's remarks to other business owners hampered her ability to obtain long-term projects. Plaintiff's daughter testified that she had been told by other business owners that defendant was spreading rumors about her mother. Defendant denied that she engaged in the activity of which plaintiff complained. The family court denied defendant's motion to rescind the PPO.

A PPO is an injunctive order which precludes a person from engaging in specified conduct. MCL 600.2950a(1); MSA 27A.2950(1)(1); MCR 3.706(A)(1). We review de novo a lower court's

decision to grant equitable relief. *Webb v Smith (After Second Remand)*, 224 Mich App 203, 210; 568 NW2d 378 (1997).

We vacate the family court's order denying defendant's motion to rescind the PPO, and remand for reconsideration in light of *Staley v Jones*, \_\_\_ F Supp 2d \_\_\_: 2000 WL 1013970 (WD Mich, July 14, 2000). In that case, the court held that MCL 750.411i; MSA 28.643(9) is unconstitutionally overbroad in that it potentially criminalizes a substantial amount of conduct protected by the First Amendment. Here, defendant argued that the conduct of which plaintiff complained, if it occurred, was constitutionally protected. While defendant did not face criminal prosecution under MCL 750.411h; MSA 28.643(8) or MCL 750.411i; MSA 28.643(9), conduct prohibited under those sections serves as the basis for a PPO. MCL 600.2950a(1); MSA 27A.2950(1)(1). Based on the decision in *Staley*, *supra*, we vacate the family court's decision and remand for reconsideration of defendant's motion to rescind the PPO.

Vacated and remanded. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ David H. Sawyer

/s/ Helene N. White