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STATE OF MICHIGAN

COURT OF APPEALS

ASHLEY WORKMAN,

Petitioner-Appellee,

v

AARON BRENT,

Respondent-Appellant.

UNPUBLISHED
November 13, 2018

No. 330325
Wayne Circuit Court
LC No. 15-112517-PP

ON REMAND

Before: MURRAY, C.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

This appeal arises from an order denying respondent's motion to terminate a personal protection order (PPO) issued against him at the request of petitioner, who is his former-girlfriend. We affirm.

In our prior opinion, we summarized the underlying procedural facts as follows:

> [P]etitioner requested an ex parte PPO on October 23, 2015, and the trial court signed the order into effect on the same day. Respondent filed a motion in the trial court to terminate the PPO. However, following a hearing, the trial court denied respondent's request to terminate the PPO and ordered that it would continue in effect until the expiration date on the PPO. By its plain terms, the PPO was scheduled to remain in effect until October 23, 2016. [*Workman v Brent*, unpublished per curiam opinion of the Court of Appeals, issued April 20, 2017 (Docket No. 330325), p 1, vacated and remanded ___ Mich ___ (2018) (Docket No. 156078).]

Because the PPO had expired, the Court dismissed respondent's appeal as moot. *Workman*, unpub op at 1. We came to this conclusion because the PPO expired on October 23, 2016, there was nothing in the trial court record to indicate that the PPO was extended beyond that date, and respondent did not suggest on appeal that the PPO had been extended. As a result, respondent's various challenges to the PPO were moot because a decision on the issues related to the expired PPO could have no practical effect on an existing controversy. *Id.* at 1-2.

With respect to respondent's argument that his appeal should not be deemed moot because he would face collateral consequences if his challenges to the expired PPO were not considered,[1] we concluded that respondent offered "only generalized conjectures about possible future harm" and that respondent's claims were unsubstantiated. *Id.* Because respondent failed to adequately demonstrate the existence of collateral consequences following the expiration of the PPO, the appeal was dismissed as moot, *id.*, and respondent's motion for reconsideration was denied. *Workman v Brent*, unpublished order of the Court of Appeals, entered May 30, 2017 (Docket No. 330325).

On July 7, 2017, respondent filed an application for leave to appeal to the Michigan Supreme Court. On September 12, 2018, our Supreme Court vacated the judgment of this Court and remanded to this Court for reconsideration in light of *TM v MZ*, 501 Mich 312; 916 NW2d 473 (2018). *Workman v Brent*, ___ Mich ___; ___ NW2d ___ (2018) (Docket No. 156078).

On remand, the question is whether the Supreme Court's decision in *TM* affects our prior decision concluding that respondent's appeal was moot. In *TM*, 501 Mich at 314, the Supreme Court held that the expiration of a PPO does not alone render an appeal taken from the entry of the PPO moot. *TM* involved an appeal of an order denying the respondent's motion to terminate a PPO. *Id.* at 314-315. As in this case, this Court held that the expiration of the PPO rendered the case moot. *Id.* at 315. Our Supreme Court concluded, however, "that identifying an improperly issued PPO as rescinded is a live controversy and thus not moot." *Id.* at 319. The Court explained that an appellate judgment could have a "practical legal effect" because if the Court concluded that the trial court should never have issued the PPO, then the respondent would be entitled to have that dismissal reflected in the Law Enforcement Information Network (LEIN). *Id.* (quotation marks and citation omitted).[2] The Court stated that "an appeal challenging a PPO, with an eye toward determining whether a PPO should be updated in LEIN as rescinded, need not fall within an exception to the mootness doctrine to warrant appellate review; instead, such a dispute is simply not moot." *Id.* at 319-320. The Court did not consider the extent of relief possible, noting that the respondent's counsel had conceded that the only available relief was a notation in LEIN that the PPO had been rescinded, which was enough to avoid concluding that the case was moot. *Id.* at 320 n 11.

Under *TM*, 501 Mich at 314, the expiration of the PPO in this case did not alone render respondent's appeal moot. Respondent raised several arguments regarding the issuance of the PPO, and if this Court were to conclude that the trial court should have never issued the PPO, then respondent would be entitled to have that reflected in LEIN. *Id.* at 319. In his brief on appeal originally filed with this Court, respondent specifically argued that, even after the

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[1] Respondent claimed that he would still be listed on the Law Enforcement Information Network (LEIN), which could affect unnamed "job opportunities" and unspecified "child custody, visitation, parentage, and child support issues." *Id.* Respondent further argued that his Second Amendment right to bear arms would not be "automatically reinstated" after the PPO expires. *Id.*

[2] The Court noted that, given that conclusion, it need not decide "whether the PPO's existence in LEIN is *itself* a present collateral consequence." *TM*, 501 Mich at 319 n 10.

expiration of the PPO, he would still be listed on LEIN. *Workman*, unpub op at 2. Therefore, respondent's appeal challenging the PPO, which had "an eye toward determining whether [the] PPO should be updated in LEIN as rescinded," was not moot. *TM*, 501 Mich at 319-320. As in *TM*, that respondent may be entitled to a notation in LEIN that the PPO has been rescinded is enough to avoid concluding that the case is moot. *Id.* at 320 n 11. Nonetheless, as detailed below, some of the particular issues raised by respondent are moot because it is impossible for this Court to grant relief for the alleged violations. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).

Because respondent's appeal is not moot, we turn to the merits of respondent's various challenges to the PPO. In his brief on appeal, respondent argues that: (1) the PPO was not issued in accordance with the law, (2) the trial court abused its discretion and clearly erred by continuing the PPO without sufficient evidentiary support, (3) the PPO violated MCL 600.2950(5), (4) the PPO violated the Second Amendment, (5) the standard of proof used to enter and continue a PPO is unconstitutional, and (6) respondent was denied a meaningful opportunity to be heard.

On appeal, respondent first contends that the trial court erred when it entered the ex parte PPO that enjoined him, and that it erred when it denied his motion to terminate the PPO. We disagree.

"Generally, an issue must have been raised before, and addressed and decided by, the trial court to be preserved for appellate review." *King v Oakland Co Prosecutor*, 303 Mich App 222, 239; 842 NW2d 403 (2013), citing *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005). Respondent contends that he preserved this issue by filing his motion to terminate the PPO, and again when he informed the trial court that a "no contact" order was in place during the motion hearing. However, during the motion hearing, respondent only disputed petitioner's testimony, and he did not raise any of the following arguments: (1) that there were defects in the petition, (2) that the trial court did not comply with MCR 3.703, (3) that petitioner failed to demonstrate that an irreparable injury would occur absent the entry of the PPO, (4) that it was improbable that he would commit similar acts against petitioner in the future because their relationship had terminated, and (5) that the PPO was unnecessary because petitioner failed to appear at the related criminal proceeding brought against him by the 36th District Court. Because petitioner did not raise these arguments, the trial court did not address or decide these arguments, and they have not been preserved.

Generally, this Court will review "for an abuse of discretion a trial court's determination whether to issue a PPO because it is an injunctive order." *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008), citing *Pickering v Pickering*, 253 Mich App 694, 700-701; 659 NW2d 649 (2002), and MCL 600.2950(30)(c). " 'An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made.' " *Pickering*, 253 Mich App at 700-701, quoting *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999). Additionally, this Court will "review a trial court's findings of fact for clear error." *Hayford*, 279 Mich at 325, citing *Sweebe v Sweebe*, 474 Mich 151, 154; 712 NW2d 708 (2006). "Unpreserved issues, however, are reviewed for plain error affecting substantial rights." *Nat'l Wildlife Federation v Dep't of Environmental Quality (No 2)*, 306 Mich App 369, 373; 856 NW2d 394 (2014), citing *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838

(2000). " 'To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights.' " *Kern*, 240 Mich App at 336, quoting *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). A party's demonstration that their substantial rights have been affected "generally requires a showing of prejudice[.]" *Carines*, 460 Mich at 763. A showing of prejudice requires "that the error affected the outcome of the lower court proceedings." *Id.*

MCL 600.2950(4) provides:

> (4) The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1). In determining whether reasonable cause exists, the court shall consider all of the following:
>
> (a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.
>
> (b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).

MCL 600.2950(1) lists a number of acts, which include "[a]ssaulting, attacking, beating, molesting, or wounding a named individual," MCL 600.2950(1)(b), and "[a]ny other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence," MCL 600.2950(1)(k). "[A] petitioner bears the burden of proof when seeking to obtain an ex parte PPO." *Pickering*, 253 Mich App at 697, citing *Kampf v Kampf*, 237 Mich App 377, 385; 603 NW2d 295 (1999). See, also, MCL 600.2950(12).

In her petition, petitioner alleged that respondent "smacked" her during an argument, that on the following day respondent tried to remove her from their apartment, and that respondent grabbed her by her throat, suffocated her, and threw her on the ground. Under MCL 600.2950(4)(a), the trial court must consider all testimony, documents, and other evidence offered in support of a request for a PPO. The petition contained a sworn statement and was clearly evidence offered in support of petitioner's request for a PPO. Therefore, the trial court did not abuse its discretion when it entered the PPO, because concluding that petitioner was at risk of harm from respondent if a PPO was not entered was within the range of principled outcomes due to respondent's previous acts towards petitioner.

Respondent contends that the trial court erred when it entered the PPO because it did not comply with MCR 3.703(D)(1)(b). MCR 3.703(D)(1)(b) provides, in pertinent part:

> **(D) Other Pending Actions; Order, Judgments.**
>
> (1) The petition must specify whether there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and the case number, if known.

* * *

> (b) If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court should contact the court where the pending actions were filed or orders or judgments were entered, if practicable, to determine any relevant information.

Respondent specifically contends that the trial court failed to contact the 36th District Court (petitioner alleged that there was a related criminal proceeding involving the parties in that court), and had it done so, it would have discovered that a "no contact" order had already been entered that prevented respondent from contacting petitioner, presumably rendering the entry of a PPO unnecessary. Respondent's contention is meritless. First, respondent relies on mere speculation that the trial court failed to contact the 36th District Court, as he has failed to identify any portion of the record that demonstrates that the trial court did not comply with MCR 3.703(D)(1)(b). Second, respondent's contention that the PPO was not necessary due to the existence of a "no contact" order entered by the 36th District Court misses the mark as MCL 600.2950 does not prevent a court from entering a PPO if there exists a separate "no contact" order. Further, the entry of the PPO was a separate matter entirely, and provided petitioner with an avenue for relief from respondent unrelated to the criminal proceeding brought in the 36th District Court.

Under MCL 600.2950(11)(g), a respondent may file a motion to modify or rescind an ex parte PPO "within 14 days after the individual restrained or enjoined has been served or has received actual notice of the order . . . ." A petitioner has the burden "of establishing a justification for the continuance of a PPO at a hearing on the respondent's motion to terminate the PPO[.]" *Hayford*, 279 Mich App at 326, citing *Pickering*, 253 Mich App at 699, and MCR 3.310(B)(5). Additionally, "an appellate court may not weigh the evidence or the credibility of witnesses." *Brandt v Brandt*, 250 Mich App 68, 74; 645 NW2d 327 (2002); see also MCR 2.613(C).

During the motion hearing, petitioner testified that respondent slapped her while in their apartment, and that on the next day, respondent "put his hands on [her] throat and threw [her] out" of their apartment. The trial court also considered the corresponding allegations contained in the petition. Thus, petitioner presented evidence that respondent had committed acts under MCL 600.2950(1)(b) and (k). Therefore, respondent's contention that petitioner's testimony and her allegations in the petition were insufficient to support a determination that there was reasonable cause to believe that respondent would commit one or more of the acts listed under MCL 600.2950(1), fails. The trial court had reasonable cause to believe that respondent would commit similar acts against petitioner in the future, and therefore, its order denying respondent's motion to terminate was within the range of principled outcomes.

Respondent contends that the PPO should have been terminated because any risk that respondent would commit similar acts against petitioner was mitigated by the fact that the dating relationship between petitioner and respondent had ended. MCL 600.2950(1) makes plain that a petitioner can obtain a domestic relations PPO against "an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner . . . ." Here,

petitioner and respondent have children in common, resided in the same household, and they had a dating relationship that had ended. Therefore, the termination of respondent's dating relationship with petitioner is not dispositive.[3]

Respondent contends that the trial court erred when it enjoined him from entering the apartment that he had shared with petitioner, and when it did not require petitioner to give security prior to the entry of the PPO.

As discussed above, only issues that have been raised before, addressed, and decided by the trial court are preserved. *King*, 303 Mich App at 239. Respondent contends that he preserved this issue by filing his motion to terminate the PPO, in which he stated that petitioner did "not have a valid property intrest [sic] in" their apartment, and again during the motion hearing when he testified that petitioner did not pay rent for the apartment. Respondent did not raise any argument concerning the application of MCR 3.310(D) in his motion or during the hearing. Therefore, only respondent's argument regarding petitioner's lack of a property interest in the apartment is preserved.

Generally, this Court will review "for an abuse of discretion a trial court's determination whether to issue a PPO because it is an injunctive order." *Hayford*, 279 Mich App at 325, citing MCL 600.2950(30)(c). Additionally, this Court will "review a trial court's findings of fact for clear error." *Hayford*, 279 Mich App at 325. "Unpreserved issues, however, are reviewed for plain error affecting substantial rights." *Nat'l Wildlife Federation*, 306 Mich App at 373.

The trial court did not err when it enjoined respondent from entering the apartment that he had shared with petitioner, or when it did not require petitioner to give security prior to the entry of the PPO.[4] MCL 600.2950(5) provides:

> (5) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1)(a) if all of the following apply:

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[3] Relatedly, respondent contends that the PPO was improperly continued because petitioner failed to pursue other available adequate remedies at law before seeking injunctive relief. Respondent's contention is meritless, because he was charged with domestic assault, MCL 750.81(2), and that statute does not provide petitioner with a private cause of action against him. "Although the same act may constitute both a crime and a tort, the crime is an offense against the public pursued by the sovereign, while the tort is a private injury which is pursued by the injured party." *People v Veenstra*, 337 Mich 427, 430; 60 NW2d 309 (1953) (quotation marks and citation omitted).

[4] Respondent briefly contends that petitioner wrongfully disposed of his personal property, and that there is an issue with regards to respondent's purported security deposit for their apartment. However, these issues were not raised below, and an appeal from the entry of a PPO is not the proper avenue for respondent to obtain relief on those issues. Further, respondent has abandoned his arguments regarding his personal property and purported security deposit by failing to adequately brief those issues. See *Wolfe v Wayne-Westland Community Sch*, 267 Mich App 130, 139; 703 NW2d 480 (2005).

(a) The individual to be restrained or enjoined is not the spouse of the moving party.

(b) The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.

(c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

During the motion hearing, neither respondent nor petitioner alleged that they were married. Petitioner testified that she and respondent had lived together in their apartment, and in her petition for the PPO, petitioner alleged that she had a property interest in the apartment. Respondent confirmed that there was no rental agreement or lease for the apartment, and that he had no legal documents related to the property. However, respondent noted that petitioner had not yet paid rent.

"It is generally held that, in order that the relation of landlord and tenant may exist, there must be present all the necessary elements of the relation, which include permission or consent on the part of the landlord to occupancy by the tenant, subordination of the landlord's title and rights on the part of the tenant, a reversion in the landlord, the creation of an estate in the tenant, the transfer of possession and control of the premises to him, and, generally speaking, a contract, either express or implied, between the parties." *Grant v Detroit Ass'n of Women's Clubs*, 443 Mich 596, 605 n 6; 505 NW2d 254 (1993) (quotation marks and citation omitted). Here, the trial court must have concluded that, in the absence of legal documentation or a formal rental agreement, petitioner and respondent were both permitted to occupy the apartment by the landlord, and therefore, both petitioner and respondent had a property interest in the apartment. As such, MCL 600.2950(5) did not bar the trial court from enjoining respondent from entering the apartment. Nor did the PPO "reassign" respondent's interest in the property, rather, the PPO enjoined respondent from entering the premises.

Respondent contends that the trial court violated MCR 3.310(D)(1) when it did not order petitioner to give security prior to the entry of the PPO. Respondent's contention is without merit because MCR 3.310(D)(1) is exercised at the trial court's discretion. "MCR 3.310(D)(1) explicitly indicates the discretionary nature of this relief by stating that the court 'may' require such security. Such express provisions of relief to a party injured by an injunction, if anything, underscore the continued viability of the general rule in Michigan and the federal system, to wit: that relief is not generally available to a party so injured apart from these rules." *Mayor of the City of Lansing v Knights of the Ku Klux Klan(After Remand)*, 222 Mich App 637, 646 n 4; 564 NW2d 177 (1997). Thus, respondent has failed to demonstrate that the trial court committed any error by refusing to exercise its discretion here.

We also reject respondent's contention that the PPO violated his right to bear arms under the Second Amendment of the United States Constitution.[5] "Generally, an issue must have been raised before, and addressed and decided by, the trial court to be preserved for appellate review." *King*, 303 Mich App at 239, citing *Hines*, 265 Mich App at 443. Respondent raised the issue of the PPO's conflict with the Second Amendment in his motion to terminate the PPO. This Court reviews de novo questions of constitutional law. *Mayor of Detroit v Arms Technology, Inc*, 258 Mich App 48, 57; 669 NW2d 845 (2003).

"Statutes are presumed constitutional, and this Court has a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent. The burden of proving that a statute is unconstitutional is on the party challenging the statute." *Varran v Granneman (On Remand)*, 312 Mich App 591, 607; 880 NW2d 242 (2015) (citations omitted). " 'If the statute can be construed in a manner consistent with the constitution, the party alleging unconstitutionality has failed to meet that burden.' " *Kampf*, 237 Mich App at 382, quoting *Brown v Siang*, 107 Mich App 91, 97; 309 NW2d 575 (1981).

Assuming that respondent's right to bear arms remained intact after issuance of the PPO, we conclude that MCL 600.2950(1)(e) is constitutional. Under MCL 600.2950(1)(e), and upon the requisite showing, a court may enjoin a respondent from purchasing or possessing a firearm. However, pursuant to MCL 600.2950(2), a petitioner must inform the court if the respondent they are seeking to enjoin is a person who must carry a firearm as a condition of his or her employment, or if the respondent is a law enforcement officer who carries a firearm during the normal course of his or her employment. Further, under MCL 600.2950(14), a respondent that fits the criteria described in MCL 600.2950(2) is entitled to a hearing on a motion to rescind or modify an ex parte PPO within five days after the respondent files the motion.

The Second Amendment of the United States Constitution[6] provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." US Const, Am II. The Second Amendment applies to the states through the Due Process Clause of the Fourteenth Amendment. *McDonald v City of Chicago, Ill*, 561 US 742, 791; 130 S Ct 3020; 177 L Ed 2d 894 (2010). However, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Dist of Columbia v Heller*, 554 US 570, 626; 128 S Ct 2783; 171 L Ed 2d 637 (2008). In *Heller*, the Supreme Court stated, "[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-627. The United States Supreme Court also noted that it identified those "presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." *Id.* at 627 n 26.

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[5] Respondent's argument on this issue is moot, since his right to bear arms was presumably restored upon expiration of the PPO. We provide the analysis on the merits for purposes of completeness.

[6] Respondent does not raise any argument concerning his analogous rights under Article 1, § 6 of the 1963 Michigan Constitution.

In *People v Deroche*, 299 Mich App 301, 308-309; 829 NW2d 891 (2013), this Court adopted the two-pronged approach for addressing Second Amendment challenges set forth in *United States v Greeno*, 679 F3d 510, 518 (CA 6, 2012). " 'Under the first prong, the court asks whether the challenged law burdens conduct that falls within the scope of the Second Amendment right, as historically understood.' " *Deroche*, 299 Mich App at 308-309, quoting *Greeno*, 679 F3d at 518. " '[I]f the historical evidence is inconclusive or suggests that the regulated activity is *not* categorically unprotected—then there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights.' " *Id.* at 309. "Under this prong, the court applies the appropriate level of scrutiny. If the law satisfies the applicable standard, it is constitutional. If it does not, 'it is invalid.' " *Id.* (citations omitted).

Respondent contends that the PPO infringed upon his right to bear a firearm for the purpose of self-defense and the defense of his home. The United States Supreme Court has held that "the inherent right of self-defense has been central to the Second Amendment right." *Heller*, 554 US at 628. Thus, a PPO entered pursuant to MCL 600.2950(1)(e) burdens conduct that falls within the scope of the Second Amendment.

Turning to the second prong, respondent, in essence, contends that a PPO enjoining a person from owning a firearm is overly broad to serve the state's interest in preventing gun violence. This Court has noted that "[t]he PPO statute is clearly addressed to protecting the health, safety, and welfare of victims of domestic violence." *Kampf*, 237 Mich App at 383 n 3. A PPO that is entered pursuant to MCL 600.2950 is a temporary order that will naturally expire absent action by the petitioner and the court to continue the order. Therefore, the burden placed upon respondent by the PPO was only of a limited duration. Further, MCL 600.2950 has provisions to lessen or mitigate the burden placed on individuals enjoined from temporarily possessing firearms. See MCL 600.2950(2) and MCL 600.2950(14). Thus, there is a reasonable fit between the governmental objective of protecting the victims of domestic violence and the burden on individuals enjoined from temporarily possessing firearms because the burden is of limited duration and MCL 600.2950 provides additional safeguards to mitigate that burden.[7]

Additionally, this Court has recently held that MCL 600.2950a, the analogous statute for the entry of nondomestic PPOs, did not facially burden a respondent's Second Amendment right, and thus there was a " 'reasonable relationship between the governmental purpose and the means chosen to advance that purpose.' " *IME v DBS*, 306 Mich App 426, 441; 857 NW2d 667 (2014), quoting *Bonner v City of Brighton*, 495 Mich 209, 230; 848 NW2d 380 (2014).

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[7] Federal courts have thus far held that 18 USC 922(g)(8), which prohibits individuals subject to a domestic violence protective order from possessing a firearm, is constitutional. See *United States v Mahin*, 668 F3d 119, 125-126 (CA 4, 2012) (noting that the restriction imposed by 18 USC 922(g)(8) is "exceedingly narrow" because it only applied for the "limited duration of the domestic violence protective order"); *United States v Knight*, 574 F Supp 2d 224, 226-227 (D Me, 2008) (holding that 18 USC 922(g)(8) is constitutional because its temporary prohibition on possession of firearms was narrowly tailored to the state's compelling interest).

Respondent contends that the standard of proof required by MCL 600.2950 to enter a PPO violates the minimum requirements of procedural due process under the United States Constitution. "Generally, an issue must have been raised before, and addressed and decided by, the trial court to be preserved for appellate review." *King*, 303 Mich App at 239. Respondent raised this issue in his motion to terminate.

"The Fourteenth Amendment of the United States Constitution provides that '[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' " *In re Sanders*, 495 Mich 394, 409; 852 NW2d 524 (2014) (alteration in original), citing US Const, Am XIV, §1. "Included in the Fourteenth Amendment's promise of due process is a substantive component that 'provides heightened protection against government interference with certain fundamental rights and liberty interests.' " *Sanders*, 495 Mich at 409, quoting *Washington v Glucksberg*, 521 US 702, 720; 117 S Ct 2258; 138 L Ed 2d 772 (1997). "The United States Supreme Court has also recognized that due process demands that minimal procedural protections be afforded an individual before the state can burden a fundamental right." *Sanders*, 495 Mich at 410.

In *Sanders*, 495 Mich at 410-411, the Court reiterated the balancing test of *Mathews v Eldridge*, 424 US 319, 333; 96 S Ct 893; 47 L Ed 2d 18 (1976). " '[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.' " *Sanders*, 495 Mich at 410-411, quoting *Eldridge*, 424 US at 333. However, the Michigan Supreme Court has recently held that all that is necessary to satisfy the Due Process Clause "is that the procedures at issue be tailored to 'the capacities and circumstances of those who are to be heard' to ensure that they are given a meaningful opportunity to present their case, which must generally occur before they are permanently deprived of the significant interest at stake." *Bonner*, 495 Mich at 238-239 (citations omitted).

"A statute is presumed constitutional unless the contrary is plainly evident. Respondent, as the party who is challenging the constitutionality of the PPO statute, bears the burden of showing this clear unconstitutionality. If the statute can be construed in a manner consistent with the constitution, the party alleging unconstitutionality has failed to meet that burden." *Kampf*, 237 Mich App at 382 (quotation marks and citations omitted).

Under MCL 600.2950(4), a court is only required to determine if there is "reasonable cause to believe that the individual to be restrained or enjoined may commit" one or more of the acts provided in MCL 600.2950(1). However, PPOs entered pursuant to MCL 600.2950 are only enforceable until they expire.

Respondent contends that many of his individual rights were affected by the entry of the PPO, which included his right to bear arms under the Second Amendment, his "ability" to reside in his "own home," and his parental rights to his then unborn child. Additionally, respondent contends that *Santosky v Kramer*, 455 US 745, 768-770; 102 S Ct 1388; 71 L Ed 2d 599 (1982), dictates that these rights may only be interfered with by the state after the grounds for the entry of the PPO have been established by clear and convincing evidence, whereas MCL 600.2950

only requires the trial court to find "reasonable cause to believe" that the respondent is likely to commit an act before enjoining them. Essentially, respondent contends that the PPO interfered with his significant liberty and property interests, and that a heightened burden of proof would reduce the probability of erroneous deprivation.

However, respondent provides no authority supporting his contention that the entry of a PPO must be supported by clear and convincing evidence. Rather, respondent relies on *Santosky*, which concerned what the Due Process Clause required in an action to terminate a person's parental rights. Further, while respondent identifies a number of rights he believes have been impaired by the PPO, he merely concludes that they are significant or fundamental, and he fails to recognize that the temporary PPO did not result in a permanent deprivation. Respondent also fails to adequately analyze all of the prongs under *Eldridge*, and to the extent he does provide analysis, he reaches questionable conclusions that assert policy issues better left to the Legislature.

Although respondent provides some authority in support of his contention, that authority fails to address the requisite due process protections required for the entry of an injunction. " 'A party may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, or give issues cursory treatment with little or no citation of supporting authority.' " *Wolfe*, 267 Mich App at 139, quoting *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Regardless, respondent's contention does not survive an application of the *Eldridge* test. The only fundamental right respondent has identified as actually being impaired by the PPO is his right to bear arms under the Second Amendment. As noted above, that right is not absolute, and it can be subject to narrowly tailored restrictions placed on it by the state. Further, MCL 600.2950 expressly requires a petitioner to inform the court when the person to be enjoined has to use a firearm in the course of his or her employment, and MCL 600.2950 also provides procedures for a respondent to challenge any impairment to their Second Amendment right to bear arms when a PPO interferes with his or her employment. MCL 600.2950(2); MCL 600.2950(14). Thus, the value, if any, of a heightened standard of proof for the entry of a PPO would be slight. Further, the state's interest here is clear, as noted in *Kampf*: "[t]he PPO statute is clearly addressed to protecting the health, safety, and welfare of victims of domestic violence." *Kampf*, 237 Mich App at 383 n 3. Therefore, respondent's contention fails, because a PPO only temporarily impairs his Second Amendment right, MCL 600.2950 already contains sufficient procedural safeguards, and the state's interest in preventing domestic violence is both legitimate and weighty.

Just as importantly, this Court has previously held that a respondent's right to Due Process is adequately safeguarded by the provisions of MCL 600.2950 in terms of notice and an opportunity to be heard. *Kampf*, 237 Mich App at 383-384. And to the extent that respondent contends that a "reasonable cause to believe" burden of proof is insufficient, this Court has held that even an ex parte PPO must be supported by positive findings by the trial court before entering the PPO. *Id.* at 385-386; see also *IME*, 306 Mich App at 441, 444 (holding that MCL 600.2950a passed constitutional scrutiny in the context of a facial challenge to the statute, noting that the "ease with which a petitioner can marshal his or her proofs" should not be equated "with the nature of the burden to be demonstrated in order to justify the issuance of a PPO").

Finally, respondent contends that he was denied a meaningful opportunity to be heard during the hearing on his motion to terminate the PPO. "Generally, an issue must have been raised before, and addressed and decided by, the trial court to be preserved for appellate review." *King*, 303 Mich App at 239. Respondent did not raise this issue in his motion to terminate or during the motion hearing. Therefore, this issue has not been preserved.

Under MCL 600.2950(14), a court must schedule a hearing on a motion to modify or rescind an ex parte PPO within 14 days after the motion is filed. "Due process in civil cases generally requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). "The opportunity to be heard does not mean a full trial-like proceeding, but it does require a hearing to allow a party the chance to know and respond to the evidence." *Cummings*, 210 Mich App at 253.

"Due process requires an impartial decision-maker." *Galien Twp Sch Dist v Dep't of Ed (On Remand)*, 310 Mich App 238, 244; 871 NW2d 382 (2015). "Actual bias need not be shown '[i]f the situation is one in which experience teaches that the probability of actual bias on the part of a decisionmaker is too high to be constitutionally tolerable.' " *Hughes v Almena Twp*, 284 Mich App 50, 70; 771 NW2d 453 (2009), quoting *Livonia v Dept of Social Servs*, 423 Mich 466, 509; 378 NW2d 402 (1985) (quotation marks omitted; alteration in original). "[T]he following situations present that risk: (1) the decision maker has a pecuniary interest in the outcome; (2) the decision maker has been the target of personal abuse or criticism from the party before the decision maker; (3) the decision maker is enmeshed in other matters involving the petitioner, and (4) the decision maker might have prejudged the case because of prior participation as an accuser, investigator, fact-finder, or initial decision maker." *Hughes*, 284 Mich App at 70.

Respondent does not contend that any of the above situations described in *Hughes* apply here; rather, he contends that the trial court judge was biased because she questioned him regarding his use of illegal drugs, and that the trial court judge offered legal advice to petitioner. Respondent has failed to demonstrate the existence of bias. Respondent merely points to the fact that the trial court judge questioned the parties during the motion hearing, and exercised its discretion in what testimony to elicit. Nor did the trial court impermissibly offer petitioner legal advice, as the trial court judge merely stated that petitioner "should get some legal advice" with regard to her parental rights, and that the court would give petitioner a list of resources. Thus, the trial court judge was not predisposed against respondent, but rather, she endeavored to make sure that petitioner was fully aware of programs that might be of benefit.

Respondent's contention that he was denied due process because he was not afforded the opportunity to submit evidence, call witnesses, or cross-examine petitioner is without merit. During the motion hearing, respondent did not indicate that he had evidence that he wished to present to the trial court, nor did he request to call any witnesses. Additionally, respondent never requested to cross-examine petitioner. Thus, respondent was afforded an opportunity to be heard, and his failure to take full advantage of this opportunity did not deny him due process.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Kathleen Jansen

Court of Appeals, State of Michigan

ORDER

Ashley Workman v Aaron Brent

Docket No. 330325

LC No. 15-112517-PP

Christopher M. Murray
Presiding Judge

Mark J. Cavanagh

Kathleen Jansen
Judges

The Court orders that the motion for reconsideration is DENIED.

Christopher Murray

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

DEC 2 1 2018

Date

Jerome W. Zimmer Jr.

Chief Clerk

Order

July 2, 2019

159019

ASHLEY WORKMAN,
Petitioner-Appellee,

v

SC: 159019
COA: 330325
Wayne CC: 15-112517-PP

AARON BRENT,
Respondent-Appellant.

/

On order of the Court, the application for leave to appeal the November 13, 2018 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

s0624

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 2, 2019

Clerk

Order

Michigan Supreme Court
Lansing, Michigan

September 12, 2018

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

156078

ASHLEY WORKMAN,
Petitioner-Appellee,

v

SC: 156078
COA: 330325
Wayne CC: 15-112517-PP

AARON BRENT,
Respondent-Appellant.

/

By order of December 27, 2017, the application for leave to appeal the April 20, 2017 judgment of the Court of Appeals was held in abeyance pending the decision in *TM v MZ* (Docket No. 155398). On order of the Court, the case having been decided on May 18, 2018, 501 Mich 312 (2018), the application is again considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals and we REMAND this case to the Court of Appeals for reconsideration in light of *TM v MZ*.

We do not retain jurisdiction.

s0905

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

September 12, 2018

Clerk

STATE OF MICHIGAN

COURT OF APPEALS

ASHLEY WORKMAN,

Petitioner-Appellee,

v

AARON BRENT,

Respondent-Appellant.

UNPUBLISHED
April 20, 2017

No. 330325
Wayne Circuit Court
LC No. 15-112517-PP

Before: FORT HOOD, P.J., and JANSEN and HOEKSTRA, JJ.

PER CURIAM.

Respondent Aaron Brent appeals as of right an order denying his motion to terminate a personal protection order (PPO) issued against him at the request of his former-girlfriend, petitioner Ashley Workman. Specifically, petitioner requested an ex parte PPO on October 23, 2015, and the trial court signed the order into effect on the same day. Respondent filed a motion in the trial court to terminate the PPO. However, following a hearing, the trial court denied respondent's request to terminate the PPO and ordered that it would continue in effect until the expiration date on the PPO. By its plain terms, the PPO was scheduled to remain in effect until October 23, 2016. Given that the PPO is now expired, we dismiss respondent's appeal as moot.

In general, this Court will not decide moot issues. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "An issue is moot if an event has occurred that renders it impossible for the court to grant relief." *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010). "An issue is also moot when a judgment, if entered, cannot for any reason have a practical legal effect on the existing controversy." *Id.* In other words, "[a] case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights." *B P 7*, 231 Mich App at 359. "However, a question is not moot if it will continue to affect a party in some collateral way." *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). See, e.g., *Hayford v Hayford*, 279 Mich App 324, 325; 760 NW2d 503 (2008).

In this case, respondent raises a variety of challenges to the PPO, including arguments relating to the issuance of the PPO, the scope and effect of the PPO, and the trial court's refusal to terminate the PPO. However, under the plain terms of the PPO, it expired on October 23, 2016. There is nothing in the lower court record to indicate that the PPO was extended beyond this date, and respondent does not suggest on appeal that the PPO has been extended. See MCR

3.707(B). Given the expiration of the PPO, respondent's various challenges to the PPO are moot because our decision on issues relating to the expired PPO in question can have no practical effect on an existing controversy. See *Gen Motors Corp*, 290 Mich App at 386.

In contrast, respondent contends that his appeal should not be deemed moot because he will face collateral consequences if we do not consider his challenges to the now-expired PPO. In particular, respondent contends that, even after the expiration of the PPO, he will still be listed on the Law Enforcement Information Network (LEIN), which could affect unnamed "job opportunities" as well as unspecified "child custody, visitation, parentage, and child support issues." Respondent also asserts that his Second Amendment right to bear arms is not "automatically reinstated" after the PPO expires. However, respondent's arguments in this regard are speculative and unsupported. That is, respondent offers only generalized conjectures about possible future harm, without providing citation to supporting legal authority or evidence in the lower court record to establish that the listing of an expired PPO on LEIN will have any effect on his unidentified job opportunities, his undefined child custody issues, or his right to bear arms.[1] Without additional factual information about his job or child custody issues, and in the absence of supporting legal authority for any of his identified consequences, respondent's claims of collateral consequences are simply unsubstantiated. It is not our role to search for law or evidence to support respondent's position, *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959); *Cathey*, 261 Mich App at 510; and we decline to search for support for respondent's assertion that he has suffered, and will suffer, ongoing collateral consequences following the expiration of the PPO. Because respondent has failed to adequately demonstrate the existence of collateral consequences following the expiration of the PPO, his claims are moot.

Dismissed as moot.

/s/ Karen M. Fort Hood
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra

[1] As a comparison, in *Hayford*, 279 Mich App at 325, this Court concluded that a respondent's challenges to a terminated PPO were not moot because the respondent made his living working with firearms and he had identified federal firearm licenses jeopardized by the PPO. In other words, the respondent in *Hayford* made a showing that he would suffer particular collateral consequences from the PPO. In contrast, in this case, respondent has failed to offer any details of his job opportunities, child custody issues, or other concerns that would support the assertion that the expired PPO will have collateral consequences for respondent. The present case is thus distinguishable from *Hayford*.

Additional material from this filing is available in the Clerk's Office.