

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

Michael Syrjala v. Taquara Coolbaugh

APP-2023-07

Decided: March 4, 2024

BEFORE: BIRON, BUTTS, CORBIERE, and DIETZ Appellate Judges.

ENTERED
5-1-24 78
Sault Ste. Marie
Chippewa Tribal Court of Appeals

Opinion and Order

Biron, Karrie Chief Appellate Judge, who is joined by Appellate Judge Butts, Corbiere, and Dietz.

For the reasons explained below, the Sault Ste. Marie Tribe of Chippewa Indians' Tribal Court *Order After Hearing on Respondent's Motion to Terminate Personal Protection Order* is affirmed and this matter is dismissed.

Facts and Procedural History

On August 1, 2023, Ms. Coolbaugh, Appellee, filed a Petition for Personal Protection Order with the Sault Ste. Marie Tribal Court ("Tribal Court") in accordance with Sault Tribe Code, Ch, 34. ("*Petition for PPO*"). That same day, the Tribal Court issued an *Ex Parte Personal Protection Order* which was subsequently amended on August 2, 2023 to include the Appellant, Michael Syrjala's physical description. ("*Amended PPO*"). On August 10, 2023, the Appellant filed a Motion to Modify/Terminate Personal Protection Order. ("*Appellant's Motion*"). The Tribal Court scheduled the Appellant's Motion for hearing on August 22, 2023, which was subsequently rescheduled to September 12, 2023 after the Tribal Court received a request from the Appellee for assistance of Counsel. ("*Order of Adjournment*"). On August 30, 2023, an Appearance for counsel was filed with the Tribal Court on behalf of the Appellee. ("*Appearance*").

On September 12, 2023, the date and time noticed for hearing on the Appellee's Motion, the Appellant was present along with the Appellee and her counsel in the Tribal Court. (9/12/23 Transcript ("*Transcript*"), at 3). The Appellant was not represented by counsel. (*Id.*). The Appellee and two witnesses testified on behalf of the Appellee in support of the *Petition for PPO*. (*Id.* at 5-46).

After hearing testimony and review of admitted evidence, the Tribal Court found that the Appellee "[had] proven, as the Code requires, by reasonable cause that she ha[d] been subjected to prohibited contact...by the [Appellant] after being told not to." (*Id.* at 67). The Tribal Court then issued an Order After Hearing on Respondent's Motion to Modify/Terminate the Personal Protection Order. ("*Order*"). The Order reiterated the Tribal Court's finding after hearing and

further specified that the Appellant engaged in prohibited contact pursuant to STC §§ 34.106(1) and 34.107 (1).

On September 12, 2023, filed a Notice of Appeal (“*Notice of Appeal*”). On October 3, 2023, this Court issued a Notice of Briefing Schedule. Briefing in this matter was closed as of December 5, 2023. No further filings were received from either party. No oral argument was held.

On February 19, 2024, this Court convened a judicial conference to discuss and decide the matter on appeal.

Jurisdiction and Standard of Review

An appeal is properly before this Court if it is a final decision of the Tribal Court or an order affecting a substantial right and which determines the action and prevents a judgment from which an appeal might be made. STC § 82.111. A Personal Protection Order and orders resulting therefrom constitute such orders of the Tribal Court.

Matters on appeal involving a conclusion of law are reviewed *de novo*. (STC § 82.124(5)). However, matters committed to the discretion of the Tribal Court shall not be subject to the judgment of the Court of Appeals. (STC § 82.124 (8)). Thus, unless otherwise set forth in Tribal law, matters involving findings of fact by the Tribal Court are reviewed under the clearly erroneous standard. “In applying the clearly erroneous standard of review, the court will determine whether it is left with a ‘definite and firm conviction’ that the trial court made an error in its findings of fact.” *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians*, APP-08-02, 3 (August 4, 2008). Moreover, the Anishinaabe teachings of *nibwaakaawin* (wisdom-use of good sense), *zaagi’idiwin* (practice absolute kindness), *minadendmowin*, (respect – act without harm) as well as *ayaangwaamizi* (careful and cautious consideration) guide this Court’s decision-making. *Payment v. The Election Committee of the Sault Ste Marie Tribe of Chippewa Indians*, APP-2022-02 (December 5, 2022). In applying all of the principles set forth herein, this Court gives regard to the special opportunity of the Tribal Court to assess the credibility of the witnesses who appear before it and will not substitute its judgment for that of the Tribal Court unless such credibility determinations are clearly erroneous.

Discussion

STC Chapter 34, § 34.102 sets forth that “[t]he Tribal Court shall have full jurisdiction to issue and enforce personal protection orders and injunctions...involving any person in matters arising anywhere in Indian Country of the Indian tribe or as otherwise within the authority of the Indian tribe. [See 18 U.S.C. 2265 (e)]. As defined in STC § 34.103, “[p]ersonal [p]rotection [o]rders are generally issued against respondents who have threatened or engaged in domestic

abuse, stalking or sexually abusive behavior or have committed an act or acts that reasonably place the petitioner in reasonable apprehension of same.” STC § 34.104(1) provides that:

A petition to obtain a PPO may be filed by:

- (1) Any person claiming to be placed in reasonable fear of, or subject to domestic, family, or dating violence, harassment, stalking, obscene material, or a sexual offense.

STC § 34.107 sets for the procedure for issuance of a PPO and directs the Court to issue a PPO “[i]f the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit one (1 or more of the acts listed in 34.106 (1)¹.”

¹ STC § 34.106(1) provides a list of prohibited conduct of a respondent in a PPO matter including but not limited to:

- (a) Entering onto the victim’s residence and/or place of employment.
- (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
- (c) Engaging or attempting to engage in domestic abuse against a named individual.
- (d) Following a named individual.
- (e) Contacting a named individual by any means, including by writing, telephone, other electronic means or by a third person.
- (f) Sending objects to a named individual.
- (g) Threatening to kill or physically injure a named individual.
- (h) Removing minor children from the victim who has legal custody, except as allowed by a custody or parenting-time order.
- (i) Purchasing or possessing a firearm or ammunition.
- (j) Interfering with victim’s efforts to remove the victim’s children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- (k) Keeping, failing to surrender or concealing from victim the keys or other instruments necessary to maintain the security of the victim’s home.
- (l) Interfering with victim at victim’s place of employment or education or engaging in conduct that impairs victim’s relationships at victim’s employment or education site.
- (m) Keeping, failing to surrender or concealing the vital records or financial instruments of the victim or the petitioner’s children.
- (n) Having access to information in records concerning a minor child of both victim and respondent that will inform respondent about the address or telephone number of the victim and the victim’s minor child, or about victim’s employment address.
- (o) Engaging in stalking conduct.
- (p) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of domestic abuse, harassment, stalking, or sexually inappropriate behavior.
- (q) Posting information and/or images on social media or other forms of communication with the intent to harass, annoy, intimidate, or embarrass the victim, whether or not the victim has access to the information posted.
- (r) Approaching or appearing within 1500 feet of the victim.
- (s) Taking, transferring, encumbering, concealing, committing an act of cruelty or

STC § 34.107 (a) and (b) instruct the court in making a reasonable cause determination and contemplates use of “[t]estimony, documents, or other evidence offered in support of the request for a PPO as well as “whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in 34.106(1). STC § 34.107 (5) establishes the burden of proof for obtaining a PPO stating that “[p]etitioner must...prove that the allegations contained within the petition are true by a preponderance of the evidence.” STC § 34.108(1) allows for the issuance of an ex parte PPO “without written or oral notice to the individual restrained or enjoined...if it clearly appears from specific facts shown...that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice....” STC § 34.108(2) provides a mechanism for a restrained respondent to request a hearing for modification or rescission of the ex parte PPO.

Here, the Appellee Coolbaugh petitioned this Court for an ex parte personal protection order to restrain Appellant Syrjala from engaging in prohibited contact set forth in Tribal law. The *Petition for PPO* alleged stalking and harassing behavior that put the petitioner, now Appellee, in fear of harm. The Tribal Court granted the Appellee’s ex parte *Petition for PPO* and held further hearing on the matter after receiving the *Appellant’s Motion*. Both parties appeared at the *Appellant’s Motion* hearing on September 12, 2023. At hearing, the allegations in the *Petition for PPO* were substantiated by Appellee’s testimony that she ended a 2 ½ -3 year relationship by a phone call to Appellant on July 17, 2023, and that she asked him to never contact her again. (*Transcript*, pg. 5-6). Appellee further offered testimony related to the allegations in her personal statement as well as the attached screenshots of call logs to support her statement that the Appellant “calls her non-stop every single day” even after she asked him to stop, text messages that reflected stalking and continued harassing behavior following the break-up as well as testimony related to recent assaultive behavior that resulted in the end of their relationship. (*Transcript*, pp. 6-23.) Appellee’s testimony was corroborated by two additional witnesses as to the breakup and stalking. (*Transcript*, pp. 27-46). The Appellant then testified to multiple contacts and attempted contacts to the Appellee but denied that he was following her or that she was in any danger. (*Transcript*, pp. 54-66). After hearing and review of the admitted evidence, the Tribal Court found that the Appellee had met her burden and proven by reasonable cause that she was subjected to conduct prohibited by Tribal law and informed the parties that the PPO would remain in place as ordered. (*Transcript*, p. 67).

The Appellant’s *Notice of Appeal* is void of any argument and no papers were submitted to support his requested relief of terminating the PPO. Therefore, this Court is left to its review

neglect upon, or otherwise disposing of any animal that is owned, possessed, leased, kept, or held by the petitioner, the respondent, or a minor child residing in the residence or household of the victim or respondent.

of the record before it to dispose of the appeal. After thorough review of the Tribal Court record, application of the Anishinaabe teachings of *nibwaakaawin* (wisdom-use of good sense), *minadendmowin*, (respect – act without harm) as well as *ayaangwaamizi* (careful and cautious consideration) used to guide this Court’s decision-making finds that the Tribal Court correctly applied the law to the facts in makings its determination that the Appellee had met her burden of proof to support the continuation of the PPO. Because the Tribal Court found the testimony of the Appellee to be credible, the requirements of STC § 34.107 were met. This Court gives regard to the special opportunity of the Tribal Court to assess the credibility of the witnesses who appear before it and will not substitute its judgment for that of the Tribal Court unless such credibility determinations are clearly erroneous. No such clear error is present here.

ORDER

For the reasons specified above, the Tribal Court *Order After Hearing on Respondent’s Motion to Terminate Personal Protection Order* is affirmed and this matter is dismissed.

It is SO ORDERED.