

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

Michael John Stewart v. Brianna Lyn Fuller

APP-2023-08

Decided: April 30, 2024

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

ENTERED
5/1/2024 ts
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 *Personal Protection Order* is affirmed and this matter is dismissed.

Facts and Procedural History

On September 6, 2023, Ms. Fuller, Appellee, filed an Ex Parte 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*”). On September 7, 2023, denied the Petition for PPO for “lack of showing that immediate irreparable injury, loss or damage will result from the delay required to effect notice or that notice will itself precipitate action before a PPO can be issued....” and set the matter for hearing on September 18, 2024. (*Order Denying Ex Parte Request for Personal Protection Order*).

On September 18, 2023, the date and time noticed for hearing on the Appellee’s *Petition for PPO*, the Appellee was present, the Appellant did not appear. The Appellee testified in support of the *Petition for PPO*. (9/18/2024 Transcript (“Transcript”) at pp. 5-7).

After hearing testimony and review of admitted evidence, the Tribal Court found that there was “reasonable cause that [the Appellant] Mr. Stewart has engaged in prohibited contact under the Code.... [a]nd it appears that [the] behavior is continuing...” warranting the issuance of a Personal Protection Order. (*Transcript* at p. 7-8).

On October 2, 2023, Appellant, Michael Stewart, filed a Notice of Appeal (“*Notice of Appeal*”). On November 7, 2023, this Court issued a Notice of Briefing Schedule. Briefing in this matter was closed as of January 8, 2024. 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 principle 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 the same.” STC § 34.104(1) provides that:

A petition to obtain a PPO may be filed by:

- (1) Any person claiming to be [p]laced 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 “if 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.” 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

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 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.

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 Fuller petitioned this Court for an ex parte personal protection order to restrain Appellant Stewart from engaging prohibited contact set forth in Tribal law. The *Petition for PPO* alleged harassment, stalking, verbal abuse and intimidation that put the petitioner, now Appellee, in fear of harm. The Tribal Court denied the Appellee’s *Petition for PPO* ex parte and set the matter for hearing allowing the Appellant to be properly served. Only the Appellee appeared on the date and time set for hearing. At the hearing, the allegations in the *Petition for PPO* were substantiated by Appellee's testimony that she was in a year and half dating relationship with the Appellant, that they have a child in common, that she has asked him not to contact her unless it’s in regarding their minor child, that he has continued to text her about things other than their child despite her asking him to stop. (*Transcript*, pg. 5-6). Appellee further offered testimony and documentation related to the allegations in her *Petition for PPO*, testifying that her fear “comes from [the Appellant’s] unpredictable erratic behaviors. (*Id.*) The Tribal Court accepted “a chronological order of everyday...where [she] felt that he was sending threats through his text messages” into evidence, (*Id.*) The Appellee also testified that his latest text message to her was right before the hearing. (*Id.* at p. 6). After hearing and reviewing 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 issued the requested PPO. (*Id.* at 8).

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 and he did not appear before the Court on the date and time set for hearing. Therefore, this Court is left to its review 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) guide this Court’s decision-making to find 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 issuance 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 *Personal Protection Order* is affirmed and this matter is dismissed.

It is SO ORDERED.