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2018 IL App (3d) 170135-U

Order filed September 18, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

VICTORIA SMITH,)	Appeal from the Circuit Court
Petitioner-Appellee,)	of the 12th Judicial Circuit,
)	Will County, Illinois.
v.)	Appeal No. 3-17-0135
)	Circuit No. 10-OP-2272
ROBERT W. GOLD-SMITH,)	The Honorable
Respondent-Appellant.)	Dinah Archambeault,
)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not violate respondent's due process rights.
- ¶ 2 Petitioner Victoria Smith sought to extend a plenary order of protection against respondent Robert Gold-Smith. Gold-Smith filed an answer and objections to the extension. At the hearing, the court prohibited Gold-Smith from continuing his opening statement and extended the order of protection based on his courtroom outburst. Gold-Smith appealed, arguing

that the trial court violated his procedural due process rights under the fourteenth amendment.

We affirm.

¶3

FACTS

¶4 On December 9, 2016, petitioner Victoria S. Smith filed a motion to extend an order of protection that would terminate on December 12, 2016. The motion derived from a plenary order of protection originally entered on December 15, 2010. The plenary order of protection has previously been extended three times. In the motion, Victoria argued that Robert was a continuing threat to her because (1) Robert had been convicted of soliciting another person to murder her and was currently incarcerated; (2) he had also been found guilty of aggravated domestic battery, aggravated battery in a public place, and violating an underlying order of protection, all of which offenses were directed at Victoria; and (3) he attempted to call Victoria on numerous occasions in 2014 in violation of the plenary order of protection in effect at the time. Robert filed an answer and objections to the motion to extend, claiming that the extension was “unnecessary and overburdensome” because he was incarcerated and, with an active order of protection, he would be ineligible for certain programs. He also alleged that the court lacked jurisdiction because Victoria was no longer an Illinois resident.

¶5 In February 2017, a hearing on the motion to extend was held. At the hearing, the court determined that it had personal jurisdiction over the parties and denied Robert’s jurisdiction argument. During Robert’s opening statement on the extension issue, the court interrupted him because Robert was needed at a status hearing in another courtroom. As Robert was leaving the courtroom, the following occurred:

“THE SHERIFF: Stop. Stop. Mr. Gold-Smith stop.

THE COURT: what did he do?

THE SHERIFF: Judge, he's making some kind of animal noise to the individual right here.

MS. SMITH: I shouldn't even have to be in the room with him. I didn't even want to have to come in here and deal with this.

THE COURT: Do you want to bring him back and I'm going to deal with that.

THE SHERIFF: Okay. So when he comes back? Okay.

THE COURT: I need to go into the recording room after this and listen because it was probably picked up.

MR. GOLD-SMITH: Liar.

THE COURT: All right. That's it. I don't need to listen. Okay.

(WHEREUPON, the case was passed.)

THE COURT: 10 OP 2272.

MS. SCHELLEKENS: For the record, Amy Schellekens on behalf of Victoria Smith, who is present in court this morning.

THE COURT: Mr. Gold-Smith, based on your outburst, I'm going to extend this order of protection as a plenary until 2/8/19. I do not need to hear anything further. Your actions speak for themselves and show me the necessity of it."

Robert appealed.

¶ 7 On appeal, Robert argues that the trial court violated his procedural due process under the fourteenth amendment (U.S. Const. amend. XIV) because it did not allow him to finish his opening statement, or present witnesses and evidence before it extended the order of protection. Petitioner did not file a brief in the appeal; however, we will consider the merits of Robert's claim because "the record is simple and the issues can be easily decided without the aid of the appellee's brief." *Thomas v. Koe*, 395 Ill. App. 3d 570, 577 (2009). Whether a respondent's procedural due process rights were violated is reviewed *de novo* because it involves a question of law. *Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 271 (2004).

¶ 8 " 'Procedural due process' claims concern the constitutionality of the specific procedures employed to deny a person's life, liberty, or property." *Willie Pearl Burrell Trust v. City of Kankakee*, 2016 IL App (3d) 150655, ¶ 28. The fundamental requirement of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). However, the concept of due process is flexible and calls for such procedural protections as the particular situation demands. *Id.* at 334. This court must consider three factors in determining whether due process rights were violated: "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." *Id.* at 335.

¶ 9 We initially consider whether Robert, in fact, had an opportunity to be heard at a meaningful time and in a meaningful manner. *Id.* at 333. We believe he had such an opportunity.

¶ 10 The parties were present in court in February 2017 for a hearing on whether a plenary order of protection issued against Robert in 2010 for the protection of his wife, Victoria, should be extended for a fourth time. At issue was whether Robert still posed a threat to Victoria's continued safety.

¶ 11 Robert's opening statement was interrupted because his presence was required at a different hearing in a different courtroom. As he was leaving the courtroom, the Sheriff witnessed him making "animal noise" at Victoria, who was sitting in the courtroom and who protested being subjected to this conduct. Upon Robert's return, the trial judge told him "your actions speak for themselves and show me the necessity of [extending the plenary order]." Although Robert was not allowed to present his remaining arguments, his conduct directed at Victoria clearly communicated a degree of hostility or, perhaps hatred, that was too great for him to restrain even in the presence of the judge and a law enforcement officer. In this instance, his actions spoke as loudly as and perhaps more truly than his words would have done. He eloquently communicated to the court the need for an extension of the plenary order. See *Corpuz v. Board of Trustees of University of Illinois*, 252 Ill. App. 3d 667, 681 (1993) ("The opportunity to be heard need only be extensive enough to guard against a mistaken decision.") Robert argues that extension is unnecessary because he is incarcerated and that Victoria has remarried and lives outside of Illinois. One of Robert's convictions was for soliciting another person to murder Victoria for him. Neither his incarceration nor her change of residence would eliminate him as that sort of threat to Victoria's personal safety. With the extension in place, the court retains jurisdiction and an ability to provide her some measure of protection. We find that, considering the totality of the circumstances, Robert had a meaningful hearing and the circuit court did not violate his right to due process.

¶ 12 Even if we were to find that Robert had been denied a proper hearing, his due process claim would fail because an analysis utilizing the *Mathews* factors, *supra*, ¶ 8, would show that he received a level of procedural protection demanded in the particular circumstances. *Mathews* at 334. We begin with our consideration of the first factor—whether Robert had private interests that were affected by the trial court’s procedures.

¶ 13 Although there is limited Illinois precedent that directly addresses this issue, we believe *People ex rel. Williams v. Rhodes*, 185 Ill. App. 3d 114 (1989), in which the Fourth District addressed the infringement of an individual’s private interests implicated by the entry of an order of protection, provides guidance. The defendant in *Rhodes* argued that his procedural due process rights were violated when the trial court did not appoint counsel for him before granting an order of protection. *Id.* at 117. To determine whether the defendant’s due process rights were violated, the Fourth District considered the three *Mathews* factors as cited in *Lassiter v. Department of Social Services*, 452 U.S. 18 (1981). *Id.* In *Rhodes*, the defendant claimed, as to the first factor, that he had a familial interest in his 12-year-old stepson and a property interest in his marital residence. *Id.* The court rejected the defendant’s arguments, determining that he did not have any interest because his stepson was not his biological son and he did not legally adopt him, he was only married to his wife for three months, and the order did not preclude contact with his stepson. *Id.* Furthermore, the court held that “any deprivation suffered by defendant here was only temporary in nature because the order was to expire after a two-year period.” *Id.*

¶ 14 Here, Robert claims that the order of protection will make him ineligible for “certain beneficial programs” when he transfers to the Illinois Department of Corrections. Although this is a collateral consequence, this court has found that “[a] prisoner does not have a liberty interest in attending educational or recreational programs.” *Hadley v. Snyder*, 335 Ill. App. 3d 347, 354

(2002). Robert has not claimed and the record does not show that he had any other affected property or liberty interests. To Robert's knowledge, his ex-wife has sold the marital residence and has remarried. His son is an adult and not a protected person under the order of protection.

¶ 15 Turning to the second factor—the risk of an erroneous deprivation of a respondent's private interests through the procedures used and the probable value, if any, of additional procedural safeguards—the *Rhodes* court held that the presence of an attorney would not have made a difference in the trial court's decision because the defendant admitted to abusing the petitioner. *Id.* at 117-18. As to the third factor, the government's interest and the fiscal and administrative burdens of additional or substitute procedures—Rhodes found that the State had “an important interest in these types of proceedings in preventing the occurrence of spousal abuse and other acts of domestic violence” and had “an interest in insuring that these proceedings are conducted in an economical manner.” *Id.* at 117. The Fourth District held that the defendant's due process rights were not violated. *Id.* at 118.

¶ 16 We also find that there was no risk of an erroneous deprivation of any interest through the procedures used nor were additional procedures necessary because, as stated above, Robert does not have any individual private interests that were infringed upon in this case and the trial court's determination that the factual allegations in the motion for extension and Robert's actions in the courtroom constituted an extension of the order of protection was proper. Lastly, similar to *Rhodes*, we find that the State has a strong interest in protecting petitioner from acts of domestic violence.

¶ 17 We hold that Robert's hearing provided procedural protections sufficient to meet the demands of the particular circumstances and to satisfy due process. Alternatively, we hold that

an analysis of the three factors set out in *Mathews*, 424 U.S. at 335, reveal no due process violation.

¶ 18

CONCLUSION

¶ 19

The judgment of the circuit court of Will County is affirmed.

¶ 20

Affirmed.