

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 21-0487
Warren County No. SRCR025727

STATE OF IOWA
Plaintiff-Appellee

v.

RICK PETRO
Defendant-Appellant

APPEAL FROM
THE DISTRICT ASSOCIATE COURT OF WARREN COUNTY
THE HONORABLE
KEVIN PARKER

FINAL REPLY BRIEF FOR APPELLANT

KARMEN ANDERSON
213 4th Street, Suite 100
Des Moines, Iowa 50309
Tel: (515) 282-8637
Fax: (888) 490-7617
E-mail:karmen@hawkeyedefense.com
ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

Table of Authorities.....	2
Statement of the Issues Presented for Review.....	2
Argument.....	3
Conclusion	8
Certificate of Service.....	9
Attorney Cost Certificate.....	9
Certificate of Compliance.....	9

TABLE OF AUTHORITIES

Cases

<i>HARDY-WILSON, v. HADAWAY</i> , No. 21-0336, 2021 WL 5475585, at *3 (Iowa Ct. App. Nov. 23, 2021).....	5, 6
<i>State v. Petro</i> , 901 N.W.2d 838 (Iowa Ct. App. 2017)	5
<i>State v. Pettit</i> , 885 N.W.2d 221 (Iowa Ct. App. 2016).....	4
<i>Vance v. Iowa Dist. Ct. for Floyd Cty.</i> , 907 N.W.2d 473, 481 (Iowa 2018)..	4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. JURISDICTION OF THE COURT

State v. Pettit, 885 N.W.2d 221 (Iowa Ct. App. 2016)
Vance v. Iowa Dist. Ct. for Floyd Cty., 907 N.W.2d 473, 481 (Iowa 2018)
State v. Petro, 901 N.W.2d 838 (Iowa Ct. App. 2017)

II. THERE WAS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE EXTENSION OF THE NO-CONTACT ORDER

Hardy-Wilson, v. Hadaway, No. 21-0336, 2021 WL 5475585, at *3 (Iowa Ct. App. Nov. 23, 2021)

ARGUMENT

I. JURISDICTION OF THE COURT

“We decided an identical jurisdictional issue in *State v. Sinclair*, where we found this court had jurisdiction to decide an appeal from the extension of a no-contact order. No. 12–1151, 2013 WL 3458146, at *2 (Iowa Ct. App. July 10, 2013). We reasoned:

The question of appellate jurisdiction depends on what authority the district associate judge exercised when extending the no-contact order. Iowa Code section 602.6306(4) (2011) provides where district associate judges are “exercising the jurisdiction of magistrates” appeals are “governed by the laws relating to appeals from judgments and orders of magistrates”; i.e. the district court should hear the issue on appeal. *See* Iowa Code §§ 602.6306(4), 602.6405. Where district associate judges are “exercising any other jurisdiction,” appeals are “governed by the laws relating to appeals from judgments or orders of district judges”; i.e. the Court of Appeals should hear the issue on appeal. *Id.* § 602.6306(4); *see also id.* § 602.5103(2).” *State v. Pettit*, 885 N.W.2d 221 (Iowa Ct. App. 2016).

The Court has jurisdiction over this appeal.

Alternatively, the Court should treat this matter as a writ of certiorari or grant discretionary review. “Accordingly, we will treat the notice of appeal and accompanying briefs as a petition for writ of certiorari.

See State v. Propps, 897 N.W.2d 91, 97 (Iowa 2017) (“[I]f a case is initiated by a notice of appeal, but another form of review is proper, we may choose to proceed as though the proper form of review was requested by the defendant rather than dismiss the action.”); *see also* Iowa R. App. P. 6.108.” *Vance v. Iowa Dist. Ct. for Floyd Cty.*, 907 N.W.2d 473, 481 (Iowa 2018).

As determined previously by this court, “The State asserts the extension of the no-contact order under Iowa Code section 664A.8 was not a final judgment and, therefore, cannot be appealed as a matter of right. *See* Iowa R. App. P. 6.103; *see also* Iowa Code § 814.6(1); *State v. Wiederien*, 709 N.W.2d 538, 543 (Iowa 2006) (Cady, J., dissenting) (describing no-contact orders as “collateral” to the underlying criminal proceeding and civil in nature). Assuming the State is correct on this point, we nevertheless opt to consider the underlying merits by treating Rick's notice of appeal as an application for discretionary review and granting it. *See* Iowa R. App. P. 6.108. Our court has done so in other instances. *See, e.g., State v. Dowell*, No. 13-1269, 2015 WL 4158758, at *1 (Iowa Ct. App.

July 9, 2015); *State v. Olney*, No. 13-1063, 2014 WL 2884869, at *3 n.2 (Iowa Ct. App. June 25, 2014). And we believe it is proper to do so here, especially considering the consequences connected with the existence and violation of a no-contact order discussed by Rick in his appellate brief. *State v. Petro*, 901 N.W.2d 838 (Iowa Ct. App. 2017).

II. THERE WAS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE EXTENSION OF THE NO-CONTACT ORDER

Recently, the Iowa court of Appeals decided a case similar to the facts in Petro’s case. In *Hardy-Wilson v. Hadaway*, the Iowa Court of Appeals found:

“In the absence of any conduct that could be objectively deemed a threat, we conclude the ex-wife failed to establish the need for an extension of the protective order. *See Wendt*, 2017 WL 510972, at *2 (“The text of the statute indicates this is an objective inquiry rather than a subjective inquiry.”). On our de novo review of the record, we reverse the extension of the protective order.” *GAYLENE FAYE HARDY-WILSON, Plaintiff-Appellee, v. THOMAS HADAWAY, Defendant-Appellant.*, No. 21-0336, 2021 WL 5475585, at *3 (Iowa Ct. App. Nov. 23, 2021).

In this case, the evidence was presented very much like that in *Hadaway*. Suella Petro began with a recitation of the events that precipitated

the filing of a domestic assault against Petro. Although Suella Petro indicated that Petro had a history of violence, there was only the one charge that is the basis for this no-contact order. Petro pled guilty to that charge, thereby taking responsibility for the actions perpetuated against her back in 2009.

Ms. Petro then went on to indicate that after nine years of being abused, she was still afraid of Rick Petro. (TT pg. 6-7; L1 25-4; App. 21-22). This is analogous to the statements made to support the extension in *Hadaway*. The Court reiterated that,

“We have no reason to question the ex-wife's fear of her ex-husband. But “trepidation, standing alone, is not enough to prove he continues to pose a threat to her safety.” *Clark v. Pauk*, No. 14-0575, 2014 WL 6682397, at *3 (Iowa Ct. App. Nov. 26, 2014). While a new incident of domestic abuse is not required, to obtain an extension, there must be proof “the domestic abuser ‘continues’ to pose a threat to the victim's safety.” *Id.* at *4 (quoting Iowa Code § 236.5(2)).” *GAYLENE FAYE HARDY-WILSON, Plaintiff-Appellee, v. THOMAS HADAWAY, Defendant-Appellant.*, No. 21-0336, 2021 WL 5475585, at *3 (Iowa Ct. App. Nov. 23, 2021).

There are no circumstances present in this case, other than her fear, which necessitate the renewal of the protection order. Despite the fact that

the parties live in a small town, Petro has taken careful steps to abide by the no-contact order. As evidenced by Suella's own testimony, she saw Petro at a Chinese restaurant, but he did not see her. She then left the premises. Petro testified, had he known she was there, he would have vacated the premises right away. This is no way for either party to have to live given a decade old conviction. The District court did not challenge Petro's credibility during the proceeding. It merely found that the NCO should be extended based the fact that Petro had a conviction and the prior violations, again, more than a decade old.

Compliance with the NCO by itself will not foreclose the possibility of an extension. But, we are not talking about compliance alone. We are talking therapy, completion of BEP, successful completion of probation and no new convictions for ANY offense.

Suella's claims that Petro's parents drove by her house during the proceeding five years is easily disproven based on the record. It appears that the Court relied on this testimony in its determination that the no-contact order should be continued. However, that allegation was made by Suella back in 2011 and was unfounded. (Application to Extend; App. 40). Further the allegation was that Rick's parents had driven by and taken pictures of items she was selling in her yard. There was not testimony or evidence that Rick

Petro put them up to this. Further, there was no threat that was alleged to be made by Mr. Petro's parents, just that they took pictures of items she was selling while the divorce was pending.

At this point, we have to ask, how much longer are we going to subject him to this? There is nothing else he can possibly do to prove he is no longer a threat to Suella. More than a decade without incident, coupled with his lack of criminal history, classes and therapy indicate that he has done everything that can be imagined to prove he is no longer a threat. There has been no conduct in over a decade that can be objectively deemed a threat and thus no need for an extension of the no-contact order.

CONCLUSION

For the above-mentioned reasons, Defendant/Appellant Rick Petro respectfully requests the appellate court reverse the Order of the District Court and dismiss the protective order.

/s/ Karmen Anderson _____
Karmen R. Anderson AT0010686
213 4th St., Ste 100
Des Moines, Iowa 50309
Tel: (515) 282-8637
Fax: (888) 490-7617
karmen@hawkeyedefense.com
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on the 9th day of December, 2021, I served a copy of this document by electronically filing a copy and mailing to all parties that are not on the electronic filing system at their respective addresses as shown below:

Assistant Attorney General
Criminal Appeals Division
Hoover State Office Building
1305 E. Walnut
Des Moines, Iowa 50319
Fax: 515-281-4209
Via EDMS

Rick Petro
Appellant
Via ELECTRONIC MAIL

/s/ Karmen Anderson
KARMEN ANDERSON

CERTIFICATE OF COST

I certify that the cost of printing this brief was \$1.00.

/s/Karmen Anderson

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 1,247 words, excluding the parts

of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman 14 pt. font.

/s/ Karmen Anderson
Karmen Anderson

12/9/2021
Date