

IN THE SUPREME COURT OF IOWA
Supreme Court No. 21-0487

STATE OF IOWA,
Plaintiff-Appellee

vs.

RICK PETRO,
Defendant-Appellant,

APPEAL FROM THE IOWA DISTRICT COURT FOR
WARREN COUNTY
THE HONORABLE, KEVIN PARKER, ASSOCIATE JUDGE

APPELLEE'S BRIEF

THOMAS J. MILLER
Attorney General of Iowa

LINDA J. HINES
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
linda.hines@ag.iowa.gov

DOUGLAS A. EICHHOLZ
Warren County Attorney

ATTORNEYS FOR RESPONDENT-APPELLEE

FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... 3

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW 4

ROUTING STATEMENT..... 5

STATEMENT OF THE CASE..... 5

ARGUMENT.....10

**I. The District Court Did Not Err in Finding Substantial
Evidence to Extend the No-Contact Order..... 10**

CONCLUSION 15

REQUEST FOR NONORAL SUBMISSION.....16

CERTIFICATE OF COMPLIANCE 17

TABLE OF AUTHORITIES

State Cases

<i>Bacon on Behalf of Bacon v. Bacon</i> , 567 N.W.2d 414 (Iowa 1997)....	11
<i>Claus v. Whyte</i> , 526 N.W.2d 519 (Iowa 1994)	14
<i>Ostergren v. Iowa Dist. Court for Muscatine Cty.</i> , 863 N.W.2d 294 (Iowa 2015)	12
<i>State v. Petro</i> , No. 16-1215, 2017 WL 1735894 (Iowa Ct. App. May 7, 2017).....	15
<i>Vance v. Iowa Dist. Ct. for Floyd Cty.</i> , 907 N.W.2d 473 (Iowa 2018).....	10, 13

State Codes

Iowa Code § 664A.3(3)	12
Iowa Code § 664A.8.....	12, 13, 15
Iowa Code § 814.6(1)(a).....	10

State Rules

Iowa R. App. P. 14(f)(1)	11
Iowa R. App. P. 6.108	10
Iowa R. App. P. 6.907	11

**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

**I. The District Court Did Not Err in Finding Substantial
Evidence to Extend the No-Contact Order.**

Authorities

Bacon on Behalf of Bacon v. Bacon, 567 N.W.2d 414
(Iowa 1997)

Claus v. Whyte, 526 N.W.2d 519 (Iowa 1994)

Ostergren v. Iowa Dist. Court for Muscatine Cty., 863 N.W.2d
294 (Iowa 2015)

State v. Petro, No. 16-1215, 2017 WL 1735894
(Iowa Ct. App. May 7, 2017)

Vance v. Iowa Dist. Ct. for Floyd Cty., 907 N.W.2d 473
(Iowa 2018)

Iowa Code § 664A.3(3)

Iowa Code § 664A.8

Iowa Code § 814.6(1)(a)

Iowa R. App. P. 14(f)(1)

Iowa R. App. P. 6.108

Iowa R. App. P. 6.907

ROUTING STATEMENT

Because this case involves the application of existing legal principles, transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case

The defendant, Rick Petro, appeals the second extension of a no contact order resulting from his 2009 conviction, following a guilty plea, of assault causing bodily injury in violation of Iowa Code section 708.2(2). Suella Petro, the protected party, filed a motion to extend the no contact order pursuant to Iowa Code section 664A.8; the State was not involved in these most recent proceedings.

Course of Proceedings

The State accepts Petro's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

This case originated on August 24, 2009, when the State issued a citation and complaint alleging that on August 23, 2009, Petro had assaulted his wife, Suella, by throwing her to the floor and "striking her numerous times." Criminal Complaint. On the same day, the

district court issued a no contact order. No Contact Order (8-24-2009).

On September 9, 2009, the State filed a trial information charging Petro with domestic abuse assault causing bodily injury (Count I) and first-degree harassment (Count II). Trial Information; App. 36. The harassment charge also arose from the August 23, 2009, incident and was based upon Petro's threat to kill Suella. Trial Information; App. 36.

On December 15, 2009, Petro filed a written guilty plea to an amended charge of assault causing bodily injury. Petition to Plead Guilty to a Serious Misdemeanor; App. 37. Petro admitted that on August 23, 2009, he had struck Suella Petro with an open hand on her shoulder causing her pain. Petition to Plead Guilty to a Serious Misdemeanor; App. 37. On January 26, 2010, the district court granted Petro a deferred judgment, placed him on probation for one year, and entered a sentencing no contact order that included a prohibition against possessing firearms. Disposition, Sentencing No Contact Order; App. --, 38-39.

On April 8, 2010, Petro was arrested for violating his probation. Arrest Warrant, Warrant Served. Petro's probation officer reported

that he had made threatening statements to Suella during a meeting at Life-Line Resources. Report of Violation; App. 40. Specifically, Petro stated that “if his wife didn’t ‘keep her mouth shut I am going to take a fucking ball bat to her head.’” Report of Violation; App. 40.

Petro stipulated to the probation violation and the district court revoked his deferred judgment. It imposed a sentence of 365 days in the county jail and suspended the sentence. Order of Disposition, Judgment Entry; App. 42.

On January 11, 2011, Suella filed an application to modify the no contact order. Application for Modifying No Contact Order. On February 8, 2011, the no contact order was modified to extend until February 8, 2016. Order of Protection (2-8-2011); App. 44.

On January 6, 2016, Suella again filed an application for modification of a no contact order requesting the court extend the no contact order “for as long as possible[.]” Application for Modifying No Contact Order; App. --. On the same day, the district court extended the no contact order issued on February 8, 2011, to February 8, 2021. Order; App. --.

Petro filed a motion requesting the court reconsider its extension order and to hold an evidentiary hearing on the matter.

Motion to Reconsider Extension of No-Contact and Request for Hearing. The district court denied the motion.

Petro appealed the district court's extension of the no contact order. *State v. Petro*, No. 16-1215, 2017 WL 1735894 (Iowa Ct. App. May 7, 2017). The Court of Appeals affirmed the extension of the no - contact order. *Id.*

On February 5, 2021, Suella requested the district court extend the no contact order. Motion to Extend No Contact Order (2-5-2021); App. --. The district court granted her motion and extended the no contact order until February 08, 2026. Order to Modify/Extend No Contact Order; App. --.

Petro filed a resistance to the extension and requested a hearing. Resistance; App. --. The district court held a hearing on the matter on March 22, 2021. Transcript Cover (4-22-2021).

At the hearing, Suella described an incident that occurred between the issuance of the 2016 no contact order and present day in which she had to leave a restaurant because Petro entered it. Hearing Tr. p. 6, lines 7-17. Suella also explained that she saw Petro's parents outside her house and her belief that they were sent by Petro.

Suella testified that she still lived in fear of Petro. Hearing Tr. p. 6, line 25-p. 7, line 9. Suella noted the years of being abused by Petro when they were married and concluded “I’m just tired of watching over my shoulder all the time.” Hearing Tr. p. 7, lines 7-8.

Petro maintained that he believed the no contact order was interfering with his ability to obtain employment. Hearing Tr. p. 14, lines 2-8, p. 23, lines 6-17. Additionally, Petro testified he had completed probation, a batterer’s education class, and attended six years of therapy. Trial Tr. p. 16, lines 14-25.

Petro denied having any intention of contacting Suella in the future and denied her assertions both about his parents’ behavior and encountering Suella in a restaurant. Hearing Tr. p. 17, lines 11-13. However, Petro did contend he was anxious about accidentally encountering her in public places because they lived in the same area. Hearing Tr. p. 19, line 11-p. 21, line 1, p. 24, line 24-p. 25, line 11.

Petro also testified that he wanted to own firearms for hunting and that his no contact order interfered with job prospects. Hearing Tr. p. 22, lines 6-14. However, Petro was currently employed and had been at the same job for five years. Hearing Tr. p. 14, lines 2-8.

Following the hearing, the district court denied Petro's motion to reconsider the extension of the no contact order. Order (3-30-2021); App. 48.

Additional facts will be set forth below as relevant to the State's argument.

ARGUMENT

I. The District Court Did Not Err in Finding Substantial Evidence to Extend the No-Contact Order.

Jurisdiction. The extension order was not a final judgment appealable by right pursuant to Iowa Code section 814.6(1)(a). *Vance v. Iowa Dist. Ct. for Floyd Cty.*, 907 N.W.2d 473, at 481 (Iowa 2018). However, the State concedes the reviewing court may treat Petro's notice of appeal as a petition for certiorari. *See* Iowa R. App. P. 6.108; *Id.*

Preservation of Error

Petro preserved error on appeal by filing a resistance to the extension of the no contact order and by participating at his requested hearing on the issue. Resistance; App. --.

Standard of Review

Petro challenges the sufficiency of evidence to support the associate district court's extension of the no contact order; therefore, review is for correction of errors of law. Iowa R. App. P. 6.907.

Merits

Petro argues that the court erred in finding there was substantial evidence to extend the no contact order. "In a law action the district court's findings of fact are binding [upon the appellate court] if those facts are supported by substantial evidence. *Bacon on Behalf of Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997) (citing Iowa R. App. P. 14(f)(1)). "Evidence is substantial if reasonable minds could accept it as adequate to reach the same findings." *Id.* (citation omitted).

Petro contends that he proved by a preponderance of the evidence that he no longer posed a threat to Suella. He maintains he has abided by the order since his violations of it in 2010 and 2011. Given this passage of time, Petro argues, he no longer presents a danger to Suella. Appellant's Brief, p. 13.

Petro also notes he lives in fear of violating the no contact order because he lives "in the same small town" in which Suella resides.

Petro asserts he would like to possess a firearm so that he can hunt and to unhindered by the no contact order in applying to jobs.

“[T]he clear purpose of section 664A.8 is to grant the court express authority to extend the duration of no-contact orders when the circumstances require continuing protection,” *Ostergren v. Iowa Dist. Court for Muscatine Cty.*, 863 N.W.2d 294, 299 (Iowa 2015). “Iowa Code section 664A.3(3) provides no-contact orders are in force ‘until ... modified or terminated by subsequent court action’ or until the case reaches final resolution.” *Ostergren v. Iowa Dist. Court for Muscatine Cty.*, 863 N.W.2d 294, 298 (Iowa 2015) (quoting Iowa Code § 664A.3(3)).

“Section 664A.8 provides that if either the State or a victim files an application to extend the no-contact order within ninety days of its expiration, the court shall modify and extend the no-contact order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's family.” *Ostergren v. Iowa Dist. Court for Muscatine Cty.*, 863 N.W.2d 294, 298–99 (Iowa 2015). “The number of modifications extending the no-

contact order permitted by this section is not limited.” Iowa Code § 664A.8.

“Iowa Code section 664A.8 “prioritizes the safety of the victims and places the burden of proof upon the defendant to show that he or she no longer poses a threat.” *Vance*, 907 N.W.2d at 482. The defendant must prove this by a preponderance of the evidence. *Id.* “[I]f the defendant proves by a preponderance of the evidence that he or she no longer poses a threat to the protected persons, the court should not extend the no-contact order for an additional five years.” *Id.*

Petro did not present sufficient evidence that he no longer poses a threat to Suella. It is true that five years have passed since the previous extension of the no contact order with no reported violations of it. However, “mere compliance with the terms of a no-contact order, while important, should by itself foreclose the possibility of the extension of a no-contact order.” *Vance*, 907 N.W.2d. at 483.

Additionally, Suella testified that Petro did enter a restaurant at which she was eating sometime during those five years and that Petro’s parents had driven by her home. Despite Petro’s denial that either of these incidents occurred, the district court was in the best

position to determine Petro's and Suella's credibility. "Factual disputes depending heavily on credibility of witnesses are best resolved by the trial court, which has a better opportunity to evaluate credibility than" does the appellate court. *Claus v. Whyte*, 526 N.W.2d 519, 524 (Iowa 1994).

The district court's order stated:

Suella Petro testified that the defendant's parents have driven by Suella's home without cause and she believes that the defendant had sent them there. The defendant testified that the time of the termination of his parental rights were the worst days of his life. The court is concerned that the defendant also wants his rights to bear arms reinstated (albeit as to hunting).

Order (3-30-2021); App. 48. It implicitly found Suella to be credible and, when their testimony conflicted, more credible than Petro.

Petro also failed to support his assertion that he completed a batterer's education program or participated in therapy on his own. It was his burden to prove these facts.

Petro's claimed inconveniences that arise from the no contact order are only relevant in determining whether he remains a threat to Suella. In affirming the prior extension of the no contact order, the Court of Appeals noted that "negative impacts on the defendant are

not part of the calculus when a court is deciding whether to extend the no-contact order. The only factor for consideration is whether he still poses a threat.” *Petro*, No. 16-1215, 2017 WL 1735894, at *4.

Some hostilities between former spouses never abate. Therefore, the threat posed by a former spouse may always be present. Given that section 664A.8 prioritizes the protected party and Suella’s testimony, the district court did not err in finding Petro failed to show he no longer posed a threat to his ex-wife.

CONCLUSION

For all the reasons set forth above, the State respectfully requests this Court deny the petition for certiorari.

REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



LINDA J. HINES

Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
linda.hines@ag.iowa.gov

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

1. This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **2,062** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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LINDA J. HINES

Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
linda.hines@ag.iowa.gov