

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 21-0487
WARREN COUNTY NO. SRCR025727

STATE OF IOWA
Plaintiff – Appellee,

vs.

RICK PETRO
Defendant – Appellant.

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

APPLICATION FOR FURTHER REVIEW

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QUESTIONS PRESENTED FOR REVIEW

- I. WHAT MORE CAN PETRO DO TO PROVE HE DOES NOT REPRESENT A THREAT TO THE PROTECTED PARTY?**

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STATEMENT SUPPORTING FURTHER REVIEW

This case warrants further review for the following reasons:

The Court of Appeals made an error of law in its analysis under Iowa Code Section 664A.8 (2021). Mr. Petro has not violated the no-contact order, nor harmed the protected party in almost TWELVE YEARS. The Court of Appeals found substantial evidence in the record, but counsel would submit there was no evidence in the record to support he continues to pose a threat to the protected party.

“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).

This record is devoid of any conduct that could be objectively viewed as a threat and the District Court did not make a finding of such.

This case is a gross miscarriage of justice and is certainly a violation of Mr. Petro’s constitutional rights.

STATEMENT OF THE CASE

NATURE OF THE CASE, THE PROCEEDINGS AND DISPOSITION OF THE CASE

This is an Application for Further Review from a March 2, 2022 Iowa Court of Appeals decision affirming the March 30, 2021 Order Denying Defendant's Motion to Reconsider Extension of the No Contact Order.

A No Contact Order was originally entered against Petro on August 24, 2009. On December 15, 2009 Petro pled guilty to Assault Causing Bodily Injury (serious misdemeanor). The existing No Contact Order was extended through January 26, 2011.

On April 8, 2011, the No Contact Order was extended through February 8, 2016. On January 1, 2016, the No Contact Order was extended through February 8, 2021. The Defendant timely filed a Motion to Reconsider the Extension of the No Contact Order and a Hearing was held on April 22, 2016. The Trial Court denied the Motion to Reconsider on July 7, 2016.

On February 5, 2021, the Protected Party filed a notice to extend. Petro again requested a hearing on the extension. On March 30, 2021 the Motion to Reconsider was denied. Subsequently, the no-contact order remains in place February 8, 2026.

Appellant/Defendant timely filed his request for further review with this tribunal pursuant to Iowa Rule of Appellate Procedure 6.1103(1).

FACTUAL BACKGROUND

STATEMENT OF THE FACTS

The State alleged in the Trial Information, filed September 8, 2009, that Petro had assaulted “a current or former spouse, a person who is a parent of defendant’s child(ren) and/or family member of intimate partner residing with defendant (or who has, within one year, resided with the defendant) and while doing so cause the victim bodily injury. Petro ultimately pled guilty to Assault Causing Bodily Injury in violation of Iowa Code 708.2(2). Petro was **not** convicted of domestic-abuse assault.

Petro was placed on probation. During the course of probation, it was alleged that Petro violated the terms of his probation on April 6, 2010 by making statements against the protected party, Suella Petro, to a third party, that were interpreted as a threat. These threats served as the basis for the extension filed on January 14, 2011.

On April 5, 2011 Petro violated the no-contact order by speaking to Suella during a termination of parental rights proceeding and was found to be in contempt of the Courts Order. The statements made to Suella at this time were simply “I

can't believe you're doing this", referring to her pursuing termination of his parental rights.

The Court held a contested hearing on April 22, 2016 regarding the motion of the protected party. Rick Petro was the only witness in the proceeding. Petro testified that it had been almost seven years since the no-contact order was put in place.

Suella and Rick Petro have not had any contact since the April 6, 2011 court proceeding. Throughout the duration of the multiple no-contact orders being entered, Petro has not had any physical contact with the protected party. Petro has not had any contact via phone, letter, personal, or otherwise since April 6, 2011.

Suella Petro did testify in the proceedings that she still felt threatened by Petro.

The Court of Appeals indicated that there was substantial evidence in the record that supported the extension. The Court of Appeals also stated that the District Court was in the best position to assess credibility of the parties. Notably, the District Court heard the testimony of Mr. Petro. It did not indicate in its Order that Mr. Petro was not credible. Further, its cited reason for the extension was an allegation that Mr. Petro's parents had driven by Ms. Petro's home at some

unknown date. Evidence in the record showed that this claim by Suella, that it had happened in the previous five years was false.

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.

ARGUMENT

I. WHAT MORE CAN PETRO DO TO PROVE HE DOES NOT REPRESENT A THREAT TO THE PROTECTED PARTY?

“‘Substantial evidence’ means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code Ann. § 17A.19 (West).

“‘When that record is viewed as a whole’ means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.” Iowa Code Ann. § 17A.19 (West).

“The purpose of a no-contact order is to protect victims of certain public offenses from harm or harassment. *See* Iowa Code § 664A.1(1) (defining “No contact order”). Section 664A.8 provides an increased layer of protection by providing victims the opportunity to have their no-contact order extended for additional five year periods if the defendant continues to pose a threat to the safety of the victim.” *State v. Haviland*, 817 N.W.2d 32 (Iowa Ct. App. 2012).

“Looking at the plain language of section 664A.8, we find the statute *does not place the burden on the defendant to show the defendant is no longer a threat to the victim. See* Iowa Code § 664A.8. We find that Pettit's claim is misplaced. The statute provides that the court must find the defendant is no longer a threat to the safety of the victim. The statute does not require the defendant to prove

anything; it simply requires the court to make an independent finding based upon the evidence presented.” *State v. Pettit*, 885 N.W.2d 221 (Iowa Ct. App. 2016) (emphasis added).

Recently, the Iowa court of Appeals decided a case similar to the facts in Petro’s case (coincidentally not referenced in the opinion rendered in this 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 and as referenced by the Court of Appeals, is easily disproven based on the record. The Court of Appeals 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. (4/21/2016; Exhibit 3 – Letter dated October 10, 2011). 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. Suella just speculated that he was somehow involved. 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.

The Court of Appeals admitted that Mr. Petro had not violated the no-contact order in the last decade. It cited that that fact alone was not enough.

This is not the only reason to support that Mr. Petro does not pose a threat to Suella. It is further solidified by his lack of any further criminal history since his altercation with Suella, his completion of probation, complete of batterer's education and engagement in therapy. The Court of Appeals fully overlooked this when finding substantial evidence.

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. When looking at this case objectively, there is no reasonable basis to support it continuing. We simply have a verbalized fear by the protected party with no substantiated (or even unsubstantiated) actions by Mr. Petro. What possibly can Mr. Petro do at this point, that he has not already successfully done, to prove he is no longer a threat?

CONCLUSION

For the above-mentioned reasons, the Appellant respectfully prays that the decision of the court be reversed and that the Court dismiss the protective order.

REQUEST FOR ORAL SUBMISSION

Appellant does request oral argument in this matter.

COST CERTIFICATE

I certify that the cost of printing Appellant's Application for Further Review was the sum of \$0.00.

Karmen Anderson Law Firm
COUNSEL FOR APPELLANT

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.1103(4) because the brief contains 2,285 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.

