

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

M.C.,	:	
	:	
Petitioner-Appellant,	:	
	:	No. 112372
v.	:	
	:	
H.M., ET AL.,	:	
	:	
Respondents-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: July 13, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-21-953261

Appearances:

M.C., *pro se.*

Edwin V. Hargate, *for appellee* S.L.H., Sr.

SEAN C. GALLAGHER, J.:

{¶ 1} The petitioner, M.C., in a civil stalking protection order case filed exclusively under R.C. 2903.214, appeals the trial court’s decision dismissing the proceeding without prejudice for failure to state a claim upon which relief can be granted. The dismissal occurred before the full hearing was conducted, which is

required under R.C. 2903.214(D)(2) and (3). Although this case has a tortured history and the animosity among the parties is palpable, a matter we need not elaborate on in light of the procedural posture of this case, we are constrained to reverse that decision and remand for the purposes of conducting the statutorily required hearing. We cannot circumvent the unambiguous requirements of R.C. 2903.214, even based on the particular facts of this case. To do otherwise risks opening the door to lessening the protections afforded by R.C. 2903.214 in general.

{¶ 2} The petitioner, on September 20, 2021, filed three petitions for an order of protection, each against one of the three respondents.¹ The three petitions were docketed under one case number. The allegations in the petitions are largely the same. According to the petitioner, the three respondents collectively engaged in cyberbullying by “creating a campaign against” the petitioner and her family, who were also included in the petitions but do not reside with the petitioner for the purposes of R.C. 2903.214(C). The petitioner accused the respondents of spreading lies about her adult grandson involving allegations of murder and that the conduct regularly occurred. It is not clear how the respondents’ alleged conduct against the grandson was applicable to the petitioner herself.

{¶ 3} Upon those allegations, the magistrate appointed to handle the matter immediately granted an ex parte order of protection. That order included an expiration date of March 20, 2022, and set the full hearing ten days after the order

¹ Only one of the respondents filed a merit brief that was accepted for review. Another brief was stricken for lack of compliance with the Rules of Appellate Procedure, and the last respondent did not appear in this appeal.

was entered. The case stalled from there. After several continuances of the full hearing based on delays in obtaining service, multiple discovery requests, and time for some of the respondents to obtain counsel, the magistrate issued a journal entry on November 17, 2022, stating that

[i]t appears that this CSPO filing is just one of many cases pending in this court involving the same or similar parties. Due to the voluminous filings in this matter, several of which need to be decided by the court before hearing, the full hearing scheduled on 11-18-22 is canceled. The temporary protection order filed 9-20-21 has long since expired. This matter will be set for a settlement/case management conference by phone, the date and time of which will be issued by separate order.

That order does not contemplate R.C. 2903.214(D)(2)(b), which unambiguously provides that an “ex parte order issued under this section *does not expire*” solely “because the court grants a continuance” of the hearing under division (D)(2)(a). (Emphasis added.) *Id.*

{¶ 4} In January 2023, the trial court² dismissed the proceeding without prejudice for the failure to state a claim upon which relief could be granted, concluding in pertinent part, that

[t]he allegations against the respondents are that each has disseminated through social media or by other means, false and/or defamatory statements about the petitioner’s grandson (who is not a party to this case) and her family. The petitioner seeks through the present matter to enjoin the respondents from conveying or posting such misinformation in the future.

However, “prior restraints on the exercise of free speech are unconstitutional and presumptively invalid.” *See* 155 Ohio St.3d 1455, 2019-ohio-1759, 122 N.E.3d 216.

² The trial court judge inherited the case through winning the 2022 general election for that seat. That represented the third sitting judge to have been assigned to the case during the lengthy proceedings.

Although that analysis addresses one aspect of the requested relief,³ the petition included requests to limit the respondents' contact with and proximity to the petitioner. R.C. 2903.214 does not authorize summary proceedings in lieu of conducting the statutorily required hearing. Because there was no full hearing and the appellate record does not contain any indication that a recorded hearing was conducted upon the ex parte order, there are no facts upon which a panel of this court can review with respect to the petitioner's request for the order of protection. Further, the petitioner's request for an order of protection included the standard requests to prevent the respondents from contacting or being near her and also to prevent the respondents from stalking or harassing her. Neither of those claims was contemplated by the trial court's order of dismissal.

{¶ 5} R.C. 2903.214 unambiguously requires a full hearing on any petition for an order of protection. Under R.C. 2903.214(D)(2), if the court grants a temporary order of protection after conducting an ex parte hearing, the court is required to schedule a full hearing within ten days. Any continuance must be granted pursuant to R.C. 2903.214(D)(2), and those continuances do not cause the temporary order of protection to expire. In this case, largely due to the overt display of animosity among the respondents over matters that go well beyond the scope of a protection order, the case languished after the ex parte order of protection was

³ In light of the disposition, we make no determination as to the validity of the trial court's stated rationale as it pertains to petitioner's request to restrain future speech. That can only be addressed upon compliance with R.C. 2903.214 and a final decision being entered upon the record.

initially granted based on the allegations contained within the four corners of the three petitions.

{¶ 6} Regardless of the merits of petitioner’s allegations, we cannot condone a practice that offers a summary dismissal of a petition for a protection order in contravention of the statutorily mandated hearing to which each petitioner is entitled under R.C. 2903.214(D)(2) and (3). The full hearing is the petitioner’s opportunity to present evidence in favor of the request for an order of protection, and until that occurs, it is error to dismiss the proceeding solely based on the allegations within the petition itself. *See* R.C. 2903.214(D)(3). If the allegations in the petition are insufficient to warrant a temporary order of protection or the court is constitutionally precluded from imposing one of the restrictions sought through the petition, the remedy is to deny the request for an ex parte order of protection. In those cases, however, the statute still demands that a full hearing occur: “[I]f a person requests an ex parte order but the court does not issue an ex parte order after an ex parte hearing, the *court shall proceed as in a normal civil action and grant a full hearing on the matter.*” (Emphasis added.) R.C. 2903.214(D)(3). That statutory process does not allow for any summary dismissal based on the sufficiency of the allegations.

{¶ 7} In this case, the magistrate initially determined that the allegations warranted the issuance of an order of protection. Upon that determination, the petitioner is entitled to a full hearing affording all parties the opportunity to be

heard. R.C. 2903.214(D)(2)(a). Dismissal of the petition based on the sufficiency of the allegations is not an available mechanism to resolve the case.

{¶ 8} For this procedural reason, and this reason alone, the decision of the trial court is reversed. All other arguments in favor of reversing the trial court's decision are moot, and all other procedural motions filed in this appeal are denied. The matter is remanded for the purpose of conducting a full hearing in accordance with R.C. 2903.214, which shall be conducted as expeditiously as practicable.

{¶ 9} Reversed and remanded for further proceedings.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE,

FRANK DANIEL CELEBREZZE, III, P.J., and
EILEEN A. GALLAGHER, J., CONCUR