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STATE OF MICHIGAN

COURT OF APPEALS

CMT, Petitioner-Appellee, v TOF, Respondent-Appellant.	UNPUBLISHED September 15, 2026 10:13 AM No. 375082 Muskegon Circuit Court LC No. 2025-000976-PH

Before: GADOLA, C.J., and RIORDAN and LETICA, JJ.

PER CURIAM.

In this action brought by petitioner for a personal protection order (PPO), respondent appeals as of right the trial court's order issuing the PPO. We affirm.

I. FACTS AND PROCEDURAL HISTORY

A. THE PETITION

Petitioner and respondent are neighbors, who have a history of involving the police in their disputes. On March 6, 2025, petitioner filed a petition seeking a PPO against respondent under MCL 600.2950a(1). Therein, petitioner alleged that respondent engaged in stalking as defined in MCL 750.411h. More specifically, petitioner alleged that six incidents involving respondent occurred from May 16, 2021 through February 21, 2025. Petitioner also attached six police reports to support his petition.[1] These incidents will be discussed in detail *infra*. But, in brief, the last incident reported to the police began when petitioner was snowplowing his yard and respondent yelled something at him. Although petitioner did not hear what respondent yelled, petitioner shouted back: "[F]uck [b]oy." Respondent then called petitioner "a dumb n*****[.]"[2] Respondent and petitioner exchanged words with respondent asking petitioner how his dead brother was,

[1] All six of the police reports were printed on the date of the last incident.

[2] Petitioner is African-American and respondent is Caucasian.

explaining that it was Suicide Awareness Month.[3] Although petitioner had a video recording of this incident, the police report was unavailable because it had been forwarded to the prosecutor's office.

Thirteen days later, petitioner filed his PPO petition. Notably, petitioner, who was representing himself, checked a box reflecting that there were no "other pending actions in this or any other court regarding the parties," but this was untrue. In fact, respondent had sued petitioner civilly and petitioner had been served with that lawsuit on February 11, 2025.[4] See Muskegon County Circuit Court Docket No. 2024-005699-NO.

B. THE PPO HEARING

On March 18, 2025, the circuit court held a hearing on petitioner's request for a PPO. Both petitioner and respondent represented themselves and were placed under oath.

The court inquired why petitioner sought the PPO. Petitioner informed the court that respondent "always" had "something to say about" him when he frequently came home or left the house. Respondent called petitioner the "n-word all of the time" and "constantly" harassed him. When asked to describe what he meant by harassment, petitioner said that if he was in his yard, respondent would come outside, grab his leaf blower, and blow it back on his side. Petitioner repeated that respondent "constantly always" called him "the n-word[.]" Petitioner had recordings of respondent's actions. Asked whether there was anything else, petitioner said: "No, sir."

The court then asked respondent why it should not issue the PPO. Respondent raised the fact that the petition reflected that there was no current litigation between the parties. Respondent then asked whether the court was aware of any current litigation. The court responded: "No. And I don't care." Respondent, however, made the court aware that petitioner had filed his PPO request ten days after respondent had served petitioner with a civil suit.[5] Therefore, respondent told the court that he viewed petitioner's PPO filing as a retaliatory event.

Addressing "[t]he use of the n-word," respondent claimed that petitioner had introduced the word and had used it against another neighbor. Further, it did not "seem to be a word that [petitioner] took great offense to since he so freely use[d] it against [respondent] and others." Respondent described the word as "ignorant," but admitted using it. The judge advised that if he were respondent, he would make it his "business never to use the word. And if [petitioner]

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[3] Suicide Prevention and Awareness Month is observed in September, not February. See <https://www.dea.gov/suicide-prevention-month#:~:text=The%20Drug%20Enforcement%20Administration%20recognizes,and%20others%20about%20suicide%20prevention> (accessed September 14, 2026).

[4] Respondent's appellate brief states that respondent's civil lawsuit against petitioner stemmed from a dog bite situation.

[5] Petitioner filed his PPO petition on March 6, 2025, 23 days after he was served with respondent's separate civil lawsuit on February 11, 2025.

decide[d] to use that word, that [did] not open the door for [respondent] to use that word." Respondent agreed.

Thereafter, respondent noted that some of petitioner's complaints were years old. Respondent also testified that he had "never threatened [petitioner]," but petitioner had threatened to "beat [respondent] up." Respondent advised he did not have "any racial anxiety toward" petitioner, but "[had] issues with [petitioner's] disrespect for his neighbors, his community, the laws, and the ordinances."

Further, respondent shared with the court that he had video of someone leaving petitioner's house on Saturday, running over respondent's mailbox, and driving away. Respondent admitted his video did not show who was driving the vehicle responsible for that incident so that he could not say it was petitioner. Respondent then reiterated that he had never threatened petitioner.

The court observed that neither petitioner nor respondent listened because they were "so amped up that [they] take off." Thereafter, the court inquired about the February 21, 2025 incident. Although respondent initially denied calling petitioner "n*****," "[f]or arguments sake," he would later admit he had. Respondent queried whether using the word was illegal. The court explained that there was no such law. Thereafter, respondent admitted that petitioner's language "was intended to inflame [him]," so he responded in kind.

The court then inquired whether respondent had asked petitioner about petitioner's deceased brother. Respondent denied doing so, claiming that he had asked petitioner about another one of his brothers. After inquiry by the court, petitioner responded that the recording reflected that respondent did not ask about a living relative.

The court further asked respondent whether he had made the statement about Suicide Awareness Month. Respondent admitted that he had. When asked why, respondent said that suicide had "been close to [his] family" and he "honestly thought it was . . . Suicide Awareness Month."[6] Respondent explained that the parties "were [engaged] in an argument" and "hollering at each other." Respondent's statement was made "[o]ut of emotion" and in "poor judgment." Lastly, respondent admitted that he made the statement "to inflame [petitioner.]"

After watching a security camera recording of the parties' interaction, which was preserved on a cellular telephone, the court observed: "That's pretty lousy."[7] Respondent agreed, explaining that many "lousy things" had happened over five years. Respondent recognized that the court could not change the parties' dislike for each other, but it would change the words he chose. Moreover, respondent expressed that he "would like to see things not escalate in the future."

When the court asked petitioner what he expected the order to accomplish, he responded "[p]retty much nothing" because it was "just a piece of paper." Petitioner added that the parties' "back-and-forth ain't going to stop." The court, however, advised that their argument would stop if petitioner did not pay attention to respondent. The court recognized that a piece of paper could

[6] See *supra* footnote 2.

[7] This recording was not admitted as an exhibit and has not been provided to this Court.

not change people, but it could change their behaviors. The trial judge observed that his mother used to say that unless someone put their hands on him, he should just let it go.

The trial court thereafter decided to issue the PPO. The court explained that the number of PPOs it had issued between neighbors could be counted on two hands. In issuing the PPO, the trial court further recognized that it was probably creating additional work for itself.

Respondent again noted that the documents filed reflected that petitioner had threatened him, not that respondent had threatened petitioner. In response, the trial court explained its decision by reading the following language from its order into the record:

> Parties are neighbors. Both attest to [a] history of antagonistic insulting, [and] aggressive behavior. Petitioner produced video evidence of willful contact [and] escalation by respondent.

Respondent asked whether the court would like to see the videos he had. The court inquired whether respondent had petitioned for a PPO, which respondent admitted he had not done. The court told respondent that it did not want to see what he had because he had not petitioned "that this [situation] was a problem for [him]." Respondent explained that the county prosecutor had recommended that he do so last year, and the court replied that respondent should have followed through at that time.

C. RESPONDENT'S APPEAL

Respondent retained counsel and appealed the trial court's issuance of the PPO order to this Court, and, a day later, filed a motion for reconsideration of the PPO order in the trial court. The trial court denied respondent's motion, concluding that it did not have jurisdiction over the case after respondent filed his claim of appeal. See MCR 7.208(A).

Respondent then filed a motion for remand in this Court to permit the trial court to exercise jurisdiction to hear his motion for reconsideration. This Court granted respondent's request and remanded the matter to the trial court. *CMT v TOF*, unpublished order of the Court of Appeals, entered July 17, 2025 (Docket No. 375082).

D. THE HEARING ON REMAND

At the hearing,[8] respondent argued that the trial court committed palpable error by granting the PPO because it failed to provide sufficient factual support for its decision that respondent had engaged in stalking. More specifically, respondent contended that there was no evidence that he had engaged in repeated and unconsented contacts toward petitioner that would make an average person feel harassed, threatened, or terrorized, and that actually made respondent feel that way.

[8] Petitioner did not appear for the hearing.

Additionally, respondent argued that his use of the word "n*****" was protected free speech. The trial court denied the motion, ruling:

> This Court finds that the Respondent failed to demonstrate palpable error. Respondent also failed to show that a different disposition would be warranted if any such error, if proven, were corrected.
>
> Moreover, the record supports the conclusion that the Respondent engaged in a willful course of conduct involving repeated harassment of the Petitioner, including the repeated use of racially charged and incendiary language. Such conduct constitutes harassment that would cause a reasonable person to feel intimidated, harassed, or terrorized, and in fact did cause the Petitioner to feel such effects. Petitioner acted upon such and sought the subject PPO.

The case is now back before us.

II. DISCUSSION

A. STANDARD OF REVIEW

"We review for an abuse of discretion a trial court's determination whether to issue a PPO because it is an injunctive order." *TM v MZ (On Remand)*, 326 Mich App 227, 235; 926 NW2d 900 (2018) (*TM II*) (quotation marks and citation omitted). The trial court abuses its discretion when its "decision is outside the range of reasonable and principled outcomes," which necessarily occurs "when it makes an error of law." *Id*. at 235-236 (quotation marks and citation omitted). "[B]ut we review for clear error the court's underlying factual findings." *CNN v SEB*, 345 Mich App 151, 159; 4 NW3d 759 (2023). "The clear-error standard requires us to give deference to the lower court and find clear error only if we are nevertheless left with the definite and firm conviction that a mistake has been made." *SP v BEK*, 339 Mich App 171, 176; 981 NW2d 500 (2021) (quotation marks and citation omitted). In making such a determination, "regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it." *Id*. (quotation marks and citation omitted). After all, "[t]he trier of fact has the advantage of being able to consider the demeanor of the witnesses in determining how much weight and credibility to accord their testimony." *Id*. (quotation marks and citation omitted). Lastly, "questions of statutory interpretation . . . are reviewed de novo." *TM II*, 326 Mich App at 235.

B. THE STALKING STATUTE

"Two different statutes, MCL 600.2950 and MCL 600.2950a, provide for three types of PPOs in Michigan." *TM v MZ*, 501 Mich 312, 315; 916 NW2d 473 (2018) (*TM I*). The relationship between the petitioner and the respondent as well as the acts involved govern which type of PPO is appropriate. *Id*. at 315.

MCL 600.2950a(1) governs the issuance of PPOs in nondomestic situations, commonly referred to as a "stalking-type PPO." *TM I*, 501 Mich at 316. Under MCL 600.2950a(1),

an individual may petition the family division of circuit court to enter a [PPO] to restrain or enjoin an individual from engaging in conduct that is prohibited under section 411h, 411i, or 411s of the Michigan penal code, 1931 PA 328, MCL 750.411h, 750.411i, and 750.411s. A court shall not grant relief under this subsection unless the petition alleges facts that constitute stalking as defined in section 411h or 411i, or conduct that is prohibited under section 411s, of the Michigan penal code, 1931 PA 328, MCL 750.411h, 750.411i, and 750.411s.

" 'Stalking' means a willful *course of conduct* involving repeated or continuing *harassment* of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested." MCL 750.411h(1)(e) (emphasis added). The pertinent definitions are found in MCL 750.411h(1):

(a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

* * *

(d) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing *unconsented contact* that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment *does not* include constitutionally protected activity or conduct that serves a legitimate purpose.

* * *

(f) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

* * *

(*i*) Following or appearing within the sight of that individual.

(*ii*) Approaching or confronting that individual in a public place or on private property.

(*iii*) Appearing at that individual's workplace or residence.

(*iv*) Entering onto or remaining on property owned, leased, or occupied by that individual.

* * *

(*vii*) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual. [Emphasis added.]

C. ADEQUACY OF THE TRIAL COURT'S FINDINGS

Respondent argues that this Court cannot adequately review the trial court's decision to issue the PPO because the trial court provided an insufficient factual basis for its ruling, resulting in a deficient lower court record. We disagree.

MCL 600.2950a(7) provides:

> If a court issues or refuses to issue a [PPO], the court shall immediately state in writing the specific reasons for issuing or refusing to issue the [PPO]. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue a [PPO].

Likewise, MCR 3.705(B)(6) provides:

> At the conclusion of the hearing the court must state the reasons for granting or denying a [PPO] on the record and enter an appropriate order. In addition, the court must state the reasons for denying a [PPO] order in writing, and, in a proceeding under MCL 600.2950a, the court must state in writing the specific reasons for issuance of the order.

In this case, the trial court held two hearings, resulting in a sufficient lower court record for appellate review. At the first hearing, the trial court took testimony from both parties before it issued the PPO and explained its reasoning for doing so on the record, memorializing its oral ruling in a written order. The trial court also held a hearing on respondent's motion for reconsideration and subsequently entered a written order. Thus, respondent's requested relief—to remand this case to the trial court to allow it an opportunity to articulate the factual basis for its ruling to issue the PPO—has already occurred, and appellate review would not be furthered by remanding this case for a second time. Therefore, we turn to the merits of this appeal.

D. SUFFICIENCY OF THE EVIDENCE

Respondent argues that the trial court abused its discretion in granting petitioner's PPO request because insufficient facts were set forth in the petition to establish that he engaged in stalking. Respondent contends that the incidents included in the petition did not involve unconsented contact, that petitioner failed to establish that the incidents would cause a reasonable person to suffer emotional distress and actually caused petitioner to suffer emotional distress, or that the incidents were not harassing because they involved constitutionally protected activity or conduct that served a legitimate purpose. We conclude that the trial court did not abuse its discretion in issuing the PPO order because the petition and testimony presented contained sufficient facts to constitute stalking under MCL 750.411h.[9]

[9] Although we agree that the April 15 and July 22, 2024 incidents did not constitute harassment for purposes of stalking, the remaining incidents and conduct supported the issuance of the PPO.

"[A] petitioner seeking a PPO bears the burden of proving reasonable cause for the issuance of a PPO." *Lamkin v Engram*, 295 Mich App 701, 711; 815 NW2d 793 (2012). In determining whether reasonable cause exists to issue a PPO under MCL 600.2950a(1), "the circuit court is not limited to the four corners of the petition itself[.]" *Lamkin*, 295 Mich App at 711. "[R]ather, it must consider the testimony, documents, and other evidence proffered to determine whether a respondent engaged in harassing conduct." *Id*.

"[F]or a victim to show that stalking has occurred, there must be evidence of two or more acts of unconsented contact that caused the victim to suffer emotional distress and that would cause a reasonable person to suffer emotional distress." *PC v JLS*, 346 Mich App 233, 241; 12 NW3d 29 (2023) (quotation marks, citation, and alteration omitted). " 'Emotional distress' means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling." MCL 750.411h(1)(c).

1. THE MAY 15 AND 16, 2021 INCIDENTS

Petitioner's petition described that respondent "was [d]rinking" and "har[]assi[n]g" petitioner when petitioner was outside of his home. Respondent blew dirt and rocks at the vehicle petitioner had just washed. Petitioner added that respondent called petitioner "a [n]*****," and, later, began "shooting his gun and y[]elling n*****[.]"

The related police report reflects that the police were dispatched on May 16, 2021, at about 7 p.m., to an active threat complaint from petitioner's wife, who identified respondent as the person who had threatened petitioner. Petitioner's wife explained that she believed that respondent was intoxicated and had been shooting in his backyard.[10]

En route, the police received a call from respondent. Respondent reported that petitioner was stacking rocks on respondent's property and that respondent wished to speak with the police.

When the police arrived, petitioner's wife reported that respondent was intoxicated on May 15, 2021. At that time, respondent, who had a beer, was riding a lawn mower around his property. Respondent stopped his mower next to the property line and intentionally blew dirt and rocks from an easement onto the freshly washed vehicle parked in her driveway.

On May 16, 2021, respondent again approached the property line and recorded petitioner, calling him "n*****" and "making threats." Later still, respondent was shooting a gun in his backyard. Petitioner's wife opined that respondent was attempting to intimidate petitioner by shooting the gun.

The police followed up with respondent, who raised his prior grievances with petitioner and petitioner's wife. Respondent reported that on May 14, 2021, petitioners were filming him and petitioner made a threatening gesture toward respondent by "running his finger or thumb across his neck." Respondent was also upset about petitioner burning wood chips, resulting in

[10] This was not the first time a complaint had been made. The police responded to two earlier complaints of similar nature on August 15 and 16, 2020.

plumes of smoke, as well as petitioner stacking rocks on respondent's property. Respondent further reported that he and petitioner recently had property surveys performed.

Respondent showed a video on his cellular phone to the police. Therein, petitioner demanded that respondent not film him. And although respondent had called petitioner names, respondent used the terms "dummy" and "dumb***," not a racial invective. Further, respondent denied shooting his gun in his backyard that day but admitted that he shot guns on his property.[11]

After checking the Geographic Information System, the police determined the rocks petitioner had stacked were either on or very close to the property line. And, after reviewing the parties' available videos, the police found no "proof of verbal threats or gestures." Because no criminal action occurred, the police advised the parties that no action would be taken. The police further advised the parties "to find the middle-ground" or look to the civil court system for resolution.

On appeal, respondent contends that he did not engage in unconsented contact during these incidents because he remained on his own property and because petitioner had threatened respondent and engaged with him. In respondent's view, this was "a game" that took "two to play." In fact, "[p]etitioner consistently engaged with [r]respondent almost like a hobby he enjoyed" because petitioner never asked respondent to leave him alone and never asked the police to ask respondent to leave him alone. We disagree.

Unconsented contact is "any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued." MCL 750.411h(1)(f). " 'Or' is . . . a disjunctive [term], used to indicate a disunion, a separation, an alternative." *Mich Pub Serv Co v Cheboygan*, 324 Mich 309, 341; 37 NW2d 116 (1949). The statute specifically provides that unconsented contact includes, but is not limited to, "[p]lacing an object on, or delivering an object to, property owned, leased, or occupied by that individual." MCL 750.411h(1)(f)(*vii*). In this case, petitioner did not consent to respondent's conduct of intentionally throwing dirt and rocks onto his freshly washed car.

Unconsented contact also includes, but is not limited to, "[a]pproaching or confronting that individual in a public place or on private property." MCL 750.411h(1)(f)(*ii*). Respondent approached the parties' property line and recorded petitioner despite petitioner asking respondent to stop. Thereafter, respondent began shooting his gun on his property while yelling the same racial invective that he had earlier directed toward petitioner. Petitioner did not initiate or consent to these contacts, which resulted in petitioner's concerned wife calling the police to report respondent's threatening behaviors. Additionally, respondent's unconsented contacts, especially discharging his firearm on his property while yelling the same racial invective he had used to reference petitioner earlier, could cause a reasonable person to feel threatened, frightened,

[11] Respondent owned an 18-acre property behind his home that extended behind petitioner's residence.

intimidated, or harassed and could cause petitioner to feel these same emotions after respondent showed he was physically capable of acting on his verbal insults.

Respondent's contention that petitioner threatened him was not supported by the videos the parties had provided to the police. Moreover, given what occurred during the hearing, the trial court found respondent was not a credible witness. See MCR 2.613(C) ("Findings of fact by the trial court may not be set aside unless clearly erroneous. In the application of this principle, regard shall be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it."). On the other hand, police review of the videos provided by the parties confirmed that respondent engaged in name calling, using the terms "dummy" and "dumb***," not a racial invective, to address petitioner. Respondent also told the police that he had previously discharged firearms on his property, bolstering the truthfulness of the petitioner's allegations against respondent.

Respondent further asserts that, even if he had used a racial invective, such speech is constitutionally protected. This is so because "[h]arassment *does not* include constitutionally protected activity or conduct that serves a legitimate purpose." MCL 750.411h(1)(d) (emphasis added).

We recognize that "[t]he First Amendment, applicable to the States through the Fourteenth Amendment, provides that Congress shall make no law . . . abridging the freedom of speech." *TM II*, 326 Mich App at 237 (quotation marks and citation omitted). "The First Amendment protects the speech . . . rights of an individual . . . no matter how different, unpopular or morally repugnant society may find his activities." *CNN*, 345 Mich App at 163 (quotation marks and citation omitted).

But the First Amendment does not protect "fighting words." *Chaplinsky v New Hampshire*, 315 US 568, 572; 62 S Ct 766; 86 L Ed 2d 1031 (1942) (quotation marks omitted). "Fighting words include 'those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke a violent reaction.' " *TM*, 326 Mich App at 239-240, quoting *Cohen v California*, 403 US 15, 20; 91 S Ct 1780; 29 L Ed 2d 284 (1971). Numerous courts have concluded that use of the particular racial invective respondent repeatedly uttered in this case falls within the fighting words exception when considered in context. See e.g., *State v Liebenguth*, 336 Conn 685; 250 A3d 1 (Conn, 2020) (The court held that the defendant's vulgar and racially charged remarks, which were directed at an African-American parking enforcement official during a hostile confrontation after the defendant received a parking ticket, were "fighting words."); *In re HK*, 778 NW2d 764, 766-770 (ND, 2010) (The court affirmed a juvenile's adjudication for disorderly conduct after the juvenile and two of her friends followed a black teenager into a bathroom during a dance, yelled at her, called her a n*****, told her that she did not own the town, that they did, that they did not want n****** in their town, and that she needed to watch out. Soon after, the juveniles appeared at a restaurant where the victim was; again, the group said "n*****," made other disparaging comments, and, before leaving, the juvenile said, "[b]ye n*****" to the victim. Recognizing that "[t]he First Amendment protects an individual's mere use of the term 'n*****,' " the juvenile "did more than simply utter an offensive racial epithet." And "[b]ased upon the derogatory and threatening nature of [the juvenile's] statements, as well as the identity of the person to whom the statements were made, . . . the [juvenile's] statements constituted 'fighting words' in the context in which they were uttered and

the protection of the First Amendment did not apply."); *In re Shane EE*, 851 NYS2d 711; 48 AD3d 946, 946-947 (2008) (quotation marks and citation omitted) (A juvenile's adjudication for aggravated harassment in the second degree was supported by evidence that while riding on the same bus over the course of two months, the juvenile called the victim several names, indicating a bias against her due to her race, color, and gender, and told her that he had "a gun with [her] name on it," "we shoot n****** like you in the woods," "and threatened to punch her in the face." The juvenile's words, threats, and racial slurs were not protected under the First Amendment because "the language at issue here is so personally and racially offensive that it was likely to provoke the average person to retaliation, and thereby cause a breach of peace."); *In re John M*, 201 Ariz 424; 36 P3d 772, 776 (App, 2001) (quotation marks omitted) (A juvenile, who yelled "f[***] you, you god d[***] n[*****]," at a black woman at a bus stop used fighting words, not entitled to protection. The court observed: "[F]ew words convey such an inflammatory message of racial hatred and bigotry as the term 'n[*****].' According to Webster's New World Dictionary, the term is generally regarded as virtually taboo because of the legacy of racial hatred that underlies the history of its use among whites, and its continuing use among a minority as a viciously hostile epithet."); *In re Spivey*, 345 NC 404; 480 SE2d 693, 699 (1997) (In a case involving a removal proceeding for a district attorney, who had repeatedly called a black bar patron n*****, the court took judicial notice that "[n]o fact is more generally known than that a white man who calls a black man a 'n*****' within his hearing will hurt and anger the black man and often provoke him to confront the white man and retaliate.").

In the trial court, respondent relied on the *CNN* case to support his argument that his use of this racial invective could not be used as evidence of harassment. In *CNN*, two black neighbors were arguing when a white neighbor came to assist. In response, one black neighbor told the other black neighbor, "[H]ere come your masser (sic)[.]" *CNN*, 345 Mich App at 154 (alteration in original; quotation marks omitted). On appeal, this Court held that the trial court erred by granting the PPO based on this statement alone. *Id*. at 162. This Court reasoned that "[i]mposing a PPO based on [a] single, nonthreatening comment violated the First Amendment of the United States Constitution." *Id*.

Respondent, however, incorrectly argues that *CNN* establishes that the trial court in this case abused its discretion by issuing the PPO when it considered respondent's use of racial invectives toward petitioner in issuing the PPO. But, during the PPO hearing, the trial court specifically recognized that the First Amendment could protect the simple utterance of this racial invective. Regardless, respondent's repeated use of racial invectives alone did not support the trial court's decision to issue the PPO. Rather, respondent's use of racial invectives provided necessary context for his contacts with petitioner, which may otherwise have an innocent purpose. For example, respondent discharging a firearm might be an innocent act that did not amount to harassment. But, when viewed in context, respondent engaging in this conduct while also repeatedly yelling the same racial invective that he had earlier used to refer to petitioner, could properly be considered to demonstrate his intent.

2. THE MAY 17, 2021 INCIDENT[12]

Although the police had advised the parties to reach a middle ground or resolve their differences in court on the evening of May 16, 2021, petitioner's wife called the police at noon the following day to report that respondent had engaged in vandalism by moving cement blocks onto their property. In petitioner's PPO petition, he described how respondent put bricks under petitioner's trailer so damage would result. Petitioner did not see the bricks, and they damaged his trailer's wheels and axles when he pulled his trailer forward.

Petitioner's wife reported that she suspected this happened between the hours of 4 and 6 a.m. because that was when their home security camera reset and failed to record respondent's actions. Petitioner's wife also had a video of petitioner and respondent arguing. Respondent had informed petitioner that "it[']s[] going to be a long summer" and that respondent was "going to keep moving" the blocks.

When the police arrived, petitioner's wife explained that the parties were arguing over the property line between their homes. Petitioner's wife pointed to cement blocks on the side of her garage, which the police observed were "stacked in a 'fence' fashion."

The police later contacted respondent by phone. Respondent began explaining the ongoing issues with petitioner and his wife. Respondent claimed petitioner and his wife "always attempt to make things about race." Respondent admitted being up for work at 6 a.m. and moving the blocks as he had done in the past. Informed that he could be liable for the damage he had caused, respondent voiced that he wanted to pursue charges against petitioner and his wife for multiple incidents.

The police forwarded their report about this incident to the prosecutor's office for review. But after petitioner's wife failed to provide the police with an estimate for the damage to the trailer, as they had requested, the case became inactive.

On appeal, respondent contends that he did not engage in stalking by placing the cement blocks on petitioner's property because his conduct was not directed at petitioner. Respondent further argues that his movement of the blocks onto petitioner's property was part of the parties' ongoing property dispute. Therefore, respondent's actions served a legitimate purpose and they could not constitute harassment. We disagree.

Again, harassment is "conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact[.]" MCL 750.411i(1)(d). In turn, unconsented contact is "any contact with another individual[.]" Examples of unconsented contact enumerated in the statute include "[a]ppearing at that individual's workplace or residence," MCL 750.411i(1)(f)(*iii*), and "placing an object on, or delivering an object to, property owned, leased, or occupied by that individual," MCL 750.411i(1)(f)(*vii*). These examples plainly do not require the victim be

[12] Petitioner's PPO request incorrectly reflects that this incident occurred on July 22, 2024; however, the police report attached by petitioner establishes that this incident occurred on May 17, 2021.

physically or immediately present when the contact is made. Accordingly, an individual need not be present or aware of the contact at the time it happens for unconsented contact to occur. This is consistent with the stalking statute's plain language that addresses whether a course of conduct was intended to harass another individual, not whether the contact effectuating that harassment is directed toward the intended individual in a particular way. See MCL 750.411i(1)(e). Because respondent admitted to going onto petitioner's property to place the blocks, his unconsented conduct, MCL 750.411i(f)(*iii*) and (*vii*), was directed toward a victim. MCL 750.411h(1)(d).

Moreover, respondent's conduct did not serve a legitimate purpose pertaining to the parties' property-line dispute. A day earlier, the police had advised the parties "to find the middle-ground" or look to the civil court system for resolution. Instead, between the hours of 4 to 6 a.m., respondent surreptitiously moved cement blocks, which were on or near the property line, not over it, onto petitioner's property in a manner that damaged petitioner's work trailer. Respondent's actions culminated in a police investigation and a referral to the prosecutor for potential criminal charges. Accordingly, unlike the surveys the parties had performed, respondent's conduct did not serve the legitimate purpose of addressing the parties' ongoing property dispute.

3. THE MARCH 29, 2022 INCIDENT

On March 29, 2022, petitioner's wife again called the police to report that respondent had struck one of their garbage cans with his vehicle, but did not damage it. Petitioner's wife reported that this was not the first time respondent had done so. After reviewing the video, the police concluded that respondent was not traveling at a slow and cautious speed when he struck petitioner's garbage can.[13]

Days later, the police followed up with respondent and his wife. When confronted with information from the videotape along with a separate video of respondent moving petitioner's garbage cans across petitioner's driveway on February 6 to block petitioner from entry into his driveway, respondent began to deny he had acted intentionally before hanging his head and admitting that petitioner and his wife had "gotten the better of him[.]" Respondent's wife then asked whether petitioner and his wife had mentioned that respondent had returned to pick up the trash can. They did not, but video from respondent's surveillance system confirmed that respondent soon returned to fix the receptacle after he struck it with his vehicle. Respondent also told the police he had obtained a variance from the Muskegon County Road Commission to build a privacy fence along the property line and county easement to separate his property from the property of petitioner and his wife.

Given the decline in police involvement, the unsubstantiated nature of respondent's action being racially motivated, and the soon-to-be-installed fence, the police advised respondent that a local ordinance for the property offenses could be sought "regardless of the [trash] cans being placed in his path of travel." The police further advised respondent that given his history, the

[13] Petitioner's wife also reported respondent had moved the survey stakes; however, she did not have direct evidence of him doing so. Respondent later denied moving the survey stakes, insisting that petitioner had done so due to his unhappiness over the survey results.

courtesy of warning him to cease such action could not continue. Respondent assured the police that no further complaints of this nature would occur, and the police closed the matter.

On appeal, respondent contends that his intentional striking of petitioner's trash can was not conduct directed toward a victim because petitioner's wife called the police, the police report suggested that the garbage can was in respondent's path of travel, respondent returned to right the can after hitting it, and the can was not visibly damaged. We disagree.

The police issued respondent a warning for violating a local ordinance for committing a "property offense[ ]" after viewing video from petitioner's home surveillance system showing respondent intentionally running over petitioner's garbage can. The police report also reflected that petitioner's wife reported that this was not the first time that this had happened. Moreover, a month earlier respondent "took extra steps to spread [petitioner's garbage] cans apart [in petitioner's driveway,] so no vehicular traffic could enter . . . , just to be an inconvenience." As already discussed above, respondent's conduct was an unconsented contact directed at petitioner, who did not initiate or express a desire for respondent to intentionally run over his garbage can or obstruct the entrance of his driveway, despite petitioner not being present or personally making the report to police. MCL 750.411h(1)(f). Additionally, despite respondent returning to right the can when he was aware of petitioner's home security video system, these were just additional instances of respondent engaging in antagonistic conduct with petitioner that could cause a reasonable person to suffer emotional distress and caused petitioner to suffer emotional distress. MCL 750.411h(1)(c) and (d).

4. THE APRIL 15, 2024 INCIDENT

On April 15, 2024, petitioner's wife called to report that respondent was trespassing on their property. Petitioner's wife had videotape of respondent tying a ribbon on a tree and "walking a dog onto what she claimed was her property." When contacted, respondent confirmed that he recently had another survey performed and was marking near the property line to ensure that his trees would not be cut down. Respondent presented a map showing the property lines to the police and it appeared to the police that respondent had marked trees on his property and remained on his property while walking in the video taken by petitioner's wife.

The police explained this information to petitioner's wife, who "became upset" and said she would call the prosecutor's office. Petitioner's wife also said she was "fed up with" respondent "antagonizing her husband" and she might get to the point where she told petitioner "to just handle it and go 'kick [respondent's] a[**].' " The police advised against that course of action and, instead, advised her that she could contact the court.

The police further followed up on this incident by checking the Geographic Information System. The police confirmed that respondent was correct about the fact that he was on his property. Thus, the police concluded there was insufficient probable cause that respondent was

trespassing on petitioner's property. Respondent told the police that he and his wife were pursuing their legal options and the police closed the matter.[14]

On appeal, respondent asserts that because he was on his own property, his conduct was not directed at the victim. Because harassment does not include conduct that serves a legitimate purpose, MCL 750.411h(1)(d), respondent's actions of walking on his own property with his dog while marking his trees did not constitute harassment and were not directed at petitioner, even though petitioner apparently observed and recorded respondent's actions.[15]

5. THE NOVEMBER 15, 2024 INCIDENT

Petitioner's PPO petition described the November 15, 2024 incident as follows:

> [Respondent] took . . . my ladders that were laying [b]y [the] property [l]ine[.] When I asked for [them,] he said[:] ["]Call the police[,] n[*****."] [I] [c]alled [the] cops[.] He then put them [b]ack on my property.

The police report reflects that petitioner told the police that respondent "went onto [petitioner's] property and took [petitioner's] ladders." When the police spoke to respondent, he reported that "two ladders [were] leaning on his fence that allegedly splits the property line." Respondent denied stepping onto petitioner's property; however, when asked what he had done

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[14] Despite this resolution and being in possession of the police report, petitioner's PPO request described this incident as respondent being on the "[b]ack of our house[,] [m]arking property lines[.] Clearly[,] [b]y video with his [d]og on video after [b]eing trespassed [b]y [the] police."

[15] Petitioner's PPO request identifies the May 17, 2021 incident as occurring on July 22, 2024. But because petitioner attached July 22, 2024 police report to his PPO petition, we will briefly address it.

Respondent contacted the police about having them remove a vehicle without a license plate that petitioner had parked across the property line and "well into [his] area." When the police arrived, the vehicle was about one foot over the property line. Petitioner's wife was outside when the police informed her about the issue. Although she maintained that the car was on her property, the police explained why this was untrue. Petitioner's wife said: "[T]ell them to cry me a f****** river" and "one of these times it's going to get to a point where something happens to somebody." After an explanation of the area's junk vehicle ordinance, petitioner's wife obtained the keys to the vehicle and moved it.

The police informed petitioner's wife that they would return in a couple of days to check on the vehicle and they also noted potential blight issues at petitioner's property. When the police returned to respondent's property over a month later, the unlicensed vehicle was still there. Moreover, another unlicensed vehicle, a vehicle with an expired plate, and a trailer without a plate were also on petitioner's property. Although it was clear that people were inside the home, they did not come to the door, and the police issued a civil-infraction citation for violations of the anti-blight and junk vehicle ordinances. Because respondent's conduct served a legitimate purpose, it did not constitute harassment. MCL 750.411h(1)(d).

with the ladders, "he said he put them on [petitioner's] property." Respondent showed the police a ladder behind petitioner's shed and another in petitioner's garage; however, respondent also said that he had never moved the ladders from those locations.

Later, the police again spoke to petitioner, who said that he had his ladders. The police and petitioner also noticed that "along the alleged property line that is split from the fence[,] [t]here was a line of fresh dog poop resting on the bricks." Observing this, respondent yelled out that it was on his property. The police then formally advised both petitioner and respondent not to step onto the other's property, and that if they entered the other's property, they would be subject to a criminal trespassing charge. See MCL 750.552.

On appeal, respondent argues that this incident "did not start out as conduct directed towards a victim" and that it was "unclear what exactly happened . . ., but it can be surmised from the police report and the other surrounding facts and circumstances that [r]espondent felt that the ladders were on his side of the property line and moved them." And, again, even though petitioner alleges that respondent referred to him as "n*****," and that respondent "presumably returned the ladders or pointed out their location on [p]etitioner's property," this was not contact that would cause a reasonable person to suffer emotional distress and actually cause the petitioner to suffer emotional distress. Further, respondent argues this contact was consented to because petitioner initiated it by confronting respondent about the ladders rather than calling the police to "sort[] out where the ladders were and where they should be." Thus, respondent's conduct also served a legitimate purpose, and "[r]espondent's choice of words are 'constitutionally protected activity,' " citing MCL 750.411h. We disagree.

As described in petitioner's petition and the related police report, respondent's actions constituted an unconsented contact. MCL 750.411h(1)(f)(*iv*) (entering onto property owned, leased or occupied that individual). Specifically, the petitioner reported that respondent "went onto his property and took his ladders." Likewise, the petition stated that the ladders were "laying [b]y [the] property [l]ine," not over it. And, although respondent denied ever stepping onto petitioner's property, he admitted putting the ladders on petitioner's property. Taking property belonging to another without permission is potentially a crime, see MCL 750.356, and not conduct that serves a legitimate purpose. Respondent's actions and response to petitioner's request to simply return the ladders, would cause a reasonable individual to suffer emotional distress and it actually caused petitioner to suffer emotional distress considering that he contacted the police for assistance.

6. THE FEBRUARY 21, 2025 INCIDENT

Finally, addressing the February 21, 2025 incident, respondent contends that it was not an unconsented contact. In fact, petitioner, who had not heard what respondent had said to him, yelled back: "F*** Boy." In turn, respondent agreed that he called petitioner a "dumb n*****." In respondent's view, petitioner consented to this contact by responding to respondent, by never asking respondent to leave him alone, by not asking respondent not to talk to him, and by not even trying to avoid interactions with respondent. Thus, "[t]his was a game that the two men were willingly playing together." We disagree.

As already discussed, by definition, unconsented contact is not only any contact in disregard of a person's expressed desire that contact be avoided, but also any "contact that is initiated or continued without the individual's consent[.]" MCL 750.411h(1)(f). Respondent initiated the contact with petitioner and petitioner responded by cursing respondent, not extending an invitation to chat further. Moreover, unlike this Court, the trial court had the benefit of watching and hearing the video recording of this incident. On the record before us, we cannot conclude that the trial court clearly erred in determining that this contact was not consensual, was harassing, and caused emotional distress.[16]

Accordingly, the trial court did not abuse its discretion by issuing the PPO after a hearing because petitioner's PPO petition contained sufficient facts to establish respondent engaged in stalking as defined in MCL 750.411h.

Affirmed.

/s/ Michael F. Gadola
/s/ Michael J. Riordan
/s/ Anica Letica

[16] As to this incident, respondent again contends that the trial court abused its discretion by issuing the PPO because it incorrectly ruled that his racial invective could constitute harassment despite his language being protected speech under the First Amendment. For the same reasons discussed earlier in this opinion, we disagree.