

IN THE MAGISTRATE COURT OF KANAWHA COUNTY, WEST VIRGINIA

JAMIE R. MILLER

Petitioner,

v.

Magistrate Court Case No. 19S-245

Magistrate Shelton

DERRICK EVANS,

Respondent.

**PETITIONER'S MOTION TO ENFORCE PERSONAL SAFETY ORDER FOLLOWING
FINAL HEARING**

Comes now the Petitioner in this matter and seeks the following relief:

INTRODUCTION

Petitioner, Jamie Miller, works at the Women's Health Center in Charleston, WV (sometimes, "WHC"). She escorts women into the WHC to consult with their physicians and receive healthcare. She provides these women with emotional support. Her service is necessary because of individuals such as the Respondent.

Respondent, Derrick Evans, is an individual who frequently gathers at the WHC with other individuals whom he leads. He shouts at and harasses patients and employees, including the Petitioner. He calls them murderers, baby-killers and various other insulting names. He follows the Petitioner around and videos her without her consent. He refers to Petitioner specifically by her by name, even though she has never told him her name. He threatens the Petitioner. He posts videos of his activity at the WHC on Facebook, and often streams it live on this social media platform. His social media followers often comment with threats and additional harassment of the Petitioner.

The Respondent's conduct towards the Petitioner led this Court to first enter a Temporary Safety Order and then, after a hearing, a Final Personal Safety Order in favor of the Petitioner and against the Respondent.

Respondent has violated the Final Personal Safety Order. He has even publicly denied its very existence, and falsely claimed that this Court entered an order on his behalf against the Petitioner.

Accordingly, the Petitioner respectfully requests that this Court enforce the terms of the Final Personal Safety Order that it previously entered.

PROCEDURAL HISTORY

“On the 9th day of May, 2019, the petitioner filed with this Court a Petition, pursuant to West Virginia Code § 53-8-4, alleging certain acts or offenses by the respondent and requesting this Court grant appropriate relief.” See **Exhibit 1**, *Personal Safety Order Following Final Hearing*, at 4 (sometimes, “Final PSO”).

More specifically, on May 9, 2019, Petitioner requested that this Court enter a Temporary Personal Safety Order on her behalf against the Respondent.

In support of her request, Petitioner completed the form provided to her, and stated that the Respondent “screams and harasses me very loudly and videos me live while screaming and calling me names, posts it on Facebook live to 11 k [11,000] follower[s] to which all talk about and threaten me.” See **Exhibit 2**, *Temporary Personal Safety Order* at 3.

Petitioner identified the “Women’s Health Center Charleston and internet” as where the acts of the Respondent occur. *See id.*

Petitioner further indicated that the Respondent “talks on video about having a weapon on him many times, does not however brandish it, but does make sure we know it’s there as if a threat.” *Id.*

In response to the request that she describe information “regarding stalking or repeated credible threats of bodily injury committed by the Respondent,” Petitioner stated as follows: “I have had many threats to my safety online and relentless harassment in person which puts me in fear of this person [Respondent] and his followers.” *Id.*

This Court made the following finding of fact supporting the Petitioner’s allegations: “PETITIONER IS IN FEAR FOR HER SAFETY.” *Id.* at 2.

Accordingly, “a Temporary Personal Safety order was previously issued and served upon the respondent, scheduling this matter for a Final Hearing.” **Ex. 1**, *Final PSO*, at 1.

“The Court held a Final Hearing in this matter on the 20th day of May, 2019 [.]” *Id.*

At the Final Hearing, the Court received testimony from the Petitioner, and evidence from both parties. The Respondent was provided the opportunity to and did cross examine the Petitioner.

This Court found in favor of the Petitioner, and issued a Final PSO, which indicated as follows: “Based upon the foregoing, the Court ORDERS the relief designated below with regard to the following protected person: JAMIE MILLER.” *Id.* at 2.

“Based on the matters set forth in the PETITION, and based upon a preponderance of the evidence, the Court finds as follows . . . B. The respondent has committed the act(s) described below against [] the petitioner.” *Id.* at 1.

The first act this Court found that the Respondent committed against the Petitioner was “[s]talking in violation of West Virginia Code § 61-2-9a(a).” *Id.* at 2.

The second act found by the Court that the Respondent committed against the Petitioner was “[r]epeated credible threats of bodily injury knowing or having reason to know that the threats caused reasonable fear for safety in violation of West Virginia Code § 53-8-4(a)(3).” *Id.*

Based on its findings, the Court ordered as follows: “RESPONDENT SHALL REFRAIN FROM HAVING ANY CONTACT WITH THE PETITIONER EVEN THRU A THIRD PARTY.” *Id.*

The Court then identified and ordered five (5) forms of relief to the Petitioner. *See id.*

These forms of relief included, without limitation: “Respondent shall refrain from contacting, attempting to contact, or harassing the person(s) named above, directly or indirectly, or through third party, regardless of whether those third parties know of this Order.” *Id.* at 3. And further, “Respondent shall stay away from the place of employment, school, and residence of the person(s) named above [Petitioner].” *Id.*

FACTS AND DISCUSSION

On Wednesday, May 29, 2019 – nine (9) days after the Final hearing and entry of the Final PSO - Respondent did physically present himself at the WHC.

On this same date, the Respondent posted a video on Facebook from the WHC in which he in part, stated as follows: “I don’t have a restraining order. She did try and get one. The girl . . . I am not going to even say her name I haven’t said it all night. Don’t want to, don’t want to take any chances. Everybody knows who it is.” See *Video Exhibit A*.¹

¹ The Petitioner is furnishing to this Court a flash drive to provide electronic access to the video and audio exhibits referenced herein.

Related to this video statement, the following comment was posted on Respondent's Facebook page by Sheree Anderson Butcher, who is identified as a "Top Fan" of the Respondent: "I can say her name. Jamie Miller from Charleston is one of the deathscorts that spit on Derrick then tried to get a restraining order against him." See **Exhibit 3**.²

Additionally, the following comment was posted on Respondent's Facebook page by his follower, Vicki Hackett Kellerman, on the day after the Respondent posted the video of him present at the WHC: "Watching replay, she [Petitioner] is a demonic zombie." See **Exhibit 4**.

This conduct violates the Final PSO in two distinct ways.

First, the Final PSO unambiguously requires as follows: "Respondent shall stay away from the place of employment, school, and residence of the person(s) named above [Petitioner]." (emphasis added).

For purposes of the Final PSO, the Petitioner's place of employment is the WHC. This is where the Respondent stalked the Petitioner, and repeatedly threatened her and caused her to have a reasonable fear for her safety. The Final PSO required Respondent "stay away" from Petitioner's place of employment. Respondent ignored this requirement and violated the Final PSO.

Furthermore, on May 29, 2019, Respondent - and others accompanying him - lined up and placed their hands on the WHC building. This represents a physical presence on the actual property of the WHC, and not only a violation of the Final PSO, but also a criminal trespass.

However, actual physical presence on the WHC property is not required in order to represent a violation of the Final PSO.

² As this Court observed in a video at the Final Hearing, Petitioner did not spit on the Respondent.

These proceedings are governed by W. Va. Code § 53-8-1, *et seq.* and this is the statute under which the Final PSO was entered by this Court. The following is included in the statutory section titled “Definitions:” “‘Place of employment’ includes the grounds, parking areas, outbuildings and common or public areas in or surrounding the place of employment.” W. Va. Code § 53-8-1 (emphasis added).

Second, the video of Respondent present at the WHC and the comments posted on Facebook related thereto violate the following portion of the Final PSO: “Respondent shall refrain from contacting, attempting to contact, or harassing the person(s) named above, directly or indirectly, or through third party, regardless of whether those third parties know of this Order.” *Id.* at 3. Even though the Respondent did not say the Petitioner’s name because “everybody knows who it is,” his statements regarding the Petitioner represent indirect harassment in direct violation of this Court’s Order.

Furthermore, Respondent’s “Top Fan,” Ms. Butcher specifically referred to the Petitioner by name and as a “deathscort.” Respondent’s Facebook follower, Ms. Kellerman, referred to the Petitioner as a “demonic zombie.” This represents the third-party harassment of the Petitioner that is prohibited in the Final PSO.

This Court specifically stated from the bench at the final hearing that the requirements of its Final PSO applied to social media. These requirements of the Final PSO have been violated in the manner set forth above.

The following comment was also posted on Respondent’s Facebook page by his follower, Sean Kelley, on the day after the Respondent posted the video of him present at the WHC: “Why

does that lady [Petitioner] have the right to life and not the babies that come to that abortion clinic! If you murder her [Petitioner] can we call it abortion!!” See **Exhibit 5**.

At the Final Hearing and in support of entering its Final PSO, this Court recognized the real potential of violence in situations such as the present. This Court further commented that the Respondent’s posts may not indicate his own intention to engage in violence, but could certainly incite violence from his followers. Sadly, the threat of Respondent’s follower, Mr. Kelley, is an unfortunate example of the dreaded potential scenario identified by this Court.

In the video posted on his Facebook account that is attached as *Video Exhibit A*, the Respondent further indicates as follows: “Went to Court . . . and the judge basically just got mad, said you guys are wasting my time . . . he said specifically I could still come here.”

Respondent appeared on the Tom Roten radio show in Wayne County, WV, on May 30, 2019, and he stated in part, as follows: “We had an incident a few weeks ago and I can’t really get into details with that, people can go to my page and probably figure it all out. So, uh, a clinic worker attempted to take out a restraining order on me, and – so the judge threw it out because he saw there was nothing there, there was no reason for that, and uh, we went to court over it and the judge said halfway through the trial I’m done with this you guys are wasting my time, this is ridiculous, and uh (laughs) and basically just told both of us not to talk to each other for 90 days.” See *Audio Exhibit B*.

As this Court is aware, and by the plain language of the Final PSO, this is a blatant falsehood stated publicly by the Respondent. Such falsity is demonstrated by the portions of the Final PSO cited above and by a review of its contents as indicated in **Exhibit 1**. This demonstrates the contempt that the Respondent has for the law and this Court’s prior Orders.

Such false statements made publicly are meant to (or the Respondent should know they would) harass the Petitioner by representing publicly that Respondent is not bound by the terms of this Court's Orders.

The Respondent also posted a video on his Facebook page of a conversation he had with a Charleston City Police Officer at the WHC on Wednesday, May 29, 2019. In this conversation, he represented with regard to this Court's Final PSO, that "it goes both ways there is one on each of us [Petitioner and Respondent]." See *Video Exhibit C*. As this Court is aware - and pursuant to the plain language of its Final PSO - this is also false.

Furthermore, under the current circumstances, not only are Respondent's assertions factually false, but it is legally impossible: "(b) A final personal safety order may be issued only to an individual who has filed a petition or on whose behalf a petition was filed under section three [§ 53-8-3] of this article." W. Va. Code § 53-8-7 (emphasis added). The Petitioner is the only individual who filed a petition in this matter.

"(c) In cases where both parties file a petition under section four of this article, the court may issue mutual personal safety orders [...] if the court finds by a preponderance of the evidence that: (1) Each party has committed an act specified in subsection (a), section four of this article against the other party; and (2) Each party has a reasonable apprehension of continued unwanted or unwelcome contacts by the other party." W. Va. Code § 53-8-7.

Both parties did not file a petition in this matter. This Court found only that the Respondent committed the acts prohibited by the statute, and that only the Petitioner has a reasonable apprehension of continued unwanted or unwelcome contacts by the Respondent.

Accordingly, Respondent's claim that this Court issued a personal safety order against the Petitioner is factually fictional under the plain language of the Final PSO, and legally fictional under W. Va. Code § 53-8-7.

This fictional claim caused the Petitioner to contact undersigned counsel in a panic because she believed this Court had entered a PSO against her without her knowledge or without serving her. The Respondent knew or should have known that his lies would cause Petitioner considerable emotional distress. However, this of course did not deter him from such conduct, and his harassment continues

LEGAL AUTHORITY AND DISCUSSION

These proceedings are governed by W. Va. Code § 53-8-1, *et seq.* and this Court has followed the provisions of this statute with precision.

“(a) Final personal safety order hearing. — Proceeding; issuance of order. If the respondent appears for the final personal safety order hearing, has been served with a temporary personal safety order or the respondent waives personal service, the magistrate: (1) May proceed with the final personal safety order hearing; and (2) May issue a final personal safety order to protect the petitioner if the court finds by a preponderance of the evidence that: (A) (i) The respondent has committed an act specified in subsection (a), section four [§ 53-8-4] of this article against the petitioner; and (ii) The petitioner has a reasonable apprehension of continued unwanted or unwelcome contacts by the respondent.” W. Va. Code § 53-8-7.

This Court proceeded with the Final Hearing on May 20, 2019, and Respondent appeared. This Court found by a preponderance of the evidence that the Respondent committed the prohibited act of stalking against the Petitioner, and further found that the Respondent unlawfully

made repeated credible threats of bodily injury towards the Petitioner. Based on these findings, this Court found that Petitioner had a reasonable apprehension of continued unwanted or unwelcome contacts by the Respondent, and issued its Final PSO.

“(d) Personal safety order - Forms of relief. — (1) The final personal safety order may include any or all of the following relief: (A) Order the respondent to refrain from committing or threatening to commit an act specified in subsection (a), section four of this article against the petitioner; (B) Order the respondent to refrain from contacting, attempting to contact or harassing the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order; (C) Order the respondent to refrain from entering the residence of the petitioner; (D) Order the respondent to remain away from the place of employment, school or residence of the petitioner; (E) Order the respondent not to visit, assault, molest or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the household of the petitioner.” W. Va. Code § 53-8-7.

This Court’s Final PSO granted each of the forms of relief available under W. Va. Code § 53-8-7 (A) - (E). As explained above, the Respondent violated the relief ordered by this Court, pursuant to (B) and (D) of the statute.

“(2) Unless the circuit court orders otherwise, modification or enforcement of the magistrate court order shall be by the magistrate court.” W. Va. Code § 53-8-9.

“(a) Fines or incarceration. — An individual who fails to comply with the relief granted in a temporary personal safety order or a final personal safety order entered pursuant to this article . . . shall: (1) For a first offense, be fined not more than \$1,000 or confined in jail not more than ninety days, or both [.]” W. Va. Code § 53-8-11.

At the Final Hearing held on May 20, 2019, this Court made it abundantly clear to the Respondent that if he violated the Final PSO, he would be subject to ninety days in jail and a fine of \$1,000. The Respondent has ignored this Court's warning.

On May 29, 2019, Respondent posted yet another video on his Facebook account from the WHC, in which he stated, in part, as follows: "If I go to jail for Jesus, I'd be proud of that." See *Video Exhibit D*. Respondent further stated in this same video: "They'll have to arrest me eventually[.]" *Id.*

Unfortunately, it appears that incarceration and fines under the controlling statute are the only means available to force the Respondent to comply with this Court's Final PSO, and to protect the personal safety of the Petitioner.

"Any petition filed in magistrate court under the provisions of this article shall be given priority over any other civil action before the court, except actions pursuant to article twenty-seven [§§ 48-27-101 et seq.], chapter forty-eight of this code and those in which trial is in progress, and shall be docketed immediately upon filing." W. Va. Code § 53-8-12.

If this Court determines that a hearing is necessary to grant the relief requested herein, Petitioner respectfully requests that a hearing be scheduled as soon as practicable.

CONCLUSION

The Petitioner respectfully requests that this Court enforce the Final PSO, and grant all forms of relief available under the law.

**Respectfully submitted,
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By counsel,**

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