

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
April 12, 2017 Session

**JENNIFER SUZANNE GILLETT v. JASON STEVEN MOLTHAN**

**Appeal from the Circuit Court for Davidson County  
No. 16X495 Philip E. Smith, Judge**

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**No. M2016-01628-COA-R3-CV**

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A man who pled guilty to charges of aggravated stalking and harassment was ordered to stay away from the woman he was stalking and harassing. When the initial term of the order of protection was nearly over, the woman filed a motion seeking to have the order of protection extended for another year. The trial court granted the motion, and the man appealed. The man does not deny engaging in the acts that formed the basis for the order of protection; the issues he raises on appeal are procedural and tangential to the reasons for the order. Concluding that none of the issues raised entitle the appellant to any relief, we affirm the trial court's judgment extending the order of protection.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Jason Steven Molthan, Nashville, Tennessee, Pro Se.

**OPINION**

**I. FACTUAL AND PROCEDURAL BACKGROUND**

This case began on February 25, 2015, when Jennifer Suzanne Gillett filed a petition for an order of protection against Jason Steven Molthan in the Davidson County General Sessions court. The basis for the petition was Mr. Molthan's unwelcome attention directed to Ms. Gillett via "thousands and thousands of messages through Facebook," texts on Ms. Gillett's cell phone, "hundreds of voicemail messages," Mr. Molthan's appearance at her house, and Mr. Molthan's attempts to deliver gifts to her. Earlier on the day when Ms. Gillett sought the order of protection, Mr. Molthan was

arrested outside her house and charged with aggravated stalking and harassment. In support of her petition, Ms. Gillett wrote:

I am afraid that Jason will kidnap me, hurt me, or hurt my family in order to be with me because he believes that I want to be with him and that we are supposed to be together. Jason and I have never been in a relationship and were only acquaintances in high school in Texas. I am terrified that he has found me and will not leave me or my family alone. He has consistently taken action based on delusions and hallucinations which cause me to worry about my current safety and future safety.

The general sessions court issued Ms. Gillett an ex parte temporary order of protection on the day she filed the petition and set a hearing for March 5, 2015. Mr. Molthan was in the State's custody by that time, and he was notified of the hearing scheduled for March 5. The hearing date was continued several times until May 14, 2015, when the general sessions court granted Ms. Gillett an order of protection against Mr. Molthan extending until May 14, 2016.

On April 28, 2016, Ms. Gillett filed a motion to extend the order of protection for another year. In support of this motion, Ms. Gillett wrote:

I would like my Order of Protection against Jason Molthan extended for 1 year because I am afraid for my life. Jason has been stalking me on and off since Junior High school. Jason was convicted of 2 counts of Aggravated Stalking and 1 count of Harassment in July 2015. Since his conviction, he has been in Nashville and will be here until 2018 to complete the requirements of his probation. I have recently been outspoken in the media about a bill that would change the Stalking laws in Tennessee. Jason began to appear frequently at the Tennessee legislature when he learned I was connected to this bill. Jason went as far as to breach security and go into the Governor's office. Jason delivered a handwritten letter to Bill Haslam opposing the Stalking bill. The letter mentioned my name several times throughout, saying that I created the bill because I have a personal vendetta against him. He insinuates that he is going to punish me through the courts for having him arrested for stalking me. I believe Jason will continue to stalk me if my Order of Protection lapses. The recent interaction with the legislature shows that he is still interested in stalking me. I believe I am in danger if my Order of Protection lapses because Jason has a violent history and has made threats to harm me in the past.

The general sessions court held a hearing on May 5, 2016, and granted Ms. Gillett's motion, extending her order of protection for one year.

Mr. Molthan appealed the order granting Ms. Gillett's motion to the Circuit Court of Davidson County. Mr. Molthan filed a motion challenging the court's jurisdiction and invoked his civil rights followed by a motion to dismiss the order of protection. A special master heard the appeal on June 14, 2016, and she affirmed the general sessions court's judgment extending the order of protection for one year. Mr. Molthan sought a re-hearing before a circuit court judge. Following his request for a re-hearing, Mr. Molthan filed motions seeking the following: (1) to replace the flag with a non-fringed flag, cite the pledge of allegiance, and enact a jury trial; (2) to activate a Tennessee Constitution article VI court; (3) to invoke rights under constitutional authority; (4) to ensure the rule of law; (5) for special care, patience, and to uphold the spirit of the law; and (6) for due process.

The circuit court held a hearing on Mr. Molthan's motions on July 7, 2016, and it entered an order denying each of the motions. The court found Mr. Molthan's "reasoning to be convoluted and generally not supported by Tennessee law or our Rules of Civil Procedure." The court then entered an order granting Ms. Gillett's motion extending her order of protection against Mr. Molthan for one year. The court made the following findings of fact:

1. Petitioner and Respondent attended the same junior high and high school in Odessa, Texas in the 1990s at which time they did not socialize and were not friends. However, Respondent engaged in some unwanted contact with Petitioner during those years.
2. Petitioner moved to Nashville as an adult, is married and has children. She is a mental health provider/private therapist.
3. In June of 2014 Petitioner began receiving messages from the Respondent on Facebook. These messages quickly became alarming to Petitioner in their frequency and content. Based on their content, it appeared to Petitioner that Respondent was suffering from a delusional understanding of a relationship with Petitioner that did not exist in reality. The messages were erratic, aggressive, and highly sexualized.
4. In addition to contacting Petitioner via Facebook, Respondent also began contacting her via telephone, with thousands of text messages and voice mails.
5. Petitioner made it clear from the beginning and restated multiple times that any contact from the Respondent was unwelcome and unwanted. The frequency and content of the messages caused her to feel terrorized and to fear for her safety and that of her family.

6. Petitioner contacted law enforcement, and in September 2014 an ex parte order of protection against Respondent was issued to Petitioner.

7. In October 2014 Respondent indicated through his messages to Petitioner that he was coming to Nashville from where he had been living in Pennsylvania in order to pursue a relationship with the Petitioner. At that point and with the assistance of law enforcement, Petitioner secured criminal warrants against Respondent for aggravated stalking and harassment.

8. After October 2014 Petitioner began receiving messages from the Respondent that indicated he was following her. On two separate occasions he left items at her home. These actions by Respondent further elevated Petitioner's fear for her safety and that of her family.

9. Respondent had no known residence or employment in Nashville; therefore, it was difficult for law enforcement to serve him with the outstanding warrants.

10. On February 25, 2015 Respondent sent a message to Petitioner indicating he was on his way to her home to see her. Respondent was arrested by Metro Nashville Police in close proximity to Petitioner's home and was taken into custody.

11. Although the Petitioner is a mental health professional she did not, nor has she ever had a therapeutic relationship with the Respondent. Indeed, Petitioner did not, nor has she ever had any sort of relationship with the Respondent, personal or professional.

12. Between June of 2014 and February 25, 2015 Respondent sent Petitioner approximately 40,000 messages the content of which was delusional, erratic, aggressive, sexually explicit and/or threatening. In addition to the Petitioner's testimony these messages are evidenced by Petitioner's Exhibit 3, examples of Respondent's disturbing messages to Petitioner.

13. Subsequent to Respondent's arrest, Petitioner was granted an Order of Protection in the Davidson County General Sessions Court.

14. On July 31, 2015 Respondent pled guilty in the Davidson County Criminal Court to two counts of aggravated stalking and one count of harassment. In addition to Petitioner's testimony, the disposition of the criminal warrants is evidenced by Petitioner's Exhibit 1, certified copies of

the judgment forms prepared by the Davidson County Criminal Court Clerk.

15. Respondent was placed on probation and released to the supervision of the Tennessee Department of Probation and Parole. In addition to ceasing all contact with the Petitioner, terms of his probation include G.P.S. monitoring, and maintaining employment and housing.

16. During the winter and spring of 2016, Petitioner became involved in lobbying the Tennessee General Assembly to enhance Tennessee's anti-stalking legislation. Respondent became aware of her efforts and wrote a lengthy letter to Governor Haslam expressing anger at the Petitioner and clearly manifesting Respondent's ongoing delusional obsessions with her. Specifically, Respondent indicates an intent to have Petitioner criminally charged and publically embarrassed as well as an intent to interfere with her professional license. Petitioner's Exhibit 2 is a copy of the letter delivered to Governor Haslam.

17. Respondent testified that he did, indeed, send a multitude of messages to the Petitioner but that it was only about 20,000 instead of 40,000 as she testified. He acknowledged that she told him on multiple occasions to stop contacting her but that "from [his] perspective" he did not think she really wanted him to and so he did not. He acknowledged pleading guilty to two counts of aggravated stalking and one count of harassment, but indicated that he did so, not because he was guilty, but because he was coerced by the system. He acknowledged sending the text messages that make up Exhibit 3 and others like them to the Petitioner but insisted they were "taken out of context" or [were] part of a book that he was writing. And he acknowledged writing Exhibit 2, the letter to Governor Haslam, and testified that he "stand[s] by" what he said in the letter today.

The trial court found that Ms. Gillett was more credible than Mr. Molthan. The court also concluded that it was "reasonable" for Ms. Gillett to feel "terrorized and harassed by [Mr. Molthan's] actions; that she does feel terrorized and harassed by [Mr. Molthan's] actions; and that her fear of [Mr. Molthan] is reasonable and ongoing." The circuit court extended Ms. Gillett's order of protection for one year, declaring that it would remain in effect until July 7, 2017.

Mr. Molthan appeals the circuit court's order extending Ms. Gillett's order of protection for another year. Mr. Molthan contends the circuit court erred in the following ways: (1) ignoring Mr. Molthan's challenges to its jurisdiction; (2) granting relief to Ms. Gillett when she failed to appear in court; (3) denying Mr. Molthan's due process rights; (4) denying Mr. Molthan's motion to ensure the rule of law; (5) denying Mr. Molthan's

motion invoking his constitutional rights; (6) denying Mr. Molthan's motion seeking a Tennessee Constitution article VI court; (7) denying Mr. Molthan's request for a jury trial; (8) denying Mr. Molthan special care as a pro se litigant; (9) denying Mr. Molthan's motion seeking the spirit of the law to be applied to his case; (10) denying Mr. Molthan's motion seeking application of the Supremacy Clause and international law; (11) denying Mr. Molthan's affirmative defense that the injunction constitutes "slavery or involuntary servitude"; (12) denying Mr. Molthan's affirmative defenses of estoppel or double jeopardy; (13) entering findings of fact obtained by way of ex parte investigations; (14) denying the entry of Mr. Molthan's statement of evidence into the appellate record; and (15) allowing a de facto SLAPP<sup>1</sup> procedure to take place by punishing Mr. Molthan for participating in political activity.

#### ANALYSIS

When reviewing a trial court's judgment, appellate courts conduct a de novo review based upon the record of the trial court, accompanied by a presumption that the trial court's factual findings are correct unless the evidence preponderates to the contrary. TENN. R. APP. P. 13(d); *Johnson v. Nissan N. Am., Inc.*, 146 S.W.3d 600, 604 (Tenn. Ct. App. 2004). Appellate courts review a trial court's legal determinations de novo, however, affording no presumption of correctness to the trial court's conclusions of law. *Johnson*, 146 S.W.3d at 604.

The record in this case does not include a transcript of any of the trial court proceedings. The trial court issued an order dated October 17, 2016, indicating that Mr. Molthan filed a statement of evidence that "does not meet the requirement of T.R.A.P. 24(c), in that it does not convey an accurate and complete account of the final hearing in this matter." As a result, the trial court rejected Mr. Molthan's statement of the evidence and refused to transmit it to the Court of Appeals. The trial court prepared a statement of the evidence that is included in the record, and we will rely on that statement to review the evidence that was presented during the trial of this case.

Mr. Molthan's first argument on appeal is that the circuit court lacked the jurisdiction to rule on his appeal from the general sessions court. Mr. Molthan filed a notice of appeal on May 12, 2016, in which he sought review of the general sessions judgment by the circuit court. Because he sought review by the circuit court, we do not understand the reason for his challenge to the circuit court's jurisdiction. Tennessee Code Annotated section 27-5-108 governs appeals taken from the general sessions court and provides that appeals shall be de novo in the circuit court. *See* Tenn. Code Ann. § 27-5-108(a)(1) ("Any party may appeal from a decision of the general sessions court to the circuit court of the county within a period of ten (10) days on complying with the

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<sup>1</sup>Mr. Molthan does not define "SLAPP" in his brief. We believe he is using the term to refer to a strategic lawsuit against public participation. *See* Tenn. Code Ann. § 4-21-1002(b) (defining "SLAPP").

provisions of this chapter.”). Mr. Molthan does not refer to this statute or argue that it should not apply to this case. Thus, we conclude that Mr. Molthan’s argument on this issue lacks merit.

Mr. Molthan’s second argument is that Ms. Gillett failed to appear in court, either in person or through her attorney, on June 7, 2016, and that Ms. Gillett’s case against him should, therefore, be dismissed. The record shows that after Mr. Molthan appealed the order of protection from the general sessions court to the circuit court, a hearing before a special judge was initially set to take place on June 7, 2016. In a document entitled “Order of Continuance,” the special master reset the hearing for June 14, 2016, and stated that the order of protection “shall remain in full force and effect.” No reason was provided for continuing the hearing, and it does not appear from the record that Ms. Gillett or her attorney violated any court rules, as Mr. Molthan suggests. A trial court has “broad discretionary authority to control their dockets and the proceedings in their courts.” *Hessmer v. Hessmer*, 138 S.W.3d 901, 904 (Tenn. Ct. App. 2003). Mr. Molthan’s contention that the trial court should have dismissed Ms. Gillett’s case against him for a reason not substantiated in the record is not well taken.

Turning to the third, fourth, and fifth issues Mr. Molthan raises on appeal, we find that he failed to articulate an argument in support of his claims that he was denied due process, the “rule of law,” or any constitutional rights. Mr. Molthan neither identifies any procedure, rule of law, or constitutional right he believes was denied him nor explains what the court or anyone else may have done to deny him any of these rights. In addition, we find Mr. Molthan failed to comply with the requirements set forth in the Tennessee Rules of Appellate Procedure concerning an appellant’s brief. Tennessee Rule of Appellate Procedure 27(a)(7)(A) requires that an appellant’s brief contain an argument in which the appellant sets forth his or her contentions with respect to each issue, “the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate references to the record . . . relied on.” Mr. Molthan cited to his arguments made before the trial court and to the trial court’s rulings, but this does not satisfy the procedural requirements of Rule 27(a)(7)(A). For this reason, we conclude Mr. Molthan has waived these issues on appeal. *See Green v. Champs-Elysees, Inc.*, No. M2012-00082-COA-R3-CV, 2013 WL 10481171, at \*11 (Tenn. Ct. App. Sept. 11, 2013) (stating that party waives issue on appeal if he or she fails to cite authorities and appropriate references in record as required by Tenn. R. App. P. 27(a)(7)(A)).

Mr. Molthan next argues that he was denied his right to be heard by a Tennessee constitution article VI court. Mr. Molthan fails to explain the basis for this claim. In his brief, Mr. Molthan wrote, “The court denied the motion for a constitutional court.” Article VI of the Tennessee Constitution is titled “Judicial Department,” and it contains fourteen sections. Section four addresses judges of inferior courts and provides that judges of the circuit court, chancery court, and other inferior courts are to be elected by

the qualified voters of the district or circuit where they are to be assigned. We are aware of no constitutional irregularity that may be attributed to the circuit court or the judge who heard Mr. Molthan's appeal from the general sessions court.

Mr. Molthan next argues he was wrongly denied the right to a jury trial when he appealed the general sessions judgment to the circuit court. The defendant in *Clark v. Crow*, 37 S.W.3d 919 (Tenn. Ct. App. 2000), appealed an order of protection from general sessions to circuit court, just like Mr. Molthan, and he too argued that the circuit court erred by denying him a jury trial. *Clark*, 37 S.W.3d at 921. The Court of Appeals disagreed, explaining that, although article I, section 6 of the Tennessee Constitution provides the right to a jury trial, this right only extends to actions that existed at common law that were tried by jury prior to 1796. *Id.* at 922. "In all other matters, the right to jury trial must be provided for by statute." *Id.* Noting that the Domestic Abuse Act does not expressly provide the right to a jury trial, the *Clark* court acknowledged that Tenn. Code Ann. § 21-1-103 provides the right to a jury trial in "chancery" actions other than in cases "excepted by law or provisions of this Code." *Id.* (quoting Tenn. Code Ann. § 21-1-103).

The *Clark* court then proceeded to determine whether the legislature intended to exclude matters covered by the Domestic Abuse Act from the statute providing a right to jury trial. *Id.* at 923. After considering the overall purpose of the Domestic Abuse Act, the *Clark* court concluded that "the legislature did not intend to include a right to jury trial prior to the issuance of an order of protection." *Id.* at 924. The *Clark* court wrote:

The first important purpose is to provide enhanced protection from domestic abuse. The legislature does this by providing an expedited process by which the victim may come into a variety of courts and, upon his or her own affidavit, obtain an order of protection. However, this initial order will last for only fifteen days. Within those fifteen days the court is required to have a "hearing" on the merits of this matter. This "hearing" is obviously intended to be a quick and efficient summary proceeding to speed enforcement of the laws and help protect the victim from further abuse.

Construing this legislation to provide for a right to jury trial would thwart this purpose of enhanced protection. At the end of the fifteen days, the order of protection would expire until such time as a jury trial could be had. We think it obvious that the impossibility of a jury trial within fifteen days of the ex parte order would exist in virtually every court. Further, those matters filed in general session would have to be transferred to the circuit before any additional action could be taken. This interpretation of the act would leave the victim unprotected until a jury trial could be placed on the docket or require the victim to request an additional ex parte order of protection, which would also require a later jury trial or consolidation with

the previous matter. All this additional transferring and maneuvering would convert the simple expedited process laid out by the legislature into a long drawn out procedure which may take many months and would defeat the purpose of enhanced protection contemplated by the legislature.

*Id.* Based on the holding in *Clark v. Crow*, we hold that the trial court did not err in denying Mr. Molthan’s request for a jury trial.

Mr. Molthan next argues the trial court erred by failing to give him “special care as a pro se litigant.” Courts provide “a certain amount of leeway” to pro se litigants who are not trained as lawyers, but they “must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.” *Hessmer*, 138 S.W.3d at 903; *see also Young v. Barrow*, 130 S.W.3d 59, 62-63 (Tenn. Ct. App. 2003). Courts apply less stringent standards to the briefs filed by pro se litigants, and they focus more on the substance than the form of a pro se litigant’s arguments.<sup>2</sup> *Hessmer*, 138 S.W.3d at 903-04; *Young*, 130 S.W.3d at 63. However, “courts cannot create claims or defenses for pro se litigants where none exist.” *Hessmer*, 138 S.W.3d at 904; *Young*, 130 S.W.3d at 63. Mr. Molthan speaks in generalities and does not specify the special care he claims he deserves. Based on the record before us, we conclude Mr. Molthan has been treated appropriately and has been provided with sufficient opportunity to present his arguments and defend his positions.

We will address the next two issues that Mr. Molthan raises together: his claim that the trial court wrongfully denied his motion seeking the spirit of the law to be applied to his case as well as his motion seeking application of the Supremacy Clause and international law. In denying these motions, the trial court explained that the Domestic Abuse Act, codified at Tenn. Code Ann. §§ 36-3-601–625, is the controlling law in this case. Mr. Molthan does not explain what he means by his statement that the trial court failed to apply “the spirit of the law” to his case, and we are not aware of a claim of this nature. The Supremacy Clause refers to the authority Congress has to preempt state law. *BellSouth Telecomms., Inc. v. Greer*, 972 S.W.2d 663, 670 (Tenn. Ct. App. 1997). Mr. Molthan fails to point to any federal law that preempts Tennessee’s Domestic Abuse Act, and we are not aware of any such law. Similarly, Mr. Molthan mentions no international law that applies to the facts of this case, and we are not aware of any. As a result, we conclude the trial court did not err in denying Mr. Molthan relief based on these claims.

Mr. Molthan next argues the order of protection constitutes slavery or involuntary servitude. He cites Tenn. Code Ann. § 39-13-307, a statute identifying “involuntary

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<sup>2</sup>In this case, for example, although the appellate court rules require briefs, motions, and other documents filed with the court to be typewritten on “opaque, unglazed, white paper,” TENN. R. APP. P. 30(a), the Court of Appeals has accepted Mr. Molthan’s handwritten briefs and motions submitted on yellow lined paper.

labor servitude” as a criminal offense. Mr. Molthan does not allege he has been required to engage in forced labor or services, which is the type of conduct the statute is meant to address. *See* Tenn. Code Ann. § 39-13-307(a)(1)-(7). The order of protection at issue here was granted pursuant to Tenn. Code Ann. § 36-3-605 based on the trial court’s determination that Ms. Gillett proved, by a preponderance of the evidence, that Mr. Molthan was stalking her. The terms of the order of protection do not constitute either slavery or involuntary servitude. The limitations placed on Mr. Molthan’s movements are meant to protect Ms. Gillett and her family from further stalking behavior by Mr. Molthan. At oral argument, Mr. Molthan objected to the order’s limitation on his right to possess firearms. However, the Domestic Abuse Act specifically precludes perpetrators of stalking from possessing firearms. *See* Tenn. Code Ann. § 36-3-625(a)(1)-(2). Mr. Molthan’s claim of slavery or involuntary servitude is devoid of any merit.

Mr. Molthan claims he asserted the affirmative defenses of collateral estoppel and double jeopardy at trial. The record does not reflect that he asserted either of these defenses at the trial court level, and Mr. Molthan does not refer in his brief to any page of the record evidencing such assertion. *See* TENN. R. CIV. P. 8.03 (describing how and when affirmative defenses are to be asserted); TENN. R. APP. P. 27(a)(7)(A) (requiring citations to record in brief). Moreover, Mr. Molthan fails to explain how he might be entitled to a defense of collateral estoppel or double jeopardy.

Collateral estoppel is defined as a “judicially created preclusion doctrine that promotes finality, conserves judicial resources, and prevents inconsistent decisions.” *Mullins v. State*, 294 S.W.3d 529, 534 (Tenn. 2009) (citations omitted).

To prevail with a collateral estoppel claim, the party asserting it must demonstrate (1) that the issue to be precluded is identical to an issue decided in an earlier proceeding, (2) that the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding, (3) that the judgment in the earlier proceeding has become final, (4) that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding, and (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded.

*Id.* at 535 (citing *Gibson v. Trant*, 58 S.W.3d 103, 118 (Tenn. 2001) (Birch, J., concurring and dissenting)). There is no evidence in the record, and Mr. Molthan does not contend, that the order of protection that the trial court granted Ms. Gillett was the subject of any prior proceeding that is not a part of the case currently on appeal. Thus, Mr. Molthan is not entitled to any relief under the theory of collateral estoppel.

The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution protects individuals from being “subject for the same offense to be twice put in jeopardy of life or limb.” *State v. Watkins*, 362 S.W.3d 530, 540 (Tenn. 2012) (quoting U.S. CONST., amend. V). Our Supreme Court has explained that the Double Jeopardy Clause has been interpreted to provide three separate protections: “(1) protection against a second prosecution for the same offense after acquittal; (2) protection against a second prosecution for the same offense after conviction; and (3) protection against multiple punishments for the same offense.” *Id.* at 541. The protections that the Double Jeopardy Clause provides show that it applies only to defendants in criminal proceedings. Because the current proceeding is a civil proceeding, the concept of double jeopardy cannot come into play. *See State v. Reese*, No. E2002-02003-CCA-R3-CD, 2003 WL 22697352, at \*3 (Tenn. Crim. App. Nov. 14, 2003) (noting that protective orders granted pursuant to Domestic Abuse Statute are civil, not criminal, in nature).

Mr. Molthan next argues that the trial court relied on “ex parte investigations” in setting out its findings of fact in the order extending Ms. Gillett’s order of protection. However, Mr. Molthan does not specify which of the trial court’s seventeen findings of fact are allegedly based on ex parte investigations. He refers to a “videotape” in support of his argument, but no videotape is included in the record on appeal. The trial court’s findings of fact are supported by the statement of evidence included in the record, which is the only resource we have to review the evidence introduced at trial in this case. Mr. Molthan, therefore, is unable to prevail on this argument.

As stated earlier, the record reveals that Mr. Molthan prepared a statement of evidence that the trial court determined was not representative of the evidence presented during the trial. Mr. Molthan challenges the trial court’s rejection of his statement of evidence. In addition to raising this issue in his brief, Mr. Molthan also filed a motion following oral argument to strike the trial court’s statement of evidence from the record.

The Tennessee Rules of Appellate Procedure provide that the trial court is to approve a party’s preparation of the statement of evidence before it is included in the appellate record. Rule 24(f) states, in pertinent part:

The trial judge shall approve the transcript or statement of the evidence and shall authenticate the exhibits as soon as practicable after the filing thereof or after the expiration of the 15-day period for objections by appellee, as the case may be, but in all events within 30 days after the expiration of said period for filing objections. Otherwise the transcript or statement of the evidence and the exhibits shall be deemed to have been approved and shall be so considered by the appellate court . . . .

Mr. Molthan relies on the deadlines included in Rule 24(f) to argue that the statement of evidence included in the appellate record was filed late and should be struck from the

record for that reason. The record reveals that Mr. Molthan filed a notice of intent to file a statement of evidence on August 15, 2016. The record does not indicate when Mr. Molthan filed his statement of evidence, but he contends he filed it on September 28, 2016.<sup>3</sup> Rule 24(c) allows the appellee to object to the appellant's statement within fifteen days after service of the notice of the appellant's filing of the statement. The record does not indicate that Ms. Gillett filed an objection to Mr. Molthan's statement. Regardless of whether the appellee objects to the appellant's statement, however, the trial court is required to approve the statement of evidence, if one is filed, following the expiration of the fifteen-day period allotted to the appellee to object, "but in all events within 30 days after the expiration of said period for filing objections." TENN. R. APP. P. 24(f). The trial court issued its order rejecting Mr. Molthan's statement on October 17, 2016, which is just seventeen days after Mr. Molthan asserts he filed his statement and well within the period within which the judge is required to act upon the litigant's statement of the evidence. The trial court then filed its own statement of evidence on December 8, 2016.

Contrary to Mr. Molthan's argument, in cases where the trial court prepares a statement of evidence, the rules do not require the court to submit the statement within a particular period; the time limits set forth in Rule 24(c) and (d) apply to statements submitted by the litigants, not those prepared by the trial court. As Rule 24(e) makes clear, the trial court has the right to correct or modify the record "to conform to the truth." The relevant section of Rule 24(e) provides:

If any matter properly includable is omitted from the record, is improperly included, or is misstated therein, *the record may be corrected or modified to conform to the truth.* Any differences regarding whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by the trial court regardless of whether the record has been transmitted to the appellate court. Absent extraordinary circumstances, *the determination of the trial court is conclusive.* (Emphasis added.)

In addition, Rule 24(g) gives the trial court the right "to add to or subtract from the record" whatever is "necessary to convey a fair, accurate and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal." Rule 24(e) clearly states that the trial court's determination of what is properly included in the record is "conclusive" in the absence of "extraordinary circumstances." We are not in a position to alter or second-guess the trial court's judgment in this regard. *See State v. Housler*, 167 S.W.3d 294, 296 (Tenn. 2005) ("The trial court is in the best position to determine those matters necessary to provide a fair, accurate, and complete account of the proceedings upon which the appeal is based."). Mr. Molthan fails to demonstrate the

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<sup>3</sup>This date falls within the sixty-day period allowed for an appellant to file a statement of evidence after filing a notice of appeal. *See* TENN. R. APP. P. 24(c).

existence of any extraordinary circumstances here. As a result, we are unable to provide Mr. Molthan with the relief he seeks with regard to the statement of evidence.

Mr. Molthan's final argument on appeal is that the trial court punished Mr. Molthan for participating in political activity by granting Ms. Gillett's request to extend her order of protection by a year. Our review of the record reflects that Mr. Molthan did not make this argument before the trial court and is raising it for the first time on appeal. Because he did not raise this issue at the trial court level, Mr. Molthan has waived this issue on appeal. *See Fayne v. Vincent*, 301 S.W.3d 162, 170 (Tenn. 2009) (holding party waives issue on appeal if it was not raised before trial court); *Wilson v. Esch*, 166 S.W.3d 729, 730 (Tenn. Ct. App. 2005) (holding that party may not raise an issue for the first time on appeal). Nevertheless, we observe that the trial court's decision is based, at least in part, on Mr. Molthan's "anger" with Ms. Gillett and his "ongoing delusional obsessions with her," reflected in his letter to Governor Haslam. The trial court's decision was not based on political activity, but rather on Mr. Molthan's continued pattern of action.

### III. CONCLUSION

The trial court's judgment extending Ms. Gillett's order of protection against Mr. Molthan until July 7, 2017, is affirmed. Costs of this appeal shall be taxed to the appellant, Jason Steven Molthan, for which execution shall issue if necessary.

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ANDY D. BENNETT, JUDGE