

State of New Hampshire
Supreme Court

NO. 2012-0686

2013 TERM

MARCH SESSION

Tamara Ann Tello

v.

John Thomas Tello

RULE 7 APPEAL OF FINAL DECISION OF
MILFORD DISTRICT COURT

BRIEF OF PETITIONER/APPELLEE TAMARA ANN TELLO

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STATEMENT OF FACTS AND STATEMENT OF THE CASE

John Tello and Tamara Tello¹ were married in Texas in 1982 and divorced in Texas in 2005. They have two children together: Nicholas who is now an adult and lives in New Hampshire, and Sarah who has recently become an adult and lives with Tamara in New Hampshire. Because of prior events and later threats, in 2011 Tamara sought and received in the Milford District Court (*Martha Crocker, J.*) a domestic violence protective order against John. That was appealed and affirmed. In 2012 Tamara sought an extension, which John has now appealed.

I. Background: Initial DV and First Appeal²

A. John's Criminal History: Sexual Assaults on Children, Including His Son

In 2003 John was indicted by a Texas grand jury for two counts of "Indecency with a Child." Texas alleged that "with the intent to arouse or gratify the sexual desire of John Thomas Tello, [he] intentionally or knowingly engage[d] in sexual contact ... by touching the genitals of ... a child younger than 17 years." One of the counts involved Nicholas Tello, John's son, who was then 11 years old. INDICTMENT 2-03-279 (May 20, 2003), *Prior Appx.* at 6; INDICTMENT 2-03-280 (May 20, 2003), *Prior Appx.* at 7. The Texas grand jury also indicted John for one count of "Possession of Child

¹Because all parties share a last-name, to ease confusion first names are used throughout. No disrespect is intended.

²This factual background is largely repeated from Tamara's brief in John's appeal of the initial domestic violence restraining order. Because the documents forming this background are already in this Court's possession, they are not re-submitted here, and citation is thus made to the record of the prior appeal. *Tamara Ann Tello v. John Thomas Tello*, N.H. Sup. Ct. No. 2011-0648.

Citations to that record are indicated as: *Prior Appx.* Citations to the brief in the prior appeal are indicated as PRIOR BRF.

The large documentary record in the current appeal ("this four-inch-thick file," *Trn.* at 19), created nearly exclusively by John, has been transmitted to this Court. Citations to those documents are contained herein but with no reference to any appendix.

Several of the documents in the record may nonetheless be necessary for review. They are contained in an addendum to this brief, SUP.CT. R. 17(1) and cited herein as: *Addm.*

Pornography.” INDICTMENT 2-03-451 (Aug. 13, 2003), *PriorAppx.* at 8.

John plead guilty and was convicted of all three charges. He was sentenced to 7 years on each count, with the sentences running concurrently. JUDGMENT ADJUDICATING GUILT 2-03-279 (Mar. 1, 2005), *PriorAppx.* at 9; JUDGMENT ADJUDICATING GUILT 2-03-280 (Mar. 1, 2005), *PriorAppx.* at 12; JUDGMENT ADJUDICATING GUILT 2-03-451 (Mar. 1, 2005), *PriorAppx.* at 15. John appealed his case at least twice. In the first, involving appeal bonds, the Texas court wrote:

Appellant was charged with two indecency with a child offenses and one possession of child pornography offense. Pursuant to plea bargain agreements, the trial court deferred adjudicating guilt and placed appellant on five years’ community supervision in each case. The State later moved to adjudicate guilt, alleging appellant violated the conditions of his community supervision. Following a hearing, the trial judge adjudicated appellant guilty and sentenced him to seven years’ confinement in each case....

The trial judge set appeal bonds at \$15,000 in each case and on April 29, 2005, appellant posted the bonds. Several conditions were set on the bonds, including that appellant not go within 1000 feet of a place where children generally gather and that appellant appear for all court hearings. On May 5, 2005, the State moved to revoke appellant’s bonds, alleging that he had gone into two daycare facilities.

Ex parte Tello, 2005 WL 2009570 (Tex.App. 2005), *PriorAppx.* at 27. In a second appeal, the convictions and sentences were affirmed. *Tello v. State*, 2005 WL 2625486 (Tex.App. 2006), *PriorAppx.* at 29. As a result, John was placed permanently on the Texas sex offender registry. TEXAS DEP’T PUBLIC SAFETY, PUBLIC SEX OFFENDER REGISTRY, *PriorAppx.* at 31.

B. Texas Protective Order and Termination of Parental Rights

Before the convictions, Tamara got a protective order against John in Texas. *In the Matter of the Marriage of Tamara Tello and John Tello* and *In the Interest of Nicholas Paul Tello and Sarah Elizabeth Tello*, Rockwall Cnty. TX Dist.Ct. No. 01-03-207, PROTECTIVE ORDER (May 7, 2003), *PriorAppx.* at 1. The Texas protective order extended until April 16, 2005, by which time it is believed John was incarcerated.

As a part of his criminal convictions, John voluntarily relinquished his parental rights over the two children. *In the Interest of Nicholas Paul Tello and Sarah Elizabeth Tello*, Rockwall Cnty. TX

Dist. Court. No. 1-03-207 ORDER OF TERMINATION and FATHER'S AFFIDAVIT FOR VOLUNTARY RELINQUISHMENT (Mar. 5, 2004), *PriorAppx.* at 18, affirmed by *In re N.P.T. and S.E.T.*, 169 S.W.3d 677 (Tex.App. 2005), *PriorAppx.* at 22. Consequently the Milford District Court found that his rights had been terminated, DOMESTIC VIOLENCE FINAL ORDER OF PROTECTION ¶11 (June 20, 2011, reaffirmed July 25, 2011), *PriorAppx.* at 58, and John has conceded it. JOHN TELLO PRIOR BRF. at 3.

Despite the termination, and also despite the Texas and New Hampshire restraining orders, John has made no secret that he “intends to communicate with his son and daughter.” JOHN TELLO PRIOR BRF. at 3, 4.

C. John Gets Out of Texas Jail

In May 2011 Tamara received a letter from Texas authorities informing her that John's projected release date was July 7, 2011, that he had served the maximum sentence, and that therefore the “Board of Pardons and Parole will no longer have authority” over him. LETTER FROM THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE TO TAMARA TELLO (May 9, 2011), *PriorAppx.* at 34.

The letter also noted that because John “is the subject of a protective order and is confined or imprisoned on the date the protective order expires [Texas law] mandates that the protective order be extended for one year from the date the offender is released.” *Id.*

D. Credible Threat to Tamara's Safety

Because by 2011 Tamara had long ago left Texas to start a new life away from John in New Hampshire, rather than apply to Texas for an extension, soon after she got the to-be-released letter she commenced the current proceeding with a petition in the Milford District Court.

In initial her petition, Tamara alleged that John is a “sociopathic, anti-govt, anti-tax, anti-IRS, Patriot [who] loves guns [and] knives,” and who “follows no rules or laws but HIS.” DOMESTIC VIOLENCE PETITION (May 27, 2011), *PriorAppx.* at 35. She alleged that John “has threatened to kill me and the children,” and that he has money and access to guns. DEFENDANT

INFORMATION SHEET (May 27, 2011), *PriorAppx.* at 39. She noted that back in Texas, he hit her and was arrested for it. Because he was not incarcerated before his plea, Tamara alleged that “[w]hen in court or at home, we had to be escorted by police for protection (including the judge).” Tamara believes that “[h]e knows where we are at, my family in N.Dak[ota], Wisconsin and N.H. [and] all fear his presence.” *Id.*

Tamara believed John is “a danger to any boy 6-12 and my family,” that she expects “[h]e will be coming here to try to get his children,” and that they are fearful of him as well. “While in prison, [John] sent package to Sarah against [Texas’s] protective order. We thought it was a bomb!” *Id.* John admits he sent a box to the younger child, and admits he intends to communicate with both children. JOHN TELLO PRIOR BRF. at 3, 4.³

Tamara believed that John had engaged in financial crimes, including “[f]orgery, many passports, [and] embezzlement.” DOMESTIC VIOLENCE PETITION (May 27, 2011), *PriorAppx.* at 35. She believed that he took marital funds and the kids’ college money, and forged signatures for those purposes. Even though he was awarded the marital condominium in their divorce, he did not pay the fees, and the condo association has held her liable. Tamara believed that John “wants my life insurance funds, and has been open about it.” *Id.*

Tamara alleged that John posed a threat because “[h]e blames me for all of his dealings.” “I have fought hard to keep him in prison with the parole board and each time the board has had no problem protecting us and keeping him locked up.” Upon his release from prison she feared for her life and for her kids. *Id.*

³John made an attempt to use this Court to contact the children by sending cards to the Court in the hopes they would be forwarded. Sup.Ct.Order (Dec. 6, 2011) (“On December 1, 2011, the court received John Tello’s brief, along with two cards that Mr. Tello addressed to individuals who are not parties to this appeal. The two cards are being returned to Mr. Tello with this order.”). In addition, during the pendency of this appeal, Tamara has received mailings which John has admitted were intended for the children. *See* ENVELOPES FROM JOHN TELLO TO NICHOLAS TELLO AND SARAH TELLO (postmarked Dec. 13, 2011), *PriorAppx.* at 85; LETTER FROM JOHN TELLO TO CLERK, MILFORD DISTRICT COURT (Dec. 13, 2011), *PriorAppx.* at 86. In separate domestic violence dockets related to the two children, John has admitted sending packages to them.

“Based on this Tamara requested “any extra protection we can get for as long as we can get,” and “[w]ould like the protective order extended in N.H. where we live.” *Id.*⁴

E. First Appeal Affirmed

Accordingly in June 2011 the Milford District Court issued Tamara a no-contact order that was good for a year, ending on June 20, 2012. DOMESTIC VIOLENCE FINAL ORDER OF PROTECTION (June 20, 2011) *Prior Appx.* at 58. John appealed, and this Court affirmed in an unpublished opinion. ORDER in *Tamara Ann Tello v. John Thomas Tello*, N.H. Sup. Ct. No. 2011-0648 (May 4, 2012) (“Affirmed.”).

II. Extension of Protective Order

Shortly before it was set to expire, on June 18, 2012 Tamara filed a request the order be extended. Her grounds were:

Continued threats and mocking of all parties involved (personal and legal) through court filings. Making false allegations about my family and self personally and professionally (defamation of character). Bullying and making threatening statements he intends to make contact with us no matter what and continued filing of paperwork in the court system (Tx, NH US Supreme Court) which is continued stalking and harassment using the legal system as his weapon. Threatening to hold me and other parties involved in legal proceedings and lawsuits and holding us financially liable and threatening prosecution for perjury.

REQUEST FOR EXTENSION OF DOMESTIC VIOLENCE OR STALKING PROTECTIVE ORDER (June 18, 2012), *Addm.* at 23.

A. John’s Responses

In response, on July 3, 2012, John filed six pleadings. LETTER FROM JOHN TELLO TO MILFORD DIST.CT. (July 3, 2012).

The first was a 55-page pleading with 22 pages of attachments. RESPONSE TO PLAINTIFF’S

⁴Tamara’s son Nicholas, the now-grown boy who had been John’s victim, filed his own petition for a restraining order on the grounds that “8 years ago ... my father sexually molested me [] and one of my closest friends.” DOMESTIC VIOLENCE PETITION, 11-DV-30 (May 27, 2011). Both he and Tamara’s daughter were granted domestic violence protection orders in the Milford Court, which have now lapsed.

POST-JUDGMENT PETITION (MOTION) FOR EXTENSION OF PROTECTIVE ORDER (July 3, 2012). It argued that the underlying protective order was invalid on a variety of grounds thus undermining an extension, that there was want of standing and lack of jurisdiction, that Judge Crocker should have been disqualified, that the extension should not have been granted on its facts, and that the petition should be dismissed or ignored on a variety of grounds that appear to be largely ideological.

The second was a 42-page request to dismiss. RESPONDENT'S MOTION TO DISMISS PETITION (MOTION) FOR INITIAL EXTENSION (July 3, 2012). It again discussed standing and jurisdiction, alleged a dearth of facts to support extension, and again pressed issues of ideology.

The third was a 5-page supplemental request to dismiss. RESPONDENT'S FIRST SUPPLEMENTAL MOTION TO DISMISS PETITION (MOTION) FOR INITIAL EXTENSION (July 3, 2012). It appears to argue Tamara was practicing law without a license.

The fourth was an 18-page motion for sanctions, RESPONDENT'S MOTION FOR SANCTIONS (July 3, 2012), to which Tamara objected in a nine-word single sentence. OBJECTION (July 10, 2012). John appears to argue that in seeking a protective order Tamara was litigating in bad faith.

The fifth was a 14-page second request for sanctions, with a 2003 Texas document attached. RESPONDENT JOHN TELLO'S THIRD-PARTY CLAIM FOR SANCTIONS (July 3, 2012). It seeks sanctions against both Tamara and her undersigned appellate attorney, and appears to suggest more bad-faith litigation.

The sixth was a pleading making evidentiary claims. RESPONDENT'S STANDING EVIDENTIARY OBJECTION (July 3, 2012). It appears to argue that all Tamara's assertions should be rejected.

B. Timeliness of John's Responses

On July 17, 2012, the court issued an order noting that John's pleadings were not timely. Either in response to his complaint in his cover letter, LETTER FROM JOHN TELLO TO MILFORD DIST.CT. (June 27, 2012) ("due to the Due-Process-defying, excruciatingly short time period of 10 days ..."), or *sua sponte*, the court nonetheless waived the untimeliness. ORDER (July 17, 2012) ("schemul[ing] the motion for extension and all of the respondent's motions for hearing on August 1, 2012"), *John's Brf.* at 40; *see also*, ORDER (Aug. 30, 2012), *John's Brf.* at 42-43. ("Despite the lateness of the letter, the court honored [John's] request to appear via telephone The hearing was scheduled within 30 days of the receipt of [his] objection."); *Trn.* at 20 (court suggesting more notice for telephonic appearances).

The court then issued a hearing notice. NOTICE OF HEARING (July 17, 2012) (scheduling August 1, 2012 hearing).

C. John's Pre-Hearing Filings

Before the hearing took place, John filed another 18-page motion to dismiss. RESPONDENT'S SECOND SUPPLEMENTAL MOTION TO DISMISS PETITION (MOTION) FOR INITIAL EXTENSION (July 25, 2012). It appears to argue that the proceeding was not timely.

Also before the hearing John requested he be excused from personally appearing and that the hearing be conducted telephonically for him. RESPONDENT'S NOTICE OF HIS INTENT TO PARTICIPATE BY PHONE (July 31, 2012).

Also before the hearing, John filed a batch of documents not only from this litigation, but also a record of his complaints to various governmental bodies about Tamara. They include John's 2004 complaints to the Texas State Board of Physician Assistant Examiners and the Texas Board of Nurse Examiners alleging that Tamara uses drugs which impair her medical skills.

These documents were accompanied by a letter making allegations against the judge who "pretend[s] to preside over this hearing," and also threatens the court staff. The letter says:

Since [the clerk] and your staff have become addicted to criminal [r]ecord - tampering, which is also witness tampering and retaliation, among a list of crimes, just know that I'm holding you personally responsible for the proper handling of these documents relevant to the hearing.... The phone line had better not be busy, either.

LETTER FROM JOHN TELLO TO MS. LYNN KILLKELLEY, CLERK, MILFORD DIST.CT. (July 31, 2012), *Addm.* at 24. The letter indicates it was shared with the County Attorney, the FBI, the Governor, the Secretary of State, the Attorney General, the Associated Press, the Concord Monitor, WKXL radio and WMUR TV.

D. Hearing Held

A half-hour hearing was held on August 1, 2012.

Under oath Tamara testified that John has filed “lengthy pleadings and contentions” in a number of courts, which is “a type of bullying, stalking.”

He's threatening to us. He had his verbal, mental and physical abuse. He says he's going to see us no matter what, and we want no contact with him whatsoever. And I think he's mocking the court system. I don't even have time to read what he is filing anymore.

Trn. at 4. Appearing by telephone John objected to a variety of court procedures, *Trn* at 4-5, 6-7, 7-8 (10-day rule, which court waived) (court date-stamping workflow, which court waived) (timeliness of hearing).

John testified that there is no emergency or grounds for fear, and that the underlying protective order, which he acknowledged was affirmed by the supreme court, was unlawfully issued.

Trn. at 4, 7-9. He said that Tamara:

has a direct problem and suffers from paranoia and other symptoms of illegal drug abuse relative to various types of prescriptive drugs and, therefore, I would show the Court that the Plaintiff is incapable of any rational sense of fear.

Trn. at 10. In his statements John repeatedly referred to Tamara as “my wife,” *Trn.* at 10, 11, 12, even though they were divorced around the time John went to jail for child rape.

Although he testified he is far away, he claimed to have knowledge – although he offered no basis – that Tamara takes drugs home from work and uses them. *Trn.* at 12-13. He suggested that

Tamara should not be believed

because she's lying about everything as she is continuing to lie here. And I believe it is my position that her inability to tell the truth is rooted in her addiction to all of these plethora of prescriptive pills that she has access to.

Trn. at 14.

John denied any ill will toward Tamara, although his statements appear in part to be a re-litigation of the underlying (and now aged) assaults, divorce, and grounds for his lengthy incarceration. *Trn.* at 13-14.

Tamara denied abusing drugs, and rebutted John's drug use allegations. She notified the court they had all been unfounded, and that she is in good standing with medical authorities in Texas, New Hampshire, and elsewhere. *Trn.* at 16-17. Tamara testified that the only complaints ever filed against her have been by John, and that is "because he blames me for putting him in prison. He put himself in prison, not me." *Trn.* at 17.

He is using this court as a hobby. This is his way of contacting me since he is not contacting me otherwise. He's contacting me through the lawyers, through the court system to mentally, financially inflict injury upon us. He just will not leave us alone. None of us want to see him.

He has made statements like, let the fight begin. I will see the kids no matter what. He has not paid the court-ordered costs of the Supreme Court nor the other costs that will be coming. He continues to file paperwork after paperwork after paperwork against us. This is one of his ways of continued control and inflicting injury upon us, his way of making contact with us. He just – we simply want peace. We want nothing to do with him. ... [I]t's a form of bullying. This man just will not leave us alone.

Trn. at 17-18 (and errata sheet).

E. John's Post-Hearing Filing

After the hearing, but before the court issued an order, John filed another pleading – a 15-pager purporting to claim sanctions under federal health-privacy laws. RESPONDENT'S SUPPLEMENTAL MOTION FOR SANCTIONS REGARDING HIPAA DISCLOSURE LAWS (Aug. 14, 2012). It was forwarded to largely the same group of outside parties as previously, and additionally to the Secretary of the Federal Department of Health and Human Services.

Tamara objected on the grounds that HIPPA applies only to “covered entities” of which she is not one, and that HIPPA does not include a private cause of action. She pointed out that John’s invocation of HIPPA was the type of harassment she had been repeatedly and continually experiencing, and that for this, she should be awarded sanctions. OBJECTION (Aug. 22, 2012).

F. Court Order Granting 1-Year Extension of DV Order

On August 31, the court issued its order. Based on its “assessment of the credibility and demeanor of the two witnesses,” the court found that

Mr. Tello is using the legal system to continue to harass his former wife for her involvement in his initial prosecution and ... incarceration.... Since his release, he appears to be obsessed with fomenting turmoil in Ms. Tello’s life....

Since his release ... he has been unwavering in his threatening, intimidating, and quasi legal pursuit of Ms. Tello, with filings in the Milford District Court, Hillsborough County Superior Court, the New Hampshire Supreme Court and the federal district courts. The court finds that this obsessive behavior on Mr. Tello’s part as evidenced by his own pleadings in this court’s file which to date measures four inches, serves as a basis for a credible fear for Ms. Tello’s personal safety. Ms. Tello was physically shaking during the hearing.

ORDER (Aug. 30, 2012), *John’s Brf.* at 42-43. The court discounted John’s claim that Tamara abuses drugs and is therefore “incapable of a reasonable sense of fear” because the only evidence were complaints John made to Texas medical authorities in connection with his criminal proceedings, and there was no independent evidence “validating the claims made by Mr. Tello.” *Id.*

Accordingly the court held that the protective order shall be extended a year, to July 25, 2013.

The court also found John in contempt based on the letter he filed with the court clerk: “[T]he court finds his cover letter of July 30, 2012 as inappropriate, threatening and contemptuous.” *Id.*

G. Post-Order Pleadings

After the court order, John filed two more pleadings.

The first was a 15-page further request for sanctions. RESPONDENT'S AFFIDAVIT AND BRIEF IN SUPPORT OF ALL HIS CLAIMS FOR SANCTIONS AND, CONDITIONALLY, HIS RESPONSE TO PLAINTIFFS MOTION FOR SANCTIONS, AND HIS ADDITIONAL MOTION FOR SANCTIONS (Sept. 6, 2012). The basis for the claim appears to be that Tamara has made baseless claims. The pleading was mailed to all the previous outside parties, and additionally to the President of the NH Psychiatric Society.

John's second post-order pleading was a 7-page request for a variety of remedies. RESPONDENT'S RULE 35 DISCOVERY MOTION FOR PSYCHIATRIC EXAMINATION OF TAMARA TELLO, PLAINTIFF, WITH MOTION TO APPOINT COUNSEL FOR TAMARA (Sept. 4, 2012). In it he requests that Tamara get a psychiatric exam, on the grounds that "Tamara's comprehension of the legal matters involved in her persistently outrageous, baseless, horrifically bad faith, malicious, false criminal charges against [John] isn't improving one iota." *Id.* at 2. The pleading was shared with roughly the same group of official and press outsiders.

H. Second Appeal

On October 1, 2012, John filed an appeal in this Court. NOTICE OF APPEAL (Oct. 1, 2012).

III. Meanwhile ...

This proceeding is not the only one in which John has been involved.

John filed a Application for Writ of Habeas Corpus. HILLS.CNTY.SUPER.CT. No. 2012-CV-0530, defended by the Hillsborough County Attorney. John argued (in voluminous pleadings) that the restraining order in the present case was a restraint such that a writ of Habeas Corpus should issue. The court (*Jacalyn A. Colburn, J.*) summarily denied it without hearing.

Not long after the initial restraining order proceeding in the present case, both of Tamara's children also requested no-contact orders. They were granted after John's voluminous pleadings

were denied. This court affirmed in an unpublished opinion. ORDER in *Nicholas Paul Tello v. John Thomas Tello & Sarah Elizabeth Tello v. John Thomas Tello* N.H. Sup. Ct. Nos. 2012-0112 & 2012-0113 (July 13, 2012) (“Affirmed.”). Notable about one of John’s pleadings filed in the children’s cases, and included in the record he presented to this Court at a time during which there was an existing order preventing his contact with them, is that he *directly* addressed the children: The pleading was labeled as: “Message to Petitioner(s),” and began with the salutation: “Son, Daughter:.” See APPENDIX A at A-66 & APPENDIX B at B-62.

SUMMARY OF ARGUMENT

Tamara Tello argues that John Tello received all process required by statute, and that the protective order was appropriately extended.

ARGUMENT

I. Extension of Protective Order Available Upon Showing of Cause

New Hampshire law provides that “[u]pon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse.” RSA 173-B:5, I. Abuse is defined as

the commission or attempted commission of one or more of [specified] acts ... by a ... former ... intimate partner, where such conduct is determined to constitute a credible present threat to the petitioner’s safety. The court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably causes or has caused the petitioner to fear for his or her safety or well-being.

RSA 173-B:1, I. A past assault combined with current on-going threatening behavior is sufficient to constitute abuse. *Fichtner v. Pittsley*, 146 N.H. 512 (2001).

Among the specified acts constituting “abuse” are harassment and stalking. RSA 173-B:1, I(d) & (f).

Harassment is defined as when the defendant, “[w]ith the purpose to annoy or alarm another, having been previously notified that the recipient does not desire further communication, communicates with such person, when the communication is not for a lawful purpose or constitutionally protected.” RSA 644:4, I(f).

Stalking is defined as: “After being ... provided notice of [] a protective order ... that prohibits contact with a specific individual” the defendant “purposely, knowingly, or recklessly engages in a single act of conduct that both violates the provisions of the order and is listed in paragraph II(a).” RSA 633:3-a, I(c). Paragraph II(a) includes “any act of communication.”

“Communication” for both harassment and stalking “means to impart a message by any method of transmission, including but not limited ... sending or having delivered any information or material by written or printed note or letter, package, mail, courier service or electronic transmission.” RSA 644:4, II.

A protective order:

shall be for a fixed period of time not to exceed one year, but may be extended by order of the court upon a motion by the plaintiff, showing good cause, with notice to the defendant, for one year after the expiration of the first order. ... A defendant shall have the right to a hearing on the extension of any order under this paragraph to be held within 30 days of the extension.

RSA 173-B:5, VI.

The contact barred by a protective order “means any action to communicate with another either directly or indirectly, including, but not limited to, using any form of electronic communication, leaving items, or causing another to communicate in such fashion.” RSA 173-B:1, IV.

On appeal this Court “uphold[s] the findings and rulings of the trial court unless they are lacking in evidential support or tainted by error of law. [It] accord[s] considerable weight to the trial court’s judgments on the credibility of witnesses and the weight to be given testimony.” *Fillmore v. Fillmore*, 147 N.H. 283, 284-85 (2001) (quotations and citations omitted).

II. Tamara Proved Her Case for Extension

Tamara petitioned for an extension on June 18, 2012. John objected on July 3, more than 10 days later, DIST.CT. R. 1.8(D), although the court waived the untimeliness and accepted his pleadings. A hearing was held on August 1, less than 30 days after John’s objections. Thus John got his hearing within the statutory time.

Tamara proved past assault, and she had a then-about-to-expire protective order which prohibited contact. She proved “communication” via a constant barrage of filings in several forums which placed her in fear for her well-being, and which was corroborated by similar threats to court personnel. Because this Court defers to the findings of the lower court, it must affirm.

III. Point-by-Point Answer

John has numbered his arguments 1 through 22, starting on page 11 of his brief. Below Tamara addresses each, in the same numbered order as presented in John's Brief.

1. Caption

This contention appears to claim that some documents were captioned slightly differently than others, and that therefore they are void. The title of a document "is not conclusive of its interpretation." *Greenland Conservation Comm'n v. New Hampshire Wetlands Council*, 154 N.H. 529, 534 (2006). *Hadden v. Collector*, 72 U.S. 107, 110 (1866) ("The title of an act furnishes little aid in the construction of its provisions."). Thus there is no error.

2. Animate any particular Capacity

It is unknown and is not made clear in John's brief what consent was allegedly compelled. Accordingly, no meaningful response can be made.

3. Underlying Protective Order

This contention relies on the assumption that the "original order is void." JOHN'S BRF. at 12. The original order however, as noted by the trial court, was upheld by this Court.

4. Ex Parte

This contention appears to rely on the existence of something which John calls *ex parte*. It is unknown and is not made clear in John's brief what proceeding was *ex parte*, and thus no meaningful response can be made.

5. Hearing Within 30 Days

At the beginning phase of a RSA 173-B proceeding, the statute requires that the court hold a hearing. Before granting an *initial* order, the court "shall" hold a hearing. RSA 173-B:3, VII(a) ("The court *shall* hold a hearing within 30 days of the filing of a petition under this section or within 10 days of service of process upon the defendant, whichever occurs later.") (emphasis added).

The extension portion of the statute is different. It provides only that "[a] defendant shall

have the right to a hearing on the extension of any order under this paragraph to be held within 30 days of the extension.” RSA 173-B:5, VI. Nothing in the extension portion makes a hearing automatic, and indeed explicitly presumes the opposite – that no hearing will ordinarily take place unless the defendant requests one. Once the defendant makes the request, it is then held as a matter of right.

This distinction makes sense. An initial order has the formalities associated with the commencement of a civil lawsuit. It is the first time a defendant may learn of and be placed under RSA 173-B restrictions. The plaintiff must prove the elements of abuse, as measured by whatever criminal-law analogue is claimed, specific acts, an ongoing pattern of behavior, and fear safety or well-being. These are matters for which an evidentiary hearing is a must. During an extension proceeding, however, the defendant is already at least one year familiar with RSA 173-B restrictions, and the plaintiff need prove only good cause – that the order is still relevant to the situation – thus not necessarily creating the need to hear new evidence.

A one-sentence request for an extension hearing filed within 10 days of the extension petition is a reasonable requirement, and 10 days is plenty of time to file it. John’s argument that 10-days is not sufficient appears to be predicated on the need to file 160 additional pages of pleadings.

Regardless, John participated in a hearing within 30 days of his request, even though his request was tardy. To the extent there is something to complain about, it could have been avoided had he timely sent a 1-page hearing request without awaiting the completion of voluminous pleadings raising his other issues.

Accordingly, John received all the process that was due.

6. Timestamp

A review of the record, which has been transferred to this Court, does not reveal any mishandling.

7. Hearing Within 30 Days

This appears to be a restatement of contentions number 5 and 6, *supra*.

8. Hearing Within 30 Days

This appears to be a restatement of contentions number 5, 6, and 7 *supra*.

9. Tamara as State Actor

This contention appears to argue that Tamara, as a protective-order plaintiff, stands in the role of the State, and therefore that all rights an individual has against the State apply against her as a plaintiff. It appears to rely on the fact that RSA 173-B references several criminal statutes in its definition section. While the issue is of intellectual interest, *see e.g.*, Kenneth Mann, *Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law*, 101 YALE L.J. 1795, 1796 (1992), it ignores the fact that Tamara has no power to put John in jail.

10. Disqualification

This contention appears to rely on an assumption, its nature either unstated or unclear, that Judge Crocker was disqualified. A review of the record however indicates nothing suggesting disqualification.

11. Access to Firearms

This contention appears to reject the aspect of protective orders regarding access to firearms. As there is no evidence of any firearms in the record, or that John has been deprived of firearms, or that as a Texas felon he would be allowed to possess firearms but for the New Hampshire protective order, the issue is not preserved. Moreover, this issue has probably been decided. *In re Peirano*, 155 N.H. 738 (2007); *Dist. of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (“nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons” and others).

12. Access to the Children

Tamara’s children applied for and received their own protective orders.

13. Good Cause

Tamara showed good cause for an extension of the protective order, for all the reasons listed by the court in its order. ORDER (Aug. 30, 2012), *Addm. to John's Brf.* at 42-43.

14. Good Cause

This appears to be a restatement of contention number 13, *supra*.

15. Good Cause

This appears to be a restatement of contentions number 13 and 14, *supra*.

16. Standing

Standing for an initial order is conferred by statute. RSA 173-B:3, I (“Any person may seek relief ... by filing a petition, in the county or district where the plaintiff or defendant resides, alleging abuse by the defendant.”). Standing for an extension is conferred on “the plaintiff” who brought the initial petition. RSA 173-B:5, VI (“Any order under this section shall be for a fixed period of time not to exceed one year, but may be extended by order of the court upon a motion by the plaintiff, showing good cause.”).

17. Burden of Proof

The court made clear that Tamara proved good cause. The court noted Tamara “maintains that Mr. Tello continues to make threats, and continues to bully, harass and stalk her using the legal system as his weapon.” ORDER (Aug. 30, 2012), *Addm. to John's Brf.* at 42-43. The court wrote:

The court finds Mr. Tello is using the legal system to continue to harass his former wife for her involvement in his initial prosecution and ... incarceration.... Since his release, he appears to be obsessed with fomenting turmoil in Ms. Tello's life....

Since his release ... he has been unwavering in his threatening, intimidating, and quasi legal pursuit of Ms. Tello, with filings in the Milford District Court, Hillsborough County Superior Court, the New Hampshire Supreme Court and the federal district courts. The court finds that this obsessive behavior on Mr. Tello's part as evidenced by his own pleadings in this court's file which to date measures four inches, serves as a basis for a credible fear for Ms. Tello's personal safety. Ms. Tello was physically shaking during the hearing.

ORDER (Aug. 30, 2012), *Addm. to John's Brf.* at 42-43. Accordingly, the court appropriately first gave Tamara the burden, and then found she met it.

18. Subject Matter Jurisdiction

If this contention is addressed to subject-matter jurisdiction, the district court clearly has it. RSA 173-B:2. If it is addressed to the burden of proof and sufficiency of the evidence, those matters have been canvassed, *supra*, and need to restatement here.

19. Sanctions

The court appropriately denied John's requests for sanctions as there was no evidence offered that Tamara has done anything beyond a good faith attempt to keep John away from her as provided by law.

20. Third Party Sanctions

The court appropriately denied John's requests for sanctions as there was no evidence offered that Tamara or anyone associated with her has done anything beyond a good faith attempt to keep John away from her as provided by law.

21. Psychiatric Exam

John requested the court order Tamara be subject to a psychiatric exam. Pursuant to RSA 173-B, the court has no authority to order such an exam. The court's authority is to either grant or not grant a no-contact order. Moreover, if protective-order petitioners were deemed to have made themselves subject to such intrusive examinations merely upon petitioning, many deserving protective-order plaintiffs would refrain from petitioning, and the purpose of the statute would be subverted.

Even if the statute provided such authority, John proved no facts warranting a psychiatric exam. The court explicitly found that John failed to "convince the court that Ms. Tello is 'incapable of a reasonable sense of fear.'" ORDER (Aug. 30, 2012), *Addm. to John's Brf.* at 42-43.

22. Out-of-State Defendant

This contention appears to claim that RSA 173-B does not apply to John because he does not live in New Hampshire. The contention ignores the United States Constitution, which provides for comity among states, and the enforcement by each state of other states' laws. U.S. CONST. art. IV, § 1 ("Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State."). Nothing in the statute, moreover, appears to limit defendants to those who live in New Hampshire. Moreover, the extent of New Hampshire's long-arm statute in this context was exhaustively litigated in John's first appeal, which this Court affirmed, and thus should be considered *res judicata* and law-of-the-case.

Other matters addressed in this contention have been argued elsewhere, *supra*, and need not be restated.

CONCLUSION

Based on the forgoing, Tamara Tello requests this Court affirm the ruling of the court below, and leave in effect the one-year extension of the underlying protective order.

Respectfully submitted,

Tamara Ann Tello
By her Attorney,

Law Office of Joshua L. Gordon

Dated: March 7, 2013

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CERTIFICATION

I hereby certify that on March 7, 2013, copies of the foregoing will be forwarded to John Tellos at, PO Box 460335, Garland, TX 75046-0335.

Dated: March 7, 2013

Joshua L. Gordon, Esq.

ADDENDUM

- 1. REQUEST FOR EXTENSION OF DOMESTIC VIOLENCE OR STALKING
PROTECTIVE ORDER (June 18, 2012) 23

- 2. LETTER FROM JOHN TELLO TO MS. LYNN KILLKELLEY, CLERK,
MILFORD DIST.CT. (July 31, 2012) 24