FILED
02/13/2019
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 18-0622

DA 18-0622

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 43N

RENE ELENA CARTER and LEE JAY CARTER,

Petitioners and Appellants,

v.

D.R.E. and COLLEEN CAMPBELL,

Respondents and Appellees.

APPEAL FROM: District Court of the First Judicial District,
In and For the County of Lewis And Clark, Cause No. ADR 2018-649
Honorable Mike Menahan, Presiding Judge

COUNSEL OF RECORD:

For Appellants:

Palmer A. Hoovestal, Hoovestal Law Firm, PLLC, Helena, Montana

For Appellees:

Timothy Willis McKeon, McKeon Doud, P.C., Helena, Montana

Submitted on Briefs: January 30, 2019

Decided: February 12, 2019

Filed:

Clerk

Justice Jim Rice delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Rene Elena Carter and Lee Jay Carter (Carters) appeal from the District Court's summary denial of their joint petition for temporary order of protection, with request for the order to be made permanent, which named D.R.E. and Colleen Campbell (D.R.E./Campbell) as Respondents. Carters also challenge the District Court's entry of an order, following the filing of their appeal, that sealed the petition and supporting affidavits and exhibits. We previously granted a motion by Carters to suspend the Rules of Appellate Procedure and to expedite the processing of the appeal. Briefing was submitted by the parties on an expedited schedule, and the Court has undertaken expedited review. We now reverse and remand for a hearing on the petition, and leave in place the sealing order.

¶3 Given the confidential nature of information related to the parties named herein, our reference to asserted facts will be minimal. In January 2018, Rene Elena Carter was charged by the State of Montana with felony sexual intercourse without consent against D.R.E., who is now an adult. On October 23, 2018, Carters initiated this proceeding, seeking issuance of a temporary order of protection against D.R.E. and Colleen Campbell, D.R.E.'s mother. Carters' joint petition and supporting documents (petition) made

extensive allegations against D.R.E./Campbell, including assertions that Carter family members have been the victims of felony crimes perpetrated against them by D.R.E./Campbell.

¶4 Carters and D.R.E./Campbell are not alleged to be in relationship as "a partner or family member," § 40-15-102(1)(b), MCA, and thus the petition's allegations of crimes perpetrated against the Carters establish threshold eligibility for an order of protection under § 40-15-102(2), MCA, which authorizes individuals who are victims of certain crimes to apply for protection, "regardless of the individual's relationship to the offender." We are sensitive to the fact, as was the District Court, that a criminal action is now pending, that this is not a criminal proceeding, and that the propriety of any further criminal charges arising from the actions of the parties here would be determined upon initiation of such proceedings by the appropriate law enforcement authorities. Upon review of the record, we concern ourselves here only with the allegation that Carters and members of their family are the victims of the crime of stalking, which, upon affidavit and physical evidence, including photographs, is alleged to be a current, continuing course of action.

¶5 The crime of stalking occurs if a "person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly following the stalked person, or harassing, threatening, or intimidating the stalked person, in person or by mail, electronic communication . . . or by any other action, device, or method." Section 45-5-220(1), MCA. In turn, "a victim of . . . stalking as defined in 45-5-220" is "eligible to file a petition for an order of protection against the

offender regardless of the individual's relationship to the offender." Section 40-15-102(2)(a), MCA. Such victims may seek a temporary order of protection by filing a petition swearing that, in addition to being a victim of the crime, they are "in danger of harm" if an order is not immediately issued. Section 40-15-201(1), MCA. The court is to review the petition and, upon "a finding that the petitioner is in danger of harm if the court does not act immediately," shall issue a temporary order of protection. Section 40-15-201(2), MCA. A hearing is to be held within 20 days of issuance of the temporary order of protection. Section 40-15-202(1), MCA

¶6 On October 30, 2018, the District Court issued an order summarily denying the petition, stating that "Petitioners are urged to report the matter to the law enforcement agency having jurisdiction in the matter. In the event D.R.E. or Colleen Campbell are charged with a criminal offense arising from the incidents, the Court will re-visit the joint petition." Although referring generally to "incidents," the District Court entered no finding regarding whether Carters are in danger of harm necessitating an order of protection.

¶7 We recognize the general efficacy in deferring to law enforcement if possible and, indeed, the pending criminal proceeding may be an appropriate forum to secure the protection of all parties involved herein. However, as recognized by statute, a protection proceeding can proceed simultaneously with a criminal proceeding involving the same parties, and deference to a criminal proceeding is not required by law. Section 40-15-204(6), MCA. Upon review, we conclude that the Carters' petition has established a prima facie showing that they are victims of stalking and are in danger of harm, and are entitled

to a temporary order of protection pending a hearing, where a final determination on the merits of their petition can be made. We find no error in the District Court's sealing order.

¶8 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶9 Affirmed in part, reversed in part, and remanded for further proceedings consistent herewith.

/S/ JIM RICE

We concur:

/S/ MIKE McGRATH
/S/ LAURIE McKINNON
/S/ JAMES JEREMIAH SHEA
/S/ DIRK M. SANDEFUR