

Free Speech and Criminal Law
Court of Appeals of Oregon.
Audrey Elizabeth VAN BUSKIRK, Petitioner–Respondent,
v.
John Norman RYAN, Respondent–Appellant.

Respondent appeals a permanent stalking protective order (SPO) issued pursuant to { ORS 30.866 prohibiting him from having any contact with petitioner. He argues that, because all of his contacts with petitioner were communicative and there is no evidence that he ever threatened her, the order violates his free speech rights under [Article I, section 8, of the Oregon Constitution](#).

To briefly summarize, petitioner writes for the Portland Tribune. She met respondent once at an open house held by petitioner's employer. Over the next two years, respondent never saw petitioner again, but communicated with her through letters and e-mails, attempting to establish a romantic relationship with her. In many of respondent's correspondences, he told petitioner that, if the contact was inappropriate, “please let me know and I will stop.” } However, petitioner or those acting on her behalf repeatedly asked respondent to stop attempting to contact her, to no avail.

In his letters, respondent commented on petitioner's articles and on her appearance. He extended invitations to meet for lunch or dinner, shared his project ideas, expressed gratitude for her time and support, and often concluded with such statements as “[w]ishing you a joyful day!” or “[e]njoy the day!” Petitioner has a young son whom she had mentioned in some of her newspaper articles, and the letters also made references to him. The letters reflected that respondent was experiencing irrational and delusional thinking about his relationship with petitioner. In a letter to petitioner's parents, he compared them to Romeo and Juliet. The letters repeatedly referred to people who had been “contaminated” and who were against him and his desire not to expose petitioner to “danger or contamination.” Petitioner received a few letters from respondent in 2005, 11 letters from respondent in 2006, and 12 letters in 2007. Respondent also attempted to contact petitioner by telephone and in person. He called her on her home and work {¶ *173 telephones and left messages for her but never spoke to her, because she screened his calls.

Respondent attempted many times to visit petitioner at work to drop off letters for her. He never succeeded in seeing petitioner at her workplace, because petitioner's coworkers, supervisor, and receptionist intervened; however, respondent's visits were troubling to petitioner and to her coworkers. Respondent began attending public events sponsored by the Tribune or its sister company.

Respondent attempted to contact petitioner through her parents, although he never succeeded in meeting them in person. Petitioner's father had a photography website, and respondent attempted to contact him through that. He wrote letters to petitioner's father, suggesting “business proposals.” He went to the parents' house to drop off letters for petitioner.

“I find that his contact caused her reasonable apprehension regarding her own safety and the safety of her son, based on her own testimony about him making inquiries about her son, and making—continuing to make contact regarding her, by clear indication that it was to stop; that, because of the nature of the contact in terms of their bizarreness and some of the language used in his communication; that he appeared to her to be unpredictable, and ‘delusional,’ was the word she used; that, based on that, it was reasonable that she would feel that apprehension. “I find that, based on the pattern of contact, the duration of contact, and the morosity of the contact with regard to her through her workplace, her parents' home, her own home, accessing her voicemail when it wasn't—her phone [REDACTED] *175 at home, when, although she was in the book, she said she wasn't in the phone book in the complete—under her complete name. “These kinds of contacts and the efforts that [respondent] clearly went to in order to make these contacts, in the face of the—of the indication that they were unwanted, I find that, in fact, it is a credible threat to her physical safety, and, based on that, I am going to enter the permanent stalking order.”

The court concluded that the communications themselves did not provide a basis for the entry of the SPO because it was unable to find that appellant made an unequivocal threat that was objectively likely to be followed by unlawful acts and that instilled in respondent a fear of imminent and serious personal violence. Nevertheless, the communications provided context for appellant's other, noncommunicative contacts. After appellant had been told by respondent and others that she did not want contact from him, he continued to contact her. In light of appellant's many communications, the noncommunicative contacts formed a pattern of behavior that made respondent's apprehension reasonable. Respondent established that appellant intentionally engaged in repeated unwanted contacts, that it was reasonable for her to have been alarmed by the contacts, and that the contacts caused her apprehension regarding her personal safety or the safety of a member of her immediate family.