

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF NEWAYGO

CHERYL L. MCCLOUD,

Petitioner,

CASE NO.: 17-55485-PH

v

HON. GRAYDON W. DIMKÖFF

LORI A. SHEPLER a/k/a LORIE A. SHEPLER,

Respondent.

Terrance R. Thomas (P21388)
Attorney for Petitioner
449 E. 56th Street
Newaygo, MI 49337
(231) 652-6844

William W. Jack, Jr. (P23403)
Smith Haughey Rice & Roegge
Attorneys for Respondent
100 Monroe Center NW
Grand Rapids, MI 49503-2802
(616) 774-8000

**RESPONDENT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SET ASIDE
PERSONAL PROTECTION ORDER**

NOW COMES Respondent Lori A. Shepler ("Ms. Shepler"), by and through her attorney, Smith Haughey Rice & Roegge, and for her Supplemental Brief in Support of Motion to Set Aside Personal Protection Order states as follows:

I. INTRODUCTION

This case stems from a Petition for a Personal Protection Order ("PPO") filed by Petitioner Cheryl McCloud ("Ms. McCloud") on November 30, 2017. Ms. Shepler filed a Motion to Set Aside the PPO on December 13, 2017, arguing that the Petition is based almost entirely on hearsay and Ms. Shepler has not threatened or attempted to intimidate Ms. McCloud in any way, but rather Ms. Shepler has merely sought to educate on the dangers associated with the declawing of cats and kittens. While the Motion mentioned free speech issues, this Brief explains the infringement on Ms. Shepler's constitutional rights as a result of the PPO.

As discussed fully herein, the PPO effectively restrains Ms. Shepler's freedom of speech and of the press in such a way that constitutes a violation of her First and Fourteenth Amendment rights.

II. LAW AND ARGUMENT

A. The injunctive relief sought by Ms. McCloud is a violation of Ms. Shepler's constitutional rights.

Freedom of speech and of the press are guaranteed under the United States and Michigan constitutions. US Const, Ams I, XIV; Const 1963, art 1, § 5. In *Near v Minnesota*, 283 US 697; 51 S Ct 625; 75 LEd 1357 (1931), the United States Supreme Court held that prior restraints on publication violates the First Amendment. The *Near* Court examined a Minnesota statute which provided, in part, that publishing a defamatory or malicious newspaper qualified as a public nuisance. One accused of violating the statute could only assert the defense that "the truth was published with good motives and for justifiable ends." *Id.* at 703.

Although the *Near* Court recognized that the freedom of speech and of the press is not absolute, the Court expressed that such limitations on that freedom are recognized only in exceptional cases. *Id.* at 708, 716. This is because "[t]he recognition of authority to impose previous restraint upon publication in order to protect the community against the circulation of charges of misconduct . . . necessarily would carry with it the admission of the authority of the censor against which the constitutional barrier was erected." *Id.* at 721. The Court furthered explained:

Charges of reprehensible conduct . . . unquestionably create a public scandal, but **the theory of the constitutional guaranty is that even a more serious public evil would be caused by authority to prevent publication.** . . . There is nothing new in the fact that charges of reprehensible conduct may create resentment and the disposition to resort to violent means of redress, but this well-understood tendency did not alter the determination to protect the press against censorship and restraint upon publication.

Id. at 722 (emphasis added). The *Near* Court, therefore, held the Minnesota statute was an "infringement of the liberty of the press guaranteed by the Fourteenth Amendment." *Id.* at 722-723. Importantly, this decision "rest[ed] upon the operation and effect of the statute [*i.e.*, the prior restraint on publication], without regard to the question of the truth of the charges contained in the particular periodical." *Id.*

The last two items on Ms. McCloud's Petition seek to restrain Ms. Shepler and her "associates"

from sharing their beliefs about the declawing of cats on social media or through any medium of communication. To permit this relief under the present facts would infringe upon Ms. Shepler's constitutional freedom of speech. Effectively, the PPO has censored Ms. Shepler in a way that prevents her from fairly criticizing the business practices of another. As expressed in *Near*, preventing publication or speech in this manner is a "more serious public evil" than prohibiting charges of reprehensible conduct. *Id.* at 722.

Accordingly, because the last two items in Ms. McCloud's Petition and the PPO mirroring the same infringe on Ms. Shepler's constitutional rights, Ms. Shepler respectfully requests that the PPO be set aside.

III. CONCLUSION

For the foregoing reasons, Respondent Lori Shepler respectfully requests this Court GRANT her Motion to Set Aside the Personal Protection Order, and grant any additional relief deemed equitable and just.

DATED: February 20, 2018

Kathryn E. Went (P18909) FOR
William W. Jack, Jr. (P23403)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for Respondent
100 Monroe Center NW
Grand Rapids, MI 49503-2802
(616) 774-8000

PROOF OF SERVICE

On February 20, 2018, the undersigned sent a copy of the foregoing instrument to all parties or attorneys of record to the above cause of action by:

First Class Mail Certified Mail Overnight Mail
 Facsimile Hand Delivery Other

This statement is true to the best of my information, knowledge and belief.

Luci A. Kunde
Luci A. Kunde