

STATE OF MICHIGAN
27TH CIRCUIT COURT (NEWAYGO COUNTY)

CHERYL L. MCCLOUD,

Petitioner,

File No. 17-055485-PH

v

LORI SHEPLER,

Respondent.

RESPONDENT'S MOTION TO SET ASIDE PERSONAL PROTECTION ORDER
BEFORE THE HONORABLE GRAYDON W. DIMKOFF, CIRCUIT COURT JUDGE
White Cloud, Michigan - Wednesday, March 21, 2018

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White Cloud, Michigan

Wednesday, March 21, 2018 - beginning at 3:02

p.m.

THE COURT: The Court will take up the McCloud versus Shepler matter, File 17-055485-PH. Today is the date set for a hearing on the motion to terminate.

Counsel, you want to put your appearances on the record?

MR. JACK: William Jack, your Honor, on behalf of the respondent.

MR. THOMAS: Terrence Thomas on behalf of -- I don't know what you call a moving party for a PPO these days.

THE COURT: We call them a petitioner is all. Counsel, have a seat. Have both of you received the motion by the American Civil Liberties Union Fund of Michigan for Leave to File an Amicus Curiae Brief?

MR. JACK: Yes, your Honor.

MR. THOMAS: Yes, just today but we have no objection. But --

THE COURT: Neither one of you do then?

MR. THOMAS: I have no objection to it.

MR. JACK: No objection. Let me also introduce to the Court, Mr. Mike Nelson. He is with the ACLU.

THE COURT: Okay. Sir, are you the drafter of

1 this then?

2 MR. NELSON: Yes, I am.

3 THE COURT: Okay. Very well. In view of the
4 fact that neither party objects, the Court will allow it.

5 MR. THOMAS: Well, we figured you knew the law
6 anyway, so it was just superfluous.

7 THE COURT: This is going to be a harmless
8 opportunity to learn the law I suspect. Have a seat,
9 gentleman. So, have you had a chance to talk to each
10 other?

11 MR. THOMAS: We have been talking incessantly
12 since the last time we talked to you. And, essentially, I
13 think two sentences, essentially, is a separation because
14 we tried to settle it by contract between the parties and
15 we haven't been able to do that.

16 THE COURT: So, how do you perceive this
17 continuing then? Would you like me to set a trial date?
18 Do you expect to have various witnesses? Would you like
19 me to simply set it by briefs and I'll render an opinion
20 or how do you want to do it?

21 MR. THOMAS: Well, my client --

22 MR. JACK: I'd like to --

23 MR. THOMAS: He's not going to do anything but
24 make an oral argument.

25 MR. JACK: I'd like to make some oral

1 statements, mostly rely upon the motion that we filed,
2 Affidavit of Ms. Shepler, and the brief, as well as the
3 amicus brief from the ACLU on the prior restrained issue.

4 THE COURT: So, Mr. Nelson, are you here to not
5 simply file the brief but to appear formally as a party or
6 representing the party?

7 MR. NELSON: No, your Honor. I do not represent
8 a party. I simply filed a brief as an amicus curiae.

9 THE COURT: And so, Mr. Jack, are you prepared
10 to, essentially, defend that brief or to answer with
11 regard to that brief?

12 MR. NELSON: Certainly, if the Court has any
13 question --

14 THE COURT: Mr. Nelson, you are. I see. Okay.
15 Well, do you want me to just kind of jump in then and I'll
16 see where you guys are at?

17 MR. THOMAS: Well, my view is this, he thinks
18 his -- he has more evidence. There's no more evidence.
19 But I have two parties here that would give evidence. And
20 so, my thought was it would probably take 15 minutes at
21 the most to explain why they filed it and how it's
22 affecting their business. I personally don't see this as
23 a First Amendment right. I see it as harassment and
24 interference with a legal business in this state. And if
25 there's going to be no evidence from the other side, and I

1 think there ought to be some evidence before a decision is
2 made and you make the decision and decide whatever.

3 MR. JACK: And, your Honor, my remarks have only
4 to do with the petition that was filed and the order that
5 was entered.

6 THE COURT: Okay. Let me back up a little bit.
7 Let me check the dates because if this was timely filed,
8 generally, within, I believe, 21 days of date of filing --
9 if the objection or motion for termination was filed, then
10 the burden of persuasion and, essentially, proof rests
11 with the petitioner. So, typically, the petitioner would
12 go first. The petition was filed on November 30th and I
13 suspect was issued on that -- an order was issued that
14 same day. Looks to me like December 13th or 15th the
15 Affidavit of Ms. Shepler and the motion to set aside
16 signed by Mr. Jack was filed. So, essentially, Mr.
17 Thomas, it appears to me that you have the burden of going
18 forward.

19 MR. THOMAS: Very well.

20 THE COURT: And we'll go from there, unless
21 either of you want to make an opening argument.

22 MR. THOMAS: I have no opening argument. I'll
23 leave the evidence to stand by itself.

24 THE COURT: Okay.

25 MR. JACK: I do have some remarks I'd like to

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make, your Honor.

THE COURT: Go ahead.

MR. JACK: I want to say at the outset that there is no question that there is great respect for Ms. McCloud and what she has accomplished in this community in terms of Lake Haven, and I want to say that at the outset. It's a much narrow issue and that is this issue of declawing of cats and kittens. That's the only thing that really brings us here today. The petition that got filed listed a number of things. And if you look at the petition, it's paragraph E, A, and, I think, one through nine alleges various things that the respondent, Ms. Shepler, did. None of that's factually true because Ms. Shepler hasn't been here in the state of Michigan for the past 45 years. So, in terms of the first nine parts of that petition, there just isn't -- it's just not factually accurate. The last two which are the ones that really are the ones that are most significant are in the petition which is E5, A10 and that is communication from all known associates of Respondent personally or via social media.

THE COURT: Now, wait a minute. Are you referring to the petition or the Personal Protection Order?

MR. JACK: Petition. Well, they actually mirror each other.

1 THE COURT: So, when you say paragraph five,
2 number 10.

3 MR. JACK: Yeah, if you look at the --

4 THE COURT: Apparently, you've numbered the
5 unnumbered blank boxes that some are checked and perhaps
6 some were not?

7 MR. JACK: Yes.

8 THE COURT: All right. I understand.

9 MR. JACK: So, if we looked at the personal
10 protection order, I'm looking at paragraph 5A, one through
11 nine.

12 THE COURT: Yep. All right.

13 MR. JACK: And then paragraph E, 5A10 which says
14 see attached addendum for additional prohibitions and then
15 there is on the next page the addendum. And then
16 paragraph E, or I'm sorry, 5B posting a message through
17 the use of any medium of communication including the
18 internet or a computer or any electronic medium. So, the
19 first nine didn't happen factually because Ms. Shepler
20 simply hasn't been in the state of Michigan for 45 years.
21 So, if you look at the petition and the order she hasn't
22 followed Ms. McCloud, she hasn't appeared near her
23 workplace, etcetera, etcetera.

24 The issue really then kind of comes down to very
25 simply, are -- is item number 10 and B, are those prior

1 restraints that are unconstitutional under the *Near* case
2 and its progeny. That's the first issue and that's the
3 one that the ACLU has weighed in on, as well as the brief
4 which we filed in supplemental answer to that. I think
5 the concern in this really is between two individuals.
6 It's between the petitioner and the respondent on a very
7 narrow issue of whether declawing is humane or inhumane.
8 My suggestion to Mr. Thomas has simply been to have an
9 order that dismisses the personal protection order and
10 then also have an order from this court that says there
11 will be no further communication of any sort between the
12 petitioner and the respondent. Because I think if you go
13 any farther and you begin to talk about known associates
14 or unknown associates and how you define that, if you
15 begin to talk about prior restraints, if you begin to talk
16 about social media, which, quite frankly, I don't
17 understand at all, you begin to get into a morass that
18 becomes impossible to enforce. So, a suggestion to the
19 Court is let's keep it just between these two individuals
20 and stop the communication between them. Nothing more
21 from Ms. Shepler to Ms. McCloud and nothing more from Ms.
22 McCloud to Ms. Shepler.

23 THE COURT: I think you have a good thought
24 there. I, ultimately, wouldn't be opposed to dismissing a
25 PPO. But on the other hand, it seems to me, there has to

1 be an agreement or something that Ms. McCloud can rely on
2 knowing that hereafter that Ms. Shepler will not call it
3 hate speech, call it inciting, call it subordination of
4 one crime or another. Basically, she's not going to
5 agitate to have people get all upset over Ms. McCloud. I
6 would like to see the last years' worth of emails,
7 postings, all of that electronic media stuff from Ms.
8 Shepler, so I would know other than what's been attached.
9 And Good Lord knows there's a lot of stuff here that's
10 been attached.

11 MR. THOMAS: Your Honor, if I could jump in.

12 MR. JACK: I think you have most of it.

13 MR. THOMAS: If I could jump in, I agree with
14 what he says. It is difficult to really enforce against
15 somebody unless we know. Ms. Shepler operates the City
16 Kitty which is her thing on the internet and the people
17 that we're dealing with are people that are listed in her
18 City Kitty thing and any connection we would have over
19 this. If I couldn't make the connection between City
20 Kitty and Ms. Shepler and the people on her website, then
21 we haven't got a case. But bottom line is, we just don't
22 want her to interfere with our business and we have no
23 quarrel with the declawing. As a matter of fact, we think
24 it would do some good to have her put her website
25 (indiscernible) against Lake Haven because there's such a

1 demand for declawed kittens. Declawing isn't the issue.
2 She's okay with her badmouthing or doing whatever she
3 wants to put on the internet, just don't interfere with
4 our business. And I'd have her testify under oath as to
5 how it affects her business. And also, we could modify
6 this. There's nothing special about this other than keep
7 her off our back and I think that's what -- and it's
8 really --

9 THE COURT: Well, at some point, you two ought
10 to be talking about how to modify it --

11 MR. THOMAS: We've been doing that.

12 THE COURT: -- or how to end up with some sort
13 of other agreement.

14 MR. THOMAS: That's -- that's his first thought.
15 Ms. McCloud had another thought, another two sentences.
16 He's got a sentence or two and I've got a sentence or two
17 and they can't agree on it. She didn't approve -- Ms.
18 Shepler didn't approve my language and Ms. McCloud didn't
19 approve of his.

20 THE COURT: Is there a third-party you guys
21 would be comfortable with going to that might be able to
22 say here's the way you're going to do it?

23 MR. THOMAS: Well, there is but --

24 THE COURT: Other than me?

25 MR. THOMAS: Well, could I have Ms. McCloud at

1 least testify today, and Ms. Culbertson, as to -- so you
2 have a full picture, you know? I don't see this at all as
3 a First Amendment right. I -- we're dealing with
4 harassment and putting her out of business.

5 MR. JACK: I think, your Honor, there is a
6 right, a First Amendment right, to criticize a business
7 practice. I don't think one under the Constitution can
8 prohibit criticism of a business practice.

9 MR. THOMAS: I agree -- I agree.

10 MR. JACK: If it rises to the level of
11 harassment, then there are actions that one can take in a
12 separate civil action but not in a personal protection
13 order and not when it's just two people. What I'm trying
14 to do is keep this as simple as possible.

15 THE COURT: I can see a brief coming.

16 MR. THOMAS: Well, that option would be to go to
17 California and try and shut this woman down. You can do
18 that but this PPO -- now, neither one of them want to
19 spend any money on this other than Jack and I are both --
20 got involved in this and --

21 THE COURT: But that's part of the point. You
22 guys either can agree on somebody that will sit down with
23 both sides or however. I mean, basically, that's what you
24 two are paid for -- paid for doing it.

25 MR. THOMAS: We're both pro bono.

1 THE COURT: Justice Warren Burger gave his State
2 of the Judiciary Address, United States Supreme Court
3 Chief Justice in 1972 or three, and in that State of the
4 Judiciary Address he said, you know, lawyers are really
5 problem solvers. That should be the ultimate goal of
6 every lawyer. He said if you think of it in those terms
7 then, basically, the moment a lawyer steps through the
8 courtroom door he's admitted defeat. He's failed to solve
9 the problem.

10 MR. THOMAS: Absolutely, right.

11 THE COURT: Saying here, Judge, you solve the
12 problem. Seems to me you guys solve it or you're going to
13 have some guy in a black robe that neither of you know
14 particularly well, or what little you and I know of each
15 other, we're not personal buddies or anything. Heaven's
16 sake, you don't know what I'm going to do. I have various
17 opinions about this type of thing. I'm going to sit
18 there, listen to the facts that come out at a hearing,
19 read carefully your brief, and come up with my own ideas,
20 probably, which maybe Ms. McCloud will love them, maybe
21 she'll hate them. Maybe Ms. Shepler will love them, maybe
22 she'll hate them. You're rolling the dice, it seems to
23 me.

24 MR. THOMAS: We understand that.

25 THE COURT: And, it seems to me, you're both

1 close enough. It doesn't make sense to roll the dice.

2 MR. THOMAS: Well, neither one of us want to be
3 here.

4 THE COURT: Well, okay. I'm certainly willing
5 to proceed with a hearing and we'll take the testimony at
6 this time. Mr. Jack, I allow people to testify by phone.
7 Is your client available by phone? Would she even want to
8 testify?

9 MR. JACK: I haven't prepared her for that.

10 THE COURT: We have a 50-inch screen over there.
11 We can put her on what we call Polycom and she can go to
12 any one of a number of places. I presume California is
13 advanced enough to have multi-media apparatus and she
14 could appear on the screen if she wanted.

15 MR. JACK: And that would be fine if that's what
16 the Court wishes to do. As I said, our motion is simply
17 to just terminate the PPO, good grounds we think to do so,
18 an affidavit in support of it. And, again, I keep coming
19 back to this is really a very simple -- a simple case
20 between two people who disagree over an issue.

21 THE COURT: Counsel, I smiled because it appears
22 to me the parties and the lawyers ought to be able to
23 agree on a solution. No one is contesting Ms. McCloud's
24 right to do what she does. In fact, I think you will
25 probably all agree that if she's got to declaw cats to

1 save cats that's better than not declawing them and having
2 them put away at the animal control shelter. That's kind
3 of an easy call, I think. Although, again, I'm not sure
4 whether I know Ms. Shepler's opinion on that. On the
5 other hand, declawing cats, we wouldn't want ourselves
6 declawed, you know, why would you want a cat declawed?
7 So, we have all kinds of views all over the map on this.
8 But, really, we just -- we don't care if Ms. Shepler
9 advocates her position, just so she doesn't make it
10 personal, it seems to me, to Ms. McCloud. And I think Ms.
11 McCloud would say more power to you, I might even be
12 willing to put a deal in my newsletter saying if you're
13 against declawing get a hold of this lady in California,
14 man, you can join the organization and fight it. I bet
15 she would probably say I'm all for not declawing them but
16 she's not going to say that if it means killing them, and
17 I think that's the conundrum you really, ultimately have
18 here. But that means the two of you ought to be able to
19 get together and decide what Ms. Shepler ought to be
20 allowed to do and what not. At what point does it step
21 over freedom of speech and become a crime, basically?

22 MR. JACK: Agreed. I agree with that. And
23 that's why I wanted to keep it -- let's just have them
24 quit talking to each other. Because a lot of this came up
25 in terms of exchanges of emails between Ms. Shepler and

1 Ms. McCloud and then it sort of burgeoned because of the
2 social medial.

3 THE COURT: Mr. Jack, I get these divorce cases
4 all the time. I issue lots of PPOs in divorce cases.
5 After a few months things cool down and they don't need a
6 PPO. In those situations, I'll turn to the lady who got
7 the PPO, or the guy, and I'll say how hard was it for you
8 to get this PPO? Every time she'll say, well, it's pretty
9 darn easy, Judge. I'll say you're right. We've
10 deliberately made the system that way in every state in
11 the union. So, if I terminate this PPO believing that
12 both of you will get along hereafter, you know that the
13 moment he screws up, he comes over and breaks a window, or
14 beats on your door, or puts a banana in your exhaust in
15 the car, you can come right back. I'll issue that PPO
16 just as quick as scat, just like I did the day you came
17 in. Now, if you're telling me that's a basis to probably
18 solve this case, then maybe that's the way to go. Let's
19 terminate the PPO, see what Ms. Shepler does and whether
20 Ms. McCloud starts getting all of this stuff in the mail
21 again. But right now, as I've reviewed the pleadings, I'm
22 not sure I'm willing to just say good luck, Ms. McCloud,
23 you know, don't worry about things.

24 MR. JACK: Well, one thing we could do is
25 dismiss the PPO -- it gets a little more complicated

1 because, of course, Ms. Shepler got a LEIN letter from the
2 Michigan State Police because there was mention in the
3 petition and the order about a firearm.

4 THE COURT: Well, that's part of a federal
5 statute --

6 MR. JACK: Yeah.

7 THE COURT: -- and they're going to do that
8 every time.

9 MR. JACK: Agreed. But, obviously, that's a
10 little unsettling for Ms. Shepler who hasn't been in
11 Michigan for the past 45 years. A way to go about this
12 would be to dismiss the PPO, let's adjourn this hearing
13 for 30 days, and let's see what happens.

14 MR. THOMAS: I have no problem with modifying
15 the PPO like to his concern about the firearm and things
16 of this nature. I agree she hasn't been here but, again,
17 it's our business that we're concerned with, not bad-
18 mouthing Ms. McCloud.

19 THE COURT: What's happened since the PPO was
20 issued?

21 MR. THOMAS: Nothing.

22 THE COURT: Nothing at all.

23 MR. THOMAS: That solved everything. Once the
24 PPO was done, everything disappeared.

25 THE COURT: Mr. Jack, what's going to happen if

1 it terminates today?

2 MR. JACK: I don't think anything will happen
3 and I'll tell you what the problem is. And Mr. Thomas has
4 raised that before; hey, look, it stopped.

5 THE COURT: Yeah.

6 MR. JACK: That's the chilling effect of prior
7 restraints. It's unconstitutional to say you can't do
8 something because there are plenty of remedies if you do
9 do something. That's the whole point.

10 MR. THOMAS: But --

11 THE COURT: Every legal right we have is limited
12 to some degree. You remember the old argument in law
13 school about, yeah, there's freedom of speech but you
14 can't stand up in a theatre and say, fire!

15 MR. JACK: Sure -- sure. And I can tell you
16 that Ms. Shepler, as the respondent in this case, won't.

17 MR. THOMAS: She won't.

18 THE COURT: You think things will continue the
19 way they have been since the PPO was issued?

20 MR. JACK: I can't -- I can't promise that
21 because I just -- I don't -- I don't know social media; I
22 don't know who our quote known associates are and who
23 aren't; I don't know what's coming from Ms. McCloud's
24 camp. I do know it has settled down, there's no question.

25 MR. THOMAS: Well, and it's to be what we're

1 having problems with just like (indiscernible) she would
2 debate that. But it's the other problem, people that
3 she's put up to it. Now, Ms. Culbertson is a volunteer
4 and I would be willing just to put her on the stand, tell
5 her experiences with the problem of our business. Just
6 leave it at that, make your decision, and I would be
7 satisfied with anything that would eliminate this problem.

8 MR. JACK: It strikes me that if we could just
9 get the PPO dismissed, have there be something that says
10 there will be no communication between these two
11 individuals, and if there does become additional
12 communication between the two, we always have the remedy
13 to come back to court.

14 MR. THOMAS: The only problem with --

15 THE COURT: So, Mr. Thomas, you had a long
16 career as a judge.

17 MR. THOMAS: Yes, I have.

18 THE COURT: You placed many people on probation.

19 MR. THOMAS: Yep.

20 THE COURT: In a sense, has not Ms. Shepler been
21 on probation for, what, since November sometime?

22 MR. THOMAS: Well, her cat has because she's put
23 on the thing that her cat's been shut up and lost her
24 right of speech and got a picture of her cat -- could I
25 get a copy of that. I probably have it here, but I'd have

1 to sort through this.

2 THE COURT: Well, it's been five months. She's
3 been a good girl since then in a sense, right?

4 MR. THOMAS: Well, I -- and I --

5 THE COURT: Isn't that a good indication of her
6 conduct in the future?

7 MR. THOMAS: Well, let me tell you another
8 story. Ms. McCloud got a hold of me first because I live
9 in the neighborhood. I told her to put some statement on
10 the internet saying I ain't going to do it anymore and
11 forget it because she couldn't afford to fight this kind
12 of thing or even bother the court with it. But then the
13 veterinarian said she -- their business was contacted by
14 City Kitty and the veterinarians advised her to come up
15 and file a PPO. So, then I get involved in it, but he
16 files his petition.

17 MR. JACK: No, my motion.

18 MR. THOMAS: Well, your motion to dismiss --

19 THE COURT: To terminate it.

20 MR. THOMAS: -- terminate it. And I've been
21 working at it for some -- well, we both have been working
22 on it. He's done as much as he could possibly do. And
23 he's a good friend of mine and a smart lawyer, and if the
24 two of us couldn't agree -- he's a mediator, I'm a
25 mediator -- and if the two of us couldn't come to some

1 type of an agreement.

2 THE COURT: Irony.

3 MR. THOMAS: But the point is, we care less
4 about what the lady's position is relative to declawing.
5 All we know is that there's a market for like 600 cats a
6 year to -- that we could dispose of. She takes them only
7 from the animal shelters. The option is death for these
8 cats. We don't see much difference between declawing and
9 neutering them. It's okay, apparently -- and it's all
10 done at the same time. So, it's okay for this lady to
11 kill the cats, and it's okay, apparently, to take their
12 guts out but it's not okay to properly and humanely take
13 these claws off so they could be adopted, would have a
14 home.

15 THE COURT: I don't necessarily --

16 MR. THOMAS: And her cats aren't declawed.

17 MR. JACK: I don't want to necessarily get into
18 the whole declawing issue because I think we get off a
19 little bit. But a suggestion that was made by counsel's
20 brother was instead of them charging for the declawing as
21 part of the adoption process, let the people who adopt
22 make up their own minds as to whether to declaw.

23 MR. THOMAS: We already do that.

24 THE COURT: So, Mr. Jack, your opinion is that
25 Mr. Thomas can go ahead, put his proofs on. You'll make

1 any further argument you want to make, he'll make any
2 argument he wants to make. I'm just going to make a
3 decision today?

4 MR. THOMAS: Well, he can cross-examine, cross-
5 examine her, get it over with.

6 THE COURT: Sure.

7 MR. THOMAS: I don't think it's going to get
8 settled any other way.

9 THE COURT: Is that what --

10 MR. THOMAS: And you know I've been on the bench
11 a long time and, you know, my thing in the back room was
12 quite forceful.

13 THE COURT: That what we're looking at?

14 MR. JACK: I think that's fine, as long as the
15 Court takes into account the Lorie Shepler Affidavit,
16 which I assume the Court does.

17 THE COURT: I'll certainly reread it before --
18 I'll probably issue a written opinion, frankly. I've got
19 enough constitutional law cited and I just got all of that
20 a few minutes before I stepped out.

21 MR. JACK: That's what I assumed.

22 MR. THOMAS: And I'm not going to -- I'm not
23 going to file anything. I'm satisfied with what they
24 filed.

25 THE COURT: But if I ordered you to you would?

1 MR. THOMAS: Yes, I -- well, I guess I would
2 have to.

3 THE COURT: Love to hear it.

4 MR. THOMAS: I thought you would.

5 THE COURT: Okay. Mr. Thomas, you can call your
6 first witness.

7 MR. THOMAS: Ms. Culbertson.

8 THE COURT: Ma'am, you want to come over here to
9 my left? I'll swear you in just before you have a seat.
10 Raise your right hand. Do you swear to tell the truth,
11 the whole truth, and nothing but the truth so help you
12 God?

13 MS. CULBERTSON: I do.

14 THE COURT: Okay. Have a seat.

15 MR. JACK: Just as a point of -- I notice that
16 Ms. Culbertson has some notes with her. I wonder if I
17 would be allowed the opportunity to review those notes.

18 THE WITNESS: He can. Absolutely. I don't care.
19 I mean, if Cheryl doesn't care.

20 THE COURT: You may do so.

21 MR. THOMAS: I just advised my clients to make
22 some notes so if they got nervous on the stand they would
23 have something to reference.

24 THE COURT: Her memory can be refreshed but
25 that's the extent of it.

1 MR. THOMAS: Well, they're her notes. I haven't
2 suggested any type of testimony to her. Ms. Culbertson's
3 husband is a lawyer, so I'm sure she's not going to lie.
4 I didn't want Mrs. McCloud to get carried away. She's got
5 lots to tell you. She might have to, but I thought Ms.
6 Culbertson might give you the straight shot.

7 THE COURT: Well, if we can't finish this by
8 five, we'll come back another day.

9 MR. THOMAS: This is the only case -- I'm not in
10 the practice -- I still have a license but I'm not in
11 practice.

12 DEBRA CULBERTSON

13 (At 3:27 p.m., sworn as a witness, testified as
14 follows)

15 DIRECT EXAMINATION

16 BY MR. THOMAS:

17 Q Ms. Culbertson, could you state your name for the record?

18 A Debra Culbertson.

19 Q And your address?

20 A 7294 Water View Lane, Allegan.

21 THE COURT: What was that first name?

22 THE WITNESS: Debra.

23 THE COURT: Debra. And do you want to spell
24 your last name?

25 THE WITNESS: C-u-l-b-e-r-t-s-o-n.

1 THE COURT: Okay. Thank you.

2 BY MR. THOMAS:

3 Q And how do you know Lake Haven?

4 A I have been a volunteer foster with them for -- for Cheryl
5 for over three years now.

6 Q Okay. Now, you're aware of Lake Haven operations?

7 A Yes.

8 Q Have they been interfered with by this person that's got
9 this PPO?

10 A Yes.

11 Q Can you explain to the Court how the Lake Haven operation
12 has been interfered with?

13 A Since Lorie started posting on City the Kitty -- she has
14 250,000 followers and she is doing -- was doing seven to
15 eight posts or more a day talking about how we are
16 torturing and mutilating kittens. And since that time,
17 they have contacted -- well, they were contacting all of
18 the -- well, on her Facebook page leaving one-star reviews
19 on our page, trashing our whole rescue when they know
20 nothing about our rescue apart from the fact that we
21 declaw. They've contacted our vets, our fosters, our
22 adopters, our rescue centers, anybody, the high school
23 that hosted our fundraiser. I mean, Pet Supplies Plus,
24 16-year-old girls in high school getting phone calls
25 saying, "Why do you torture kittens," all day long, non-

1 stop. So, anybody that they could find. Cathy Bissell
2 pulled our funding for the --

3 Q How much was that funding?

4 A \$14,000.00 I believe.

5 THE COURT: Who is Cassie -- Cathy --

6 THE WITNESS: Cathy Bissell. She funds a low-
7 cost spay and neuter in Newaygo that goes to simply that.
8 It's low-cost spay and neuter for people in Newaygo
9 County. None of it ever went towards declawing or
10 anything to do with our animals. That's all it was,
11 simply a low-cost spay and neuter program. And they
12 harassed her non-stop until -- phone calls, emails, blah,
13 blah, blah until she pulled funding on that.

14 MR. JACK: Your Honor, Ms. Culbertson keeps
15 using the word they. I'd like to know specifically what
16 Lorie Shepler has done.

17 THE WITNESS: They're her followers; they are --
18 it's her page. She's the one that put the posts up saying
19 this is the people doing it; these are the people to
20 contact; this is the woman torturing and mutilating
21 kittens every day; here are the kittens that are about to
22 be tortured and mutilated, so.

23 BY MR. THOMAS:

24 Q You also had a direct conversation with her by phone or
25 was it through the internet? That's one of the reasons I

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had --
A Facebook Messenger. My first one came in at 3 a.m. and then all day on Thanksgiving Day. I was messaged by her until I finally blocked her. At the point that she informed me that what we are doing, declawing kittens, is, essentially, the same as putting foster children in homes with pedophiles and child molesters and that the pets --

MR. JACK: I'm going to object to this, your Honor. I have seen those postings. If we want to introduce those postings as evidence, fine. Otherwise, it's hearsay.

THE WITNESS: You have --

MR. THOMAS: Well, she's a party to it. She was a party to it.

MR. JACK: I don't think that cures hearsay, whether she's a party to it or not.

THE WITNESS: Well, it was a conversation with me.

MR. JACK: There are -- there is written documentation that includes the dialogue. I'll object to it further because it doesn't have anything to do with Ms. McCloud and with Ms. Shepler. It has to do with Ms. Culbertson who isn't a party to this proceeding.

THE COURT: So, Mr. Jack, your obvious attitude, I think, appears to be that regardless of what steps an

1 individual takes to motivate conduct by another, the
2 person motivating that conduct is not responsible.

3 MR. JACK: Not at all, your Honor. I'm just
4 saying there is no evidence to suggest that if City the
5 Kitty or Ms. Shepler posts things and then additional
6 people look at those and then communicate directly with
7 Ms. McCloud or Ms. Culbertson, for that matter, there's no
8 way with the social media to police that. There's no way
9 to enforce it. That's the whole problem with this.

10 MR. THOMAS: You misunderstand her testimony.
11 She's talking to miss -- to the other lady, what's her
12 name?

13 THE WITNESS: Lorie Shepler.

14 MR. THOMAS: Lorie Shepler. This is a direct
15 conversation between Lorie Shepler and her.

16 THE WITNESS: Lorie Shepler and I.

17 MR. THOMAS: That's not hearsay.

18 MR. JACK: And all I'm suggesting is, we're just
19 here about the communication between Ms. McCloud and Ms.
20 Shepler. We can have another argument about Ms.
21 Culbertson and Ms. Shepler, I suppose.

22 THE COURT: I don't think the connection is as
23 remote as you'd like to make it. I think by definition as
24 a volunteer for the organization that Ms. McCloud heads
25 that it's an approach to Ms. Culbertson. It, essentially,

1 constitutes an approach to Ms. McCloud. I don't think you
2 can say it's got nothing to do with Ms. McCloud. It sure
3 as heck does.

4 MR. JACK: Then in that -- in that case, your
5 Honor, I think the Court should review the transcripts
6 which Ms. Culbertson was kind enough to supply me and
7 which I think Mr. Thomas has a copy.

8 THE COURT: Okay.

9 MR. JACK: And we can introduce those as an
10 exhibit.

11 THE COURT: Very well. Now, again, I've read
12 all the pleadings probably once or twice, but I didn't
13 review them before I came out here.

14 MR. THOMAS: Well, this is recent. Was that --
15 was that in the package (indiscernible) submit it already.
16 Was that conversation between you and her at Thanksgiving
17 already submitted to the court, do you know?

18 THE WITNESS: I know you got a copy and he got a
19 copy.

20 MR. THOMAS: Yeah, I've got a copy and I'll
21 provide a copy of it.

22 MR. JACK: I don't think it was provided to the
23 court, your Honor. It was provided to me.

24 THE COURT: Counsel, you're welcome to take a
25 look at the file before you depart today to make sure that

1 my file is up-to-date and there's not something out there
2 I've not seen. Mr. Jack, you've mentioned an Affidavit
3 by, what, Ms. Shepler?

4 MR. JACK: Yes.

5 THE COURT: I've gone through your pleadings and
6 the ACLU motion. I don't recall the affidavit. Maybe
7 it's on there and I just didn't dive deep enough.

8 MR. JACK: It was attached as Exhibit One.

9 THE COURT: To what?

10 MR. JACK: To our motion to set aside.

11 THE COURT: Oh, all right. Yes, I reviewed
12 that. That was some time ago. That was filed on December
13 15. Yep, I understand. You're basically saying that Ms.
14 Shepler has never done anything directly. But I don't
15 think that's the end all of this situation. I'm going to
16 let it go at that at this point. Objection is overruled.
17 You may continue to question her.

18 BY MR. THOMAS:

19 Q Where were you at --

20 A So, okay. So, that was -- that was my conversation with
21 her and that's when my conversation with her ended. But I
22 know that she has contacted other fosters. I know she has
23 contacted our adopters, I mean, anybody that has had their
24 name on our Facebook page. She's taking clips from our
25 Facebook -- screenshots from our Facebook page and has

1 posted our kittens. She posted my name with pictures of
2 my fosters with, you know, and your question -- I don't
3 know if I can really say this but you were saying if you
4 were to pull this what would happen, she would be back at
5 it before I even made it back to Grand Rapids. I
6 guarantee it. She has been posting for weeks how she has
7 been silenced, she wants to be able to speak. She wants
8 to be able to come at us again and now she is angry. And
9 if this gets pulled it is going to get ten times worse.
10 It is going to be so bad. And he will tell you that that
11 -- I don't know that.

12 THE COURT: Mr. Jack has an objection.

13 MR. JACK: Speculation, your Honor.

14 THE COURT: Okay. Mr. Thomas.

15 MR. THOMAS: I don't object.

16 THE COURT: Hmm?

17 MR. THOMAS: I don't object.

18 THE COURT: Okay. It is conjecture or
19 speculation under 701. You're trying to reach into the
20 future and, to some degree, you can do that. I suppose
21 you could say this is allowed under the rule that allows a
22 lay person to give an opinion.

23 THE WITNESS: Right.

24 THE COURT: But I think it might be a stretch,
25 so I'm going to indicate that the objection is sustained.

1 MR. THOMAS: I'm, essentially, not going to
2 object to anything. Whatever you want to throw out, you
3 can throw out.

4 BY MR. THOMAS:

5 Q Is there anything --

6 THE COURT: I think it's rule 701 that allows
7 opinion testimony by a lay witness.

8 MR. THOMAS: Well, I'm retired.

9 BY MR. THOMAS:

10 Q Is there anything else you think that the judge should
11 know about this as more of an on-looker?

12 A Just that there's -- I think there's also a huge issue
13 with Cheryl's safety, that she's posting, you know, the
14 shelter and shelter information. That's where Cheryl
15 lives. She's by herself. She's had to get a security
16 system. She's had threats to her safety all stemming
17 directly from posts on City the Kitty where, you know,
18 like I said seven to eight times a day and with language
19 that makes us the enemy and as, you know, we're torturing
20 and killing -- or torturing and mutilating these kittens
21 that it definitely -- I mean, the language is to incite
22 and it definitely does -- it definitely does. That's --
23 that is what she's doing, and these people respond. And
24 lately, since the PPO, she will say, you know, be
25 respectful, you know, whatever. But 250,000 followers

1 that you are saying we torture and mutilate kittens. She
2 doesn't know what they're going to do and some of them are
3 nuts. And this is all directly a result of, you know, her
4 posts. Like I said, it stopped as soon as the PPO went up
5 and she was told to quit posting. Everything came to a
6 screeching halt. We were actually able to get back to
7 functioning and not having to police our Facebook page
8 constantly and having, you know, our adoption centers
9 called non-stop.

10 And the -- another issue I'd like to go into is on
11 the whole declawing in general. Our business is declawed
12 cats. We have people from out of state because we offer
13 declawed cats. They're returning people. You can get a
14 cat anywhere. You can get -- for \$15.00 you can get a cat
15 from a shelter. We're charging \$150.00 for a cat. Why do
16 people pay that? Why are they coming from out of state?
17 Because we offer declawed cats that they know are going to
18 be healed, healthy, all the medicals are done, and they
19 don't have to deal with it. And we do --

20 THE COURT: And, in fact, some states don't
21 allow it.

22 THE WITNESS: Right. Well, some cities don't.

23 THE COURT: So, that's why they're coming to
24 Michigan.

25 THE WITNESS: Some cities don't. I don't

1 believe we have any states --

2 THE COURT: I believe Ms. Shepler, in one of her
3 pleadings, listed some states that --

4 MR. JACK: I don't think there are any states,
5 your Honor.

6 THE WITNESS: It's cities.

7 MR. JACK: There are a number of cities. The
8 following countries have been banned -- have banned
9 declawing: England, Scotland, Wales, Italy, France,
10 Germany, Austria, Switzerland, Norway, Northern Ireland,
11 Ireland, Denmark, Finland, Israel, Slovenia, etcetera,
12 etcetera.

13 THE COURT: That's where I saw those then.

14 MR. JACK: Yeah, and I don't think yet there are
15 any states. I know there's legislation pending, I think,
16 in New Jersey, and I think there is one other one in which
17 they are trying to, basically, ban declawing as a
18 practice. But there are certainly cities. Denver,
19 Colorado comes to mind. There's cities in California, all
20 of which are prohibited.

21 MR. THOMAS: Could have to do with this is a
22 free country and we have a constitution which allows
23 people to live free too.

24 THE WITNESS: And it's not illegal here.

25 THE COURT: Any other questions?

1 MR. THOMAS: No.

2 THE COURT: Cross-exam?

3 MR. JACK: Yes.

4 CROSS-EXAMINATION

5 BY MR. JACK:

6 Q Ms. Culbertson, you've had the opportunity to review the
7 petition that was signed by Ms. McCloud?

8 A Yeah, a while ago.

9 Q Okay. You've also had the opportunity to review the
10 Affidavit filed by Ms. Shepler?

11 A I believe I saw it.

12 Q Okay. You have no evidence sitting here today that Ms.
13 Shepler has ever followed Ms. McCloud or appeared within
14 her sight?

15 A No.

16 Q You have no evidence whatsoever that Ms. Shepler has ever
17 appeared at her workplace?

18 A No. I -- does it count --

19 Q You have no evidence whatsoever that she has ever
20 approached or confronted her in a public place or on
21 private property? There is no evidence that you know of,
22 fair?

23 A No, but we have posts where she has specifically asked for
24 people from the Newaygo area --

25 Q No -- no -- no. Listen to my question, ma'am.

1 A Okay.

2 Q I'm talking just about Lorie Shepler.

3 A Okay. Then, no.

4 Q All right. You have no evidence whatsoever that Ms.

5 Shepler ever entered onto or remained on property owned by

6 Ms. McCloud?

7 A No.

8 Q You have no evidence whatsoever that she has ever sent

9 actual mail, snail mail, or other communication to her?

10 A No.

11 Q No evidence whatsoever, correct?

12 A No.

13 Q Correct is you've got to say yes.

14 A Correct, yes.

15 Q All right. You know, you're married to Mr. Culbertson.

16 You know --

17 A Yes, I'm sorry.

18 Q All right. That's all right.

19 A He would be so disappointed.

20 Q You have no evidence whatsoever that Ms. Shepler ever

21 contacted her by telephone?

22 A None.

23 Q And you have no evidence that Ms. Shepler ever placed an

24 object on or delivered an object to property owned by Ms.

25 McCloud?

1 A No, none.

2 Q Okay. And you have no evidence that she ever has
3 threatened to kill or physically injure Ms. McCloud?

4 A No, none.

5 Q And you have no evidence that she ever purchased or
6 possessed a firearm with the idea that she was going to
7 harm Ms. McCloud?

8 A No, none.

9 Q You understand that Ms. McCloud swore under oath that all
10 of those things had happened. You understand that, don't
11 you?

12 A It's people that she asked --

13 Q No -- no. My question, ma'am, is you or -- you understand
14 that Ms. McCloud swore under oath that all of those things
15 had happened?

16 A Okay. Yeah.

17 Q And you also understand that if you swear under oath and
18 it's not true, that's perjury. You understand that.

19 A But it's not specifically her. It's at her request.

20 Q No. This was a petition against Lorie Shepler.

21 A Okay.

22 Q Now, you would agree with me that if there are 250,000
23 followers of City the Kitty that the issue of declawing is
24 a very emotional issue in this country and around the
25 world?

1 A We don't have a problem with people who choose to not
2 declaw. That's fine.

3 Q Listen to my question, ma'am. You understand this is a
4 very passionate quest, yes?

5 A Yeah. I'm just saying I think it's -- I feel it's far
6 more passionate on her side.

7 Q Okay.

8 A We're not all that passionate.

9 Q But the point is, one of the reasons why there are 250,000
10 people that follow just City the Kitty is because a
11 quarter of a million people feel passionately about this
12 issue. You'd agree with that?

13 A Yes -- yes.

14 Q And you also, I think, just mentioned and you agree that
15 there are any number of cities around the country which
16 banned declawing because it's inhumane. Do you understand
17 that?

18 A Yes, we're not one of them.

19 Q You understand that there is legislation pending in
20 several states that will, basically, ban declawing?

21 A Yes.

22 Q You also understand that there are countries all across
23 this world of ours that have banned declawing because it's
24 inhumane. You understand that as well?

25 A Yeah.

1 Q All right. Now, there are any number of rescue missions
2 around at least Western Michigan. You're aware of that,
3 yes?

4 A Yes.

5 Q All right. And you're aware that, at least ones that I
6 know, none of them declaw cats or kittens. You're aware
7 of that?

8 A I don't know which ones you know but.

9 Q Well, let's take for example Noah out of Muskegon. They
10 don't declaw.

11 A Okay.

12 Q Yes?

13 A I don't know. I don't know what their practices are.

14 Q All right. And let's take some -- you live in Grand
15 Rapids with Mr. Culbertson?

16 A Allendale.

17 Q And you are aware of various rescue missions there?

18 A Yes.

19 Q And none of those rescue missions declaw?

20 A I -- like I said, I don't really know what other places'
21 policies are.

22 Q Okay. Can you give me a single -- can you give me a
23 single rescue mission, other than Lake Haven, that does
24 declaw?

25 A I -- I don't know of any. I couldn't tell you whether one

1 specifically declaws or doesn't declaw, or what their
2 policy is.

3 Q All right. Now --

4 A I have no idea. I'm familiar with ours.

5 Q You understand that there is not just City the Kitty but
6 there are any number of organizations across this country,
7 if not the world, that also share the same passion about
8 declawing?

9 A Yes.

10 Q All right. And you understand that they also post on
11 social media.

12 A Not about us. Not that we've seen.

13 Q All right. You've heard of the Pet Project -- the Paw
14 Project, I'm sorry.

15 A Yes. Oh, sorry. Yes, they had one on us.

16 Q And that's an organization that is against declawing?

17 A I believe so.

18 Q And they have also posted against Lake Haven?

19 A Yeah, I believe there was a connection between them and
20 Lorie where she asked them to and they did.

21 Q And you also understand that Ms. Bissell is an animal
22 rights advocate?

23 A Yes.

24 Q And that's the reason why she would support a program that
25 would support spaying and neutering?

1 A Yes.

2 Q You also understand that she has had conversations with
3 Ms. Shepler, if not others, and as a result of that thinks
4 that the declawing is inhumane?

5 A I actually had a conversation with her myself and she did
6 not express to me that she thought it was inhumane. Her -
7 - her --

8 Q The declawing? Ms. Bissell told you she didn't think that
9 declawing was inhumane?

10 A Yes, that's a conversation I had with her.

11 Q All right.

12 A I spoke to her on the phone and her statement was I don't
13 know enough about it to have an opinion on this one way or
14 the other yet, this is the direction it's going, and I
15 believe -- it was something along the lines of, you know,
16 this is probably going to be the way of the future but she
17 did not -- she did not express to me that she believe it
18 was humane.

19 Q Okay.

20 A Like I said, she expressed to me that she didn't know
21 enough about it to have an opinion one way or the other,
22 but she was having an issue with the constant emails,
23 phone calls, whatever.

24 Q All right. Now, let's talk about the whatever. You
25 understand there is something in this country, I'm going

1 to test how well you and your husband communicate.

2 A Uh-oh.

3 Q You understand that there is something in the country
4 called First Amendment?

5 A Yes.

6 Q And that's the right to freedom of speech?

7 A Yes.

8 Q And you understand that as a part of that if one wants to
9 criticize a business practice, one has the right to do
10 that. You understand that?

11 A Yes. Criticize, yes. Saying we torture and mutilate cats
12 and that they're going to suffer for the rest of their --
13 all of them will suffer for the rest of their lives
14 because of it, no.

15 Q And you understand that that is a school of thought that
16 people believe in? You understand -- you understand that
17 there are --

18 A That a declawed cat is going to suffer every day for the
19 rest of its life?

20 Q Yes. You understand --

21 A All of them?

22 Q Let me finish the question and then you can answer, okay?

23 A Okay.

24 Q You understand that there are veterinarians in this
25 country who think that by declawing cats and kittens that

1 maims them and creates problems for a lifetime for that
2 cat or kitten.

3 A Do I believe that there are people that believe that?

4 Q No, I'm saying you understand there are people --

5 A Yes, I understand there are people -- there are people
6 that believe the world's flat, yes.

7 Q And listen, here's another thing I want to ask you, you
8 all talk about the fact that if we don't declaw and adopt
9 that then those cats are going to be put down. That's
10 basically an argument that you all make.

11 A Yes.

12 Q All right. Muskegon now is a no-kill county.

13 A Okay.

14 Q You understand that?

15 A Yes.

16 Q So, whether a cat is declawed or not they can't be put
17 down.

18 A Those are not the animals we're taking in. I mean, we're
19 taking in --

20 Q I'm just asking you this question.

21 A Okay.

22 Q You understand Muskegon is a no-kill.

23 A Yes.

24 Q Okay.

25 A You're telling me that, so I believe you.

1 Q Thank you. And you also understand that there are other
2 no-kill counties around the state?

3 A Yes.

4 Q All right. Apparently, Newaygo is not one of those?

5 A I -- what do you mean? Like our specific rescue? Newaygo
6 shelter? I don't -- again, I don't know what their
7 practices are.

8 Q No. You're saying that you declaw, so cats don't get put
9 down. I'm suggesting to you that there are no-kill
10 counties all across this state that have got -- that got
11 no-kill rules.

12 A There are also --

13 Q You can't put a cat down.

14 A There are also plenty of shelters that are kill shelters.

15 Q All right. All I'm suggesting to you is there are several
16 counties across the state that are no-kill counties.

17 A Okay.

18 Q All right. Now, one question that came up in a
19 conversation that I had was you all charge \$150.00 and
20 that includes a cat that gets declawed before they're
21 adopted out.

22 A Yes.

23 Q And then there are other shelters who will adopt out cats
24 and kittens that will have their claws, but they will be
25 adopted out for \$15.00. You just said that a while ago or

1 I think --

2 A Oh, yeah. Like, yeah, through --

3 Q Yeah. So, here's my question to you, why don't you say to
4 a prospective adoptee, listen, for \$15.00 we will give you
5 this kitty who's got claws, here's some information on
6 declawing, here's some information on why you shouldn't
7 declaw, it's up to you as the adoptive parent, for lack of
8 a better word, to decide whether or not to declaw?
9 Because you make money on declawing.

10 A It has nothing to do with making the money off of declaw.

11 Q It's \$150.00 if you give somebody a declawed cat and if
12 it's another shelter that doesn't declaw, you basically --
13 they basically adopt out for \$15.00.

14 A We have a policy that any animal that we adopt out we will
15 take back, if there's an issue with it.

16 Q Okay.

17 A I have one at my house right now. We declaw ourselves
18 because when we do it they're going down for spay and
19 neuter surgery. They're getting them both done at the
20 same time. They only need to be put under one time.

21 Q Okay.

22 A We also know that they're going to stay with me in my
23 house until they're fully healed. We can watch them and
24 make sure that the recovery is done right. They need to
25 have special litter, they need to be treated a certain way

1 so that they're not, you know, running all over the place
2 and hurting themselves, and they're going to be fully
3 healed before they leave.

4 Q And does every single --

5 A And they're going to use proper litter and we're using
6 vets that we know are doing a really good job. If we were
7 to send them out they could go to any vet. They could be,
8 you know, not treated right. It could be that they're not
9 treated properly through the healing process. Then you're
10 dealing with the potential of messing up a declaw and
11 we're the ones that are going to take that cat back. This
12 way, we know that it's going to be done properly by a
13 trained surgeon who does a good job, that it's going to be
14 given time to heal, and then it's going to be fully healed
15 when it goes to the person that it's -- whose house it's
16 going to be with one time being put under.

17 Q Okay.

18 A That's easier for us. If they choose not to -- if they
19 don't want theirs declawed they can say to us don't declaw
20 them; we won't.

21 Q I think you may have forgotten my question.

22 A Okay.

23 Q If you declaw a cat or a kitten, you charge \$150.00.

24 A Right.

25 Q Other rescues who don't declaw charge \$15.00.

1 A I don't know what other rescues charge.

2 Q Well, you mentioned that earlier.

3 A I know when I got my cat it was \$15.00 because, you know,
4 it was some promotion weekend at the, you know, shelter,
5 blah, blah, blah.

6 Q And does every single one of the Lake Haven rescue cats
7 come to the Culbertson household before they're adopted
8 out?

9 A My husband would say yes.

10 Q Of course.

11 A But the answer is no.

12 Q No -- no, because Lake Haven declaws 600 cats or kittens a
13 year.

14 A No, we don't. We're -- we adopt out, I think, around 500
15 a year.

16 Q Okay. And how many of those -- you know, if Ms. McCloud
17 wants to testify, I'm happy to hear her but --

18 THE COURT: Cheryl, you'll have to be real
19 quiet.

20 MS. MCCLOUD: Okay.

21 MR. JACK: Thank you.

22 MR. THOMAS: She'll try.

23 THE WITNESS: Probably about 60 percent of them
24 are --

25 BY MR. JACK:

1 Q Sixty percent of the 500 are declawed?

2 A It depends on the age and the weight of the cat and, you
3 know, there are other issues. But kittens -- young cats
4 and kittens are declawed, yes.

5 Q Sixty percent of the 500?

6 A Yeah.

7 MR. JACK: Thank you, ma'am.

8 REDIRECT EXAMINATION

9 BY MR. THOMAS:

10 Q Do you know what the veterinarian bills are for Lake Haven
11 in a year?

12 A Excuse me?

13 Q How much Lake Haven spends on veterinarians?

14 A I have no idea. That's one you would have to ask Cheryl.
15 All I could say to that is just from the probably 40-
16 something a year that come through my house, I -- that's
17 not a bill I would want to see. It's got to be
18 substantial but I --

19 Q Well, before a cat is adopted out there's other medical
20 procedures, is there not?

21 A Yeah, they're fully vaccinated, they're dewormed.

22 Depending on what the condition of -- I mean, I do mostly
23 kittens, but I've had them come in with bad eyes. So,
24 they're fully vetted by the time they leave and depending
25 on the cat individually, you know, some I've had at the

1 vet once a week for depending, so.

2 MR. THOMAS: Well, I guess I have no further
3 questions but there's a few things I think Ms. McCloud
4 could clear up.

5 THE COURT: Very well. Ma'am, you may step
6 down.

7 MR. JACK: No, I do have one further question,
8 if I may.

9 THE WITNESS: Okay.

10 RE-CROSS-EXAMINATION

11 BY MR. JACK:

12 Q If they come in with an infection in their eyes or
13 something else wrong with them, you can take care of that
14 without having to declaw them?

15 A Yeah.

16 MR. JACK: Give my regards to your husband.

17 THE WITNESS: I will. Thank you.

18 (At 3:55 p.m., witness excused)

19 MR. THOMAS: Cheryl, do you want to testify?

20 THE COURT: Debra, where does your husband
21 practice?

22 MS. CULBERTSON: Garan Lucow Miller.

23 THE COURT: I take it that's Kent County.

24 MR. THOMAS: Well, that's who I work for as a
25 mediator.

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THE COURT: Oh.

MR. THOMAS: But I didn't -- we never knew each other until this come up.

THE COURT: Cheryl, you want to raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

MS. MCCLOUD: I do.

THE COURT: Please have a seat.

MR. JACK: And, your Honor, may I also review Ms. McCloud's notes?

THE WITNESS: They're the same ones.

MR. JACK: May I just check?

THE COURT: Mr. Thomas, is that okay?

MR. THOMAS: Yep.

THE COURT: Go ahead.

MR. THOMAS: Letting it all hang out, right?

CHERYL MCCLOUD

(At 3:56 p.m. sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. THOMAS:

Q Ms. McCloud, would you state your name and address?

A Cheryl McCloud, 551 Pickerel Lake Drive, Newaygo, Michigan.

Q And you operate Lake Haven?

1 A I do.

2 Q And what is Lake Haven?

3 A Lake Haven is a pet rescue that's been in operation as a
4 501(c)(3) since 1999, and I've been in rescue for 40
5 years.

6 Q And this Lorie Shepler, do you know her, or ever seen her,
7 or talk to her on the telephone?

8 A I've never spoke with her on the phone. All
9 communications come at me in the form of messages or
10 emails.

11 Q Okay. Do you have a position relative to declawing cats?

12 A I don't know that I really have a position. It's what
13 people want to do. It's -- it happens to be a surgical
14 procedure that's legal in all of the states of the union.
15 I view it much like spaying a cat to make them more
16 adoptable. I view it as anything that you would do to any
17 animal to make them more adoptable. I guess the argument
18 could be made that pulling the uterus out of cat is not a
19 very nice thing to do either but it's what we do, and it
20 works because we have to do that. So, I kind of view it
21 all the same. I'm trying to adopt kitties. I like to make
22 sure that they end up in good, inside homes. I don't want
23 to promote barn cats and I don't do that. But I -- all of
24 our cats end up inside, so by that -- that's why the
25 declawing came up to begin with.

1 Q Did you -- do you own cats yourself?

2 A I own cats myself, yes.

3 Q Are they declawed?

4 A I never get a chance to get a declawed one. My own cat is
5 an eight-year-old feral cat that came in with 44 puppies
6 from Georgia.

7 Q Where do you get -- what's your source of getting these
8 cats?

9 A We get kitties mostly from county shelters. Most of our
10 county shelters are still kill shelters. I will point out
11 that being a no-kill facility is not near as glorious as
12 it sounds. When you're a no-kill facility you also have
13 to be a restrictive facility, meaning that you can't take
14 in animals. Once you're full, you're full. That's the
15 downside to no-kill. When you reach capacity, you're
16 done. So, therefore, that cat that's lying out in the
17 snowbank, or that dog that just got hit by a car can't
18 come there anymore because they're full.

19 THE COURT: You said most of these counties are
20 no-kill or are not no-kill?

21 THE WITNESS: Most are not.

22 THE COURT: Not no-kill.

23 THE WITNESS: Not no-kill, right.

24 BY MR. THOMAS:

25 Q How does it work that you get your cats from the shelters?

1 A We just get -- we just get our animals from whoever needs
2 us. I get calls. Like I got a call last week from Oceana
3 County shelter and they said come get this dog, it's got
4 heartworm. They don't have the budget to take care of
5 heartworm, so we went and got it. And Kevin from Newaygo
6 County called me about another heartworm dog. It was a
7 pit bull in a cruelty case. It weighed 28 pounds and it
8 had heartworm and it was going to die. And he said I
9 don't want it to die now, he says I'm trying to save it.
10 So, we took on the expense of taking care of the pit bull.

11 Q Now, you started the shelter, did you not?

12 A The Lake Haven shelter?

13 Q Yes.

14 A Yes.

15 Q Was that 10 years ago?

16 A Oh, it's been more than 10 years ago.

17 Q Okay. Did you put your own money into it to start it?

18 A Originally, I did. Yes.

19 Q How much?

20 A Costs us about \$8,000.00 a year, originally, just to do
21 the original rescues. But I've been doing rescue for 40
22 years and I was never funded by anybody until just
23 recently. And Bissell doesn't fund our operation.
24 Bissell funds the low-cost spay/neuter program which is a
25 backbone of Newaygo County. Newaygo County shelter went

1 from taking in 1,100 animals a year, euthanizing
2 everything that I took in -- unless I took it in it got
3 euthanized. They went from that to 346 animals last year
4 intake. When they're intake fell, mine fell from that
5 shelter which enabled us to go south and we pulled animals
6 in from the south and we pulled animals in from other
7 shelters.

8 Q Now, when you take a cat from the shelters what do you do
9 when they first come into your shelter?

10 A Well, first thing we do is test for feline leukemia and
11 feline aids, and then we worm them, and they get
12 vaccinated, and they get bathed, and they get whatever.
13 Whatever they need they get.

14 Q Do you make a profit at that \$150.00?

15 A No, there's no profit. I'm a legal non-profit.

16 Q Do you spend \$150.00 on each cat then?

17 A Oh, yeah, that and more. I mean, you can't even -- I --
18 how do you -- how do you equate the amount of money that
19 it costs to air condition a 24 X 60 building, and heat a
20 facility that big, and the labor? I'm out there every
21 day. I'm out there every morning at nine o'clock, and I'm
22 out there every night at four o'clock, and I have a
23 morning shift and an evening shift. And I work that every
24 day, Monday, Tuesday, Wednesday, Thursday, Friday,
25 Saturday and Sunday for 40 years.

1 Q And what is your budget that you know of for veterinarian
2 care for these kittens?

3 A Vet care usually runs about a hundred -- a hundred and
4 twenty thousand a year maybe, roughly.

5 Q Okay.

6 A We spend a lot with our vets. We love our vets.

7 Q Okay. Now, what would happen if this PPO is lifted?

8 MR. JACK: Objection. Calls for speculation.

9 THE WITNESS: I was diagnosed -- I'm not going
10 to say. I'm not going to answer.

11 THE COURT: Wait a minute. Cheryl, there's been
12 an objection.

13 THE WITNESS: Okay. I'm sorry.

14 THE COURT: What's that objection?

15 MR. THOMAS: I'll withdraw.

16 MR. JACK: Calls for speculation.

17 MR. THOMAS: I'll withdraw the question.

18 THE COURT: Very well.

19 BY MR. THOMAS:

20 Q The reaction toward your PPO has interfered with your life
21 somewhat, personal life?

22 A Oh, yes.

23 Q And your health.

24 A I was diagnosed nine months ago with myasthenia gravis.
25 Myasthenia gravis is something most people don't even know

1 anything about. But the way that it affects -- the way
2 stress affects a person with myasthenia gravis is they
3 can't breathe, and they can't swallow. It becomes kind of
4 an impairment, so to speak.

5 Q Has this happened in your case?

6 A Yes, I've had -- I've had -- stress is the worst thing in
7 my life. I try to keep my stress at a minimum. When this
8 first happened, when Lorie Shepler hit me first on
9 November 24th with an email, she emailed me, she demanded
10 -- this is not a situation where she's making suggestions.
11 She's not telling me about the pros and cons of declaws.
12 She demanded that I stop or else. She unleashed her
13 volunteer -- her force on me. I would wake up to
14 sometimes 30 or 40 emails a day. Personal messages where
15 my life was threatened, which is why I went for the PPO.
16 And can I explain something about the PPO? I did not
17 swear to any of those things about the gun, about any of
18 that. I was -- nobody asked me to swear to that. Those
19 were things on the PPO that they allowed you to check and
20 I didn't want to see those things happen, and I felt like
21 I was in danger because I was. Here's the problem, when
22 one incites and her -- the biggest thing that I object to
23 is the fact that she is inciting people to do bad things.
24 That's the problem.

25 MR. JACK: And, your Honor --

1 THE WITNESS: Inciting people to do bad things.

2 THE COURT: Okay. Mr. Jack?

3 MR. JACK: I'd move to strike that. It's pure
4 conjecture, it's pure speculation.

5 MR. THOMAS: It's not conjecture. She can
6 testify as to her health.

7 THE WITNESS: I -- well, yes.

8 MR. JACK: To her what?

9 MR. THOMAS: Her health.

10 MR. JACK: Health is fine.

11 THE COURT: And how this affects it. What part
12 is conjecture?

13 MR. JACK: The conjecture is that it's Ms.
14 Shepler who was inciting others. The -- all of the emails
15 --

16 THE WITNESS: I have testimony to the -- I've
17 got --

18 MR. JACK: I wonder if I could finish, Ms.
19 McCloud. All of the emails, I believe, between Ms.
20 Shepler and Ms. McCloud and other people and Ms. McCloud,
21 I think, are a part of the record. I think the only thing
22 that the court doesn't have is this exchange between Ms.
23 Culbertson and Ms. Shepler on that Thanksgiving. And
24 that, I think, Mr. Thomas can provide you. But I think
25 you have all of the rest, I believe, because I think they

1 were attached to the petition.

2 MR. THOMAS: I'd have to look but we discussed
3 that in chambers.

4 THE COURT: Gentleman, I'm going to take that
5 objection under advisement. I'll rule on it the same time
6 I rule on the overall issue. It really comes down to
7 incitement and whether or not that's going to be enough
8 when you weigh it against freedom of speech.

9 MR. THOMAS: Well, and if you look at the
10 personal protection things, those are all the things you
11 have to show if it affected you personally and put -- if
12 you're fighting for some reason. All of that is language
13 in these protection orders when you're starting to make a
14 case for it.

15 THE COURT: The Court notes that under MCL
16 750.411h stalking is a misdemeanor. It's defined under
17 that statute as having three different sections. The
18 first is there must be a willful course of conduct
19 involving repeated or continuing harassment of another
20 individual. Secondly, that would cause a reasonable
21 person to feel terrorized, frightened, intimidated,
22 threatened, harassed or molested. And, thirdly, that
23 actually causes the victim to feel terrorized, frightened,
24 intimidated, threatened, harassed or molested. Mr. Jack
25 would mention that harassment does not include

1 constitutionally protected activity or conduct serving a
2 legitimate purpose pursuant to MCL 750.411h(1)(c).

3 MR. THOMAS: I have no quarrel with that
4 statement, your Honor.

5 THE COURT: You may continue.

6 BY MR. THOMAS:

7 Q You heard what the judge said. Personally, has this
8 affected you?

9 A Yes, she has contacted the high school that was doing my
10 portraits of my rescued pets, called them repeatedly to
11 the point where they finally blocked her and would not
12 answer her phone calls. She called my veterinarians and
13 emailed my veterinarians over, and over again demanding
14 that we stop declawing cats. My vet is the one that asked
15 me to get the PPO because she said this is -- we can't
16 conduct business like that. They're calling, meaning her
17 volunteers or forces, were calling every day demanding
18 that they stop declawing cats. They -- I mean, at some
19 point in time -- she has a right to her thoughts and I
20 would never take that away from anybody. But she went way
21 past that and she contacted my volunteers, my doctors.
22 She contacted the Bissell family and harassed them all day
23 until ten hours later Cathy Bissell called me at night and
24 she said I can't do this anymore, I have to pull your
25 funding because they won't leave me alone. And I said I

1 understand. And so, that's how it went. That was after
2 ten hours of steady harassment. She gave up the Newaygo
3 program for the low-income people in Newaygo County. She
4 gave up the funding so that we no longer have funding
5 available for that. It wasn't for me. That was for the
6 people of Newaygo County. She wrote on the internet
7 asking for people to contact all of these different
8 people. She told people where to call. She told people
9 what to do and they did it.

10 THE COURT: Do you have a copy of that?

11 THE WITNESS: I do. It's in my folder, yeah.

12 She --

13 THE COURT: Mr. Thomas, do you know if you
14 attached that to your original attachment?

15 THE WITNESS: They trashed our reviews to where
16 there were no reviews left.

17 MR. THOMAS: The original attachment is this
18 thick.

19 THE COURT: Well, I'm going to have to see this
20 stuff.

21 MR. THOMAS: Okay.

22 THE WITNESS: I'm going to get it to you.

23 THE COURT: Because that's a smoking gun.

24 THE WITNESS: Judge Dimkoff, I will get all of
25 that to you. I promise.

1 THE COURT: Well, now is the day and time to get
2 it.

3 THE WITNESS: I certainly will. Well, we've got
4 -- I've got a folder over there. Give him that. Give him
5 what's in that.

6 MR. THOMAS: I can give you my file too.

7 THE WITNESS: Yeah.

8 MR. THOMAS: Be glad to get rid of it.

9 THE WITNESS: I -- I can't -- I don't understand
10 why would this be an argument about declawing cats.
11 Declawing cats is legal in every state of the union. It's
12 an elective procedure just like spaying a cat or doing
13 anything with a cat. Are we going to actually -- if we
14 make this about declawing cats there's no end to it. An
15 argument about whether to declaw or not, there's no end to
16 that.

17 MR. JACK: That is one thing that Ms. McCloud
18 and I can agree on.

19 THE WITNESS: Yes, there's no -- to just -- if
20 this is an argument about that -- I'm not arguing about
21 whether or not -- she has a right to go get -- I -- I --
22 in fact, I suggested that to her. Go get the cats in the
23 county shelters and take those six-year-old cats out that
24 still have their claws and nobody wants. Go get them and
25 give them a home, please. But the fact of the matter is,

1 is that she's impeding my ability to do business. She's
2 impeding my health. I had to have a security system
3 installed. I took on a big dog even though I didn't want
4 a big dog. I have a big dog now just to protect me. I
5 shouldn't have to live like that.

6 BY MR. THOMAS:

7 Q Do you have any quarrel with what her position relative to
8 --

9 A No, she's welcome to her -- everybody has a right to their
10 own thoughts. I don't have any problem with that. She
11 can post -- if she posts on her site Lake Haven is
12 declawing cats and we think it's terrible, every day, I
13 don't care. There's nothing wrong with that. But when
14 she incites people to put messages on my Facebook that
15 they're going to come and get me, taking me to my basement
16 and cut my hands and feet off that's wrong.

17 Q Is that the statement in some of this stuff we have here?

18 A Yes, I've got -- it's in my folders, yes. They're going
19 to -- they're going to rip my nails out and they're going
20 to cut my head off and they're going to do all kinds of
21 things to me. You don't do that.

22 Q Is there anything else you think the judge should know?

23 A Yes, probably just -- I'll be very quick now. The PPO --
24 nobody asked me to testify that I had to be -- about her
25 gun or about -- nobody asked me to -- that was never sworn

1 testimony from me. That's just a box that we checked. We
2 don't want her to do this, we don't want her to do that;
3 we don't want her to do this; I don't want her to come to
4 my house; I don't want her to leave packages; I don't want
5 her to do any of that stuff. I don't want to have
6 anything to do with this woman at all. We are in a no-
7 engage mode. We have not had any contact with her since
8 November 24. I have not contacted her. There's been no
9 postings. We do not contact. As an organization, I
10 issued an order, do not engage with this woman, it will
11 only fuel the fire. Nobody has been in touch with her
12 that I know of, nobody. I don't want anything to do with
13 her at all. She scares me, frankly. She scares me.
14 She's a scary woman.

15 Q Is that it?

16 A Yep, that's it.

17 MR. JACK: May I, your Honor.

18 MR. THOMAS: Sure. Oh, I'm sorry. I forgot my

19 --

20 MR. JACK: Forgot where you were?

21 MR. THOMAS: I forgot my name there for a
22 minute.

23 THE COURT: Mr. Jack.

24 CROSS-EXAMINATION

25 BY MR. JACK:

1 Q Ms. McCloud, you're familiar with the petition that you
2 filed?
3 A The PPO?
4 Q For the PPO.
5 A Yes.
6 Q All right. And you were -- your -- on the second page of
7 that PPO, verification under MCR 2.1142(b) I declare that
8 the statements above are true to the best of my
9 information, knowledge, and belief.
10 A Yes.
11 Q And you signed that?
12 A And I did sign that.
13 Q And that means you were under oath when you signed it?
14 A I would assume so.
15 Q And the petition lists, first of all, nine specific things
16 and we've already talked about them with Ms. Culbertson,
17 and I don't want to take up more of the Court's time.
18 A But aren't those things that we --
19 Q Just let me finish, okay?
20 A Okay.
21 Q And then you can answer my questions, is that fair?
22 A Okay. Yep.
23 Q All right. She has never followed you or appeared within
24 your sight?
25 A She has not.

1 Q She's never appeared at your workplace or residence?

2 A She hasn't. Her members have.

3 Q She's never -- no. My question is --

4 A Okay. She has not, nope. Okay.

5 Q Because the only person you seek the PPO against is Ms.

6 Shepler.

7 A No, the PPO had an addendum and it said that her -- it was

8 her and all of her associates --

9 Q And I'm going to get to that.

10 A And the people that were -- that were -- that she had

11 directed to do things.

12 Q Ms. McCloud?

13 A Yes.

14 Q I will get to that.

15 A Okay.

16 Q She's never approached or confronted you in a public

17 place?

18 A Nope.

19 Q Never entered onto or remained on property owned by you?

20 A Nope.

21 Q Never sent mail to you?

22 A Email, yes.

23 Q You never contacted her by telephone?

24 A I never did, no.

25 Q She never contacted you by telephone?

1 A No, she did not.

2 Q She's never placed an object on or delivered an object on
3 property owned by you?

4 A Nope, she has not. Don't want her to either.

5 Q Understood, but she never has.

6 A No.

7 Q As of the date you filed this petition she never had?

8 A Right -- right.

9 Q She's never threatened to kill or physically injure you?
10 Lorie Shepler has never threatened to injure you --

11 A No, Lorie never did. She -- just her members.

12 Q And she's never purchased or possession -- possessed a
13 firearm?

14 A Don't know.

15 Q To the best of your knowledge, she hasn't ever been in the
16 state of Michigan for 45 years?

17 A I don't know anything about that.

18 Q Do you have any knowledge to the contrary?

19 A I don't have any knowledge either way, no.

20 Q Now, there have been a series of emails back and forth
21 between you and her and that has been included in the
22 package which you sent to the court as a part of your
23 petition?

24 A Yeah, prior to November 30.

25 Q And to the best of your knowledge, the court file contains

1 all of those emails between Ms. Shepler and you?

2 A I don't know. I don't know if all of them are there or
3 not. I can't tell you that.

4 Q All right. Now, I've explained to the Court that I'm not
5 much of a social media person.

6 A Uh-huh.

7 Q But I understand there is something called Facebook?

8 A Yes.

9 Q And there can be public Facebooks?

10 A Yep.

11 Q And there can be private Facebooks?

12 A Yep.

13 Q My understanding is that Lake Haven has a private
14 Facebook?

15 A We have a closed page for volunteers where they can write,
16 you know, ask questions like do I worm my cats at two
17 weeks or, you know, what --

18 Q All right.

19 A Yeah.

20 Q And what that means is that's closed to only the people
21 you want it to be open to, fair?

22 A Right, that's correct. Yes, that's correct.

23 Q All right. Now, there's, again, something called public
24 Facebook.

25 A Uh-huh.

1 Q You've got to answer yes for me.

2 A Yes -- yes.

3 Q All right. And people can post to that?

4 A Yes.

5 Q People can also block that?

6 A Yes.

7 Q And you have talked at various times where people have
8 blocked Ms. Shepler because they don't want to hear from
9 City the Kitty or Ms. Shepler?

10 A Right.

11 Q And they have the right to do that?

12 A That's right.

13 Q Once they file that blockage they don't get anymore
14 postings from Ms. Shepler or City the Kitty?

15 A Right.

16 Q Okay. And there isn't any reason why if people are on
17 social media or Facebook public they can't do that? They
18 can block.

19 A Yes, you can.

20 Q Now, they can also -- if somebody were to call on the
21 telephone, a vet for example, and on the other end of the
22 line there's somebody who says, hi, I'm Ms. Shepler, they
23 can say we don't want to talk to you and hang up?

24 A Yes.

25 Q So, there are certainly avenues that people can stop

1 communication if they so choose?

2 A Unless it comes at you in a bombardment form. It took
3 three of us three days to clean up our site working full-
4 time.

5 Q And you blocked it?

6 A We blocked everybody that was doing that, yes.

7 Q All right. And --

8 A All the threats --

9 Q And --

10 A All the threats -- we did -- we blocked everybody. If
11 they made a threat, they got blocked.

12 Q And that's exactly my point, is that when that happened,
13 you had a mechanism that you could block it and,
14 therefore, there's no more communication, yes?

15 A Except for the new ones, yeah.

16 Q Okay. Now, you also had indicated that you suffer from
17 myasthenia gravis?

18 A Myasthenia gravis, yes.

19 Q I'm sorry. And that can be caused by stress?

20 A It's not caused by stress.

21 Q Stress can aggravate it?

22 A Stress -- the results of stress on a myasthenia gravis
23 patient are very apparent.

24 Q Okay. No physician who treats you for that disease has
25 ever told you that the relationship that has gone on

1 between you and Ms. Shepler has aggravated that.

2 A Yes, they did.

3 Q All right. Give me the name of that doctor.

4 A Dr. Willekes.

5 Q Okay. And is Dr. Willekes here in White Cloud?

6 A Doctor -- no, Dr. Willekes is from the Meijer Heart Center
7 and he told me to avoid stress at whatever -- by whatever
8 means I could and I have done that. I've tried to remove
9 all stress from my life.

10 Q And the way you have done that is to block any
11 communication from Ms. Shepler or any of the people that
12 you think are associated with?

13 A No, the way that we did it was we got a PPO and it worked.

14 Q Well, you've also blocked off of Facebook.

15 A We blocked some people, but you can't block them all
16 because they just keep coming. When we got our PPO, it
17 worked.

18 Q But then once you do that then you can block whoever it
19 is?

20 A You can't --

21 Q I mean, if

22 A No, you -- no, I say no. No, you can't because it comes
23 too fast.

24 Q If Bill Jack sent you --

25 A It comes too fast at you. You don't get it. It comes at

1 you so fast that you have to have full-time people
2 monitoring the site to get it off --

3 Q Okay.

4 A -- and to do the blocking. It takes time to do that.

5 Q All right. Ms. McCloud, if I were to send you an email
6 or, what do you call them, Facebook posting --

7 A If you were one person sending one thing, yes.

8 Q All right. And I say to you, boy, I really wish you'd
9 quit declawing, you could block me?

10 A Yes.

11 Q Okay. Now, you've indicated on a couple of occasions that
12 you think Ms. Shepler has every right in this country to
13 express her opinions about the declawing?

14 A She doesn't have a right to interfere with our business
15 but, yes, she has a right to her opinion.

16 Q All right. And she has a right to be critical of the
17 business practice that she thinks is inhumane?

18 A She's got a long way to go because declawing is done at
19 every clinic in every county in Michigan.

20 Q Ms. McCloud?

21 A Yeah.

22 Q All right. You also understand there are any number of
23 cities across this country who have banned declawing
24 because it's humane -- inhumane?

25 A Any number of?

1 Q Yes.

2 A I understand that there's two cities.

3 Q All right. And which two do you think there are?

4 A I think there was one in Colorado and I think there's one
5 in California, one or two.

6 Q All right. If I were to tell you that there are eight --

7 A Again, this is an argument about declawing. Do we want to
8 do that here?

9 Q I'm talking about the issue of declawing. Denver has
10 banned it, you know that?

11 A This could -- again, this is -- it's legal in every state
12 in the union.

13 Q Okay.

14 A That's the only thing I know and that's the only thing I
15 can go by.

16 Q And you --

17 A And to speculate that maybe -- maybe New Jersey will do
18 something that -- that's been lying there in New Jersey
19 for years.

20 THE COURT: Ms. McCloud, let Mr. Jack ask his
21 questions. Simply answer them the best you can.

22 THE WITNESS: I am.

23 MR. THOMAS: Yeah, just -- Ms. McCloud, just
24 respond to his questions.

25 THE WITNESS: Yeah, I'm trying to answer the

1 best I can. Yeah, okay. Go ahead.

2 BY MR. JACK:

3 Q Let's try it again.

4 A Yeah.

5 Q If I were to tell you that there are several cities in
6 California that have banned declawing, would you have any
7 reason to disagree with me?

8 A No, not necessarily.

9 Q You understand that Denver has banned it?

10 A I wouldn't have any problem with that.

11 Q And you understand there are countries all around the
12 world that have banned it as countries?

13 A Yes.

14 Q Okay.

15 A And other things.

16 Q And you understand that there are movements afoot to get
17 legislation passed in a number of states to ban --

18 A Yes, I do.

19 Q Okay. Here's one more thing. This is really hard on the
20 court reporter when you don't wait for my question to be
21 over before you answer.

22 A Okay.

23 Q All right. So, I'll ask my question and then you can
24 answer it, fair enough?

25 A Uh-huh.

1 Q Yes?

2 A Yes.

3 Q All right. Now, you understand that there is legislation
4 pending in various states to ban it?

5 A Yes.

6 Q Big issue, declawing?

7 A I guess -- I guess that depends on who you are.

8 Q All right. Passionate issue?

9 A I think there's lots of passionate issues out there for
10 sure.

11 Q All right. Including declawing?

12 A Probably.

13 Q But you and I can agree, I think, that people have the
14 right to express their views.

15 A As long as they don't interfere with people's legal right
16 to do business, yes.

17 MR. JACK: That's all I have. Thank you.

18 MR. THOMAS: I just have one --

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MR. THOMAS:

22 Q I want to present this. Ms. McCloud, can you identify
23 those documents?

24 A Yep.

25 Q And what are they?

1 A This is somebody that -- again, there's --

2 MR. JACK: Excuse me, may I see them?

3 MR. THOMAS: Yeah, it's a report with the Better
4 Business Bureau.

5 THE WITNESS: Give me that paper that's with --

6 MR. THOMAS: What the person reported -- the
7 person under the City Kitty's --

8 THE WITNESS: Where she advertised for that
9 person to come forward.

10 MR. THOMAS: This is the one where they reported
11 it to the Better Business Bureau.

12 THE WITNESS: Yeah -- yeah -- yeah, I know. But
13 it's all related. She did that after being -- Lorie
14 Shepler advertised on her site for somebody to come
15 forward that had a kitten that was limping or that might
16 be injured in some way, or the declaw wasn't just right or
17 something. She advertised for somebody to come forward
18 like that and sure enough she got one right from Grand
19 Rapids.

20 THE COURT: Wait a minute. Did she advertise
21 for someone to come forward or for someone to complain to
22 the Better Business Bureau?

23 THE WITNESS: She advertised for somebody to
24 come forward to her and that she would keep them
25 anonymous.

1 THE COURT: Did she then complain to the Better
2 Business Bureau?

3 THE WITNESS: Then she -- then Maris Tippett
4 that went to the Better Business Bureau with it, yeah.

5 THE COURT: Who's she?

6 THE WITNESS: Somebody that was -- she's on the
7 Facebook -- on the City the Kitty Facebook page. I've got
8 it with me.

9 MR. JACK: I have no idea what this is. I've
10 not seen it before. We've not marked it as an exhibit.

11 MR. THOMAS: But she can testify to it.

12 MR. JACK: We've got to mark it as an exhibit.

13 MR. THOMAS: All right. We'll mark it as an
14 exhibit.

15 THE WITNESS: Maris Tippett is a woman who had a
16 kitten -- who adopted one of Deb Culbertson's kittens. We
17 had seven kittens in that litter. Seven kittens were
18 declawed at the same vet's office, at the same day, at the
19 same time. All six kittens are doing wonderful. Nobody
20 had a problem except Maris Tippett who's on the City of
21 the Kitty page had a problem with hers and complained to
22 the Better Business Bureau, and I'm responding to that
23 now, but I haven't done it yet but I'm going to. In the -
24 - I -- I happen to know one of the veterinarians that she
25 went in to see. She went in to see three veterinarians

1 before she could find one that would tell her that, yes,
2 maybe the kitty has got a little bit of an infection in
3 one toe.

4 MR. THOMAS: You don't have to testify.

5 THE WITNESS: Okay.

6 MR. THOMAS: We just want to admit this
7 document.

8 THE WITNESS: I -- okay. Thank you very much.

9 MR. THOMAS: Are you going to object?

10 MR. JACK: I'm just -- I just have never seen it
11 before.

12 MR. THOMAS: I never saw the ACLU's brief until
13 today either.

14 MR. JACK: Well, you didn't have any objection
15 to it.

16 MR. THOMAS: No, I don't have an objection.

17 THE WITNESS: This is so simple. I just want
18 her to leave me alone. I don't care what she thinks. She
19 can post on her site that Lake Haven declaws cats.

20 MR. JACK: You know what, you're off the record.

21 THE WITNESS: All right. I'm sorry.

22 MR. THOMAS: And I think we've gone through just
23 about everything, haven't we? It's been a long day.

24 THE WITNESS: I know it has. I just had a
25 couple more things to say and I'm done.

1 THE COURT: Any objection, Mr. Jack?
2 MR. JACK: I'm not really sure what the purpose
3 of it is. I'd sure like a copy of it.
4 MR. THOMAS: What?
5 THE WITNESS: I can get you a copy of
6 everything.
7 MR. JACK: Well, Mr. Thomas can too.
8 THE WITNESS: Yeah.
9 MR. THOMAS: It shows a connection between City
10 Kitty's page --
11 THE WITNESS: I think you should have it.
12 MR. THOMAS: -- and this complaint to the Better
13 Business Bureau. Here's Maris Tippett and here she is on
14 the City Kitty --
15 MR. JACK: And Maris Tippett has an animal that
16 was declawed and has a problem.
17 THE WITNESS: It does. The other six don't.
18 THE COURT: So, Mr. Jack, is that an objection
19 or not?
20 MR. JACK: No -- no.
21 THE COURT: No objection to what's been marked
22 as --
23 MR. THOMAS: Whatever it's worth, your Honor.
24 THE COURT: -- as Plaintiff's Proposed Exhibit -
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MR. THOMAS: One.

THE COURT: -- One is hereby admitted as Plaintiff's Exhibit One, the Better Business Bureau letter and attachment.

(At 4:25 p.m., PX 1 marked and admitted)

MR. THOMAS: Do you want to examine her, Bill?

MR. JACK: I'm done.

MR. THOMAS: I think we're --

THE COURT: Counsel, somehow, I ended up with a sheaf of further papers.

MR. THOMAS: That is the document you requested between Ms. Culbertson and --

THE COURT: Well, I think it ought to be marked.

MR. THOMAS: It's, actually, what was sent to Mr. Jack.

THE WITNESS: Can I say -- just make one simple statement and then I'm going to leave, I'm going to go? I just want to say one simple thing.

MR. JACK: You know what, I think there needs to be a question.

THE WITNESS: Okay.

MR. JACK: I think. I --

MR. THOMAS: Haven't we exhausted everything that --

THE WITNESS: Just the one thing that I wanted

1 to say was that -- the thing that's really bad about --

2 THE COURT: Wait -- wait a minute, Cheryl. I've
3 got an objection here.

4 THE WITNESS: Oh, he objected.

5 THE COURT: Until we resolve it, you can't
6 answer.

7 THE WITNESS: Okay. All right. That's fine.
8 Okay.

9 MR. THOMAS: Well, I can't tell you what --
10 well, I can't tell what you're going to say.

11 THE WITNESS: Okay.

12 THE COURT: The objection is that you really
13 needn't comment unless you're asked a question. You
14 haven't been asked a question.

15 THE WITNESS: Okay.

16 MR. THOMAS: And I'm of the impression it's --

17 THE COURT: Mr. Thomas, do you have any more
18 questions?

19 MR. THOMAS: No, between Ms. Culbertson and Ms.
20 McCloud I think you know the problem.

21 THE COURT: Mr. Jack, do you have an objection
22 to the admission of what's now been marked as Plaintiff's
23 Exhibit Number 2?

24 MR. JACK: No, sir. I think that's an important
25 sheaf of documents.

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THE COURT: That is admitted as Plaintiff's Exhibit Number 2.

(At 4:26 p.m., PX2 marked and admitted)

THE COURT: May this witness step down?

MR. THOMAS: Yes, as far as I'm concerned.

MR. JACK: As far as I'm concerned.

THE COURT: You may step down. Thank you.

(At 4:26 p.m., witness excused)

THE COURT: Mr. Thomas, do you have anymore witnesses or evidence to present?

MR. THOMAS: I do not, your Honor.

THE COURT: Is it correct, then, that I have all of the emails or other types of correspondence between City the Kitty and Ms. McCloud?

MR. THOMAS: Your answer is no?

THE PETITIONER: He doesn't have it all, no. I have a stack of paper at my house like this. The threats, the harassment, everything.

MR. THOMAS: But you've already -- when you asked for the PPO you submitted those.

THE PETITIONER: I submitted part of it, yes. I didn't do all of it. I mean, I couldn't submit it all. It was just this thick, but I submitted part of it. So, there is more. If he wants more, I can get him more.

THE COURT: Counsel, here's the situation. I'm

1 told that all civilizations rest on three pillars, if you
2 will. The first is truth, the second is justice and the
3 third is peace. I've got to know the truth, or I can't do
4 justice. That's the bottom line. If I don't know the
5 whole truth and nothing but the truth, all of the truth
6 then the chances of me doing justice are remote. In my
7 mind, it's like putting me in a dark room on a piano stool
8 with a blindfold, spinning me around 50 times, and putting
9 a quarter up on the wall, and say go ahead and hit it with
10 that dart we're now going to give you. Well, yeah, I
11 might hit it, but the chances are slim to none. When I'm
12 only given half of the evidence or part of the evidence or
13 a small part of the evidence then you're saying take your
14 shot, Judge, and we'll live with it.

15 MR. THOMAS: Well, at this --

16 THE COURT: I'm willing to do that. But when I
17 do that there's no peace because one side wins and one
18 side loses and they walk away saying that wasn't justice.
19 Well, if they knew it was justice there would be some
20 peace, whether they particularly like justice or not,
21 there'd still be some peace. What do I do about these
22 other documents that here we are the day of a hearing? I
23 didn't anticipate trying the case today, but it looks like
24 we've done that.

25 MR. THOMAS: Well, my client anticipated that

1 the evidence we did present and the testimony would
2 support the thing.

3 THE COURT: Let's put it this way, I'm willing
4 to review all of these documents, and the entire case
5 file, and willing to review the law. At the end of the
6 day, I've got to be convinced that City the Kitty,
7 particularly Lorie Shepler, has embarked upon a campaign
8 to harass Ms. McCloud. If she just puts in there I don't
9 agree with stripping off the claws of cats and neither
10 does Cheryl McCloud and people ought to write to her about
11 that, I don't believe that's anything but protected speech
12 under the Constitution. But if she's inciting people to
13 have her license removed, or her -- if she's got a license
14 -- or the Better Business Bureau lower her rating, or for
15 people to burn her down, or to kidnap her and cut off her
16 nails, that's a whole different story. So, either there
17 are emails or posts like that that'll show me a direct
18 relationship or there aren't. And that's kind of my gut
19 reaction to everything at this point.

20 MR. THOMAS: Well, when do you want the balance
21 of it?

22 THE COURT: Well, Counsel, what do you want me
23 to do about that?

24 MR. JACK: Let me say this, your Honor. You had
25 before you the petition that Ms. McCloud filed, and you

1 had supporting documentation for that. And based upon the
2 sworn affidavit that she filed with the petition, you made
3 the decision to issue the PPO. We're here on the rather
4 narrow issue of dismissing the PPO. And so, we have given
5 you additional materials, but they really weren't a part
6 of the initial filing of the PPO in the first place. So,
7 perhaps we've gone beyond where we have to go and created
8 more work for you than we have to. And I get back to
9 where I started. And that is, we have great respect for
10 Ms. McCloud and what she's done in Newaygo County. I want
11 to make that very clear. We're simply here to try to
12 resolve a dispute between Lorie Shepler as a respondent
13 and Cheryl McCloud. And I end with this. Let's dismiss
14 the PPO; let's have an order that says they don't ever
15 talk again. Apparently, you can do that by blocking
16 stuff, what do I know --

17 THE COURT: I can't have Ms. Shepler posting
18 things basically saying you folks out there need to attack
19 this lady.

20 MR. JACK: Yeah.

21 THE COURT: To me, it's like the guy and the gal
22 in a divorce where the guy doesn't threaten his wife at
23 all. Instead, he's got his bar buddies that are sending
24 notes and dropping off stuff, and putting horse crap up on
25 the porch, and one thing after another. I'm going to sit

1 here as a judge and say, gee, since he didn't do it, it's
2 not his responsibility. I -- you know?

3 MR. JACK: You're not going to find that. But -
4 -

5 THE COURT: I'm going to issue the PPO every
6 time -- every time.

7 MR. JACK: Understood.

8 THE COURT: And if that's what I've got going
9 here, I'm going to sustain that PPO.

10 MR. JACK: Okay. I don't think you'll find it.

11 THE COURT: Okay.

12 MR. JACK: I was just offering a solution. We
13 can always come back.

14 THE COURT: I'll -- when we break, I'm going to
15 invite you in my chambers, both of you, and we're going to
16 talk about this, take one last stab at settling it. Now,
17 Mr. Jack, in your cross-examination you seemed, to me, to
18 be focused in on paragraph five of the petition and
19 ultimately of the PPO as if to say that Ms. McCloud was
20 swearing that she followed me, she appeared within my
21 sight, she appeared at my workplace or residence. That's
22 not what the affidavit or what the petition says. The
23 petition says I make this petition under the authority of
24 MCL 600.2950A1 and ask the court to grant a personal
25 protection order prohibiting the respondent from. It's

1 saying what she's being asked -- what I'm being asked to
2 prohibit. Not saying what has actually happened. If in
3 fact people have gone on the internet or messaging and
4 been provoked to send threats to Cheryl, then I'm going to
5 be concerned that this lady herself is going to do that
6 because she's the one provoking it. And so, I'm going to
7 issue an order that says, hey, you can't follow her, you
8 can't come within her sight even, you can't approach her
9 or confront her, or appear at her workplace. I'm going to
10 do that and I'm not --

11 MR. JACK: All right.

12 THE COURT: I think you've kind of misconstrued
13 as if Cheryl is alleging she already did all those things.
14 I don't think that's what Cheryl McCloud is saying at all.
15 I think she's saying, Judge, you've got to help me here.
16 I'm afraid she's going to do these things because look at
17 what she's already done. But, again, I'm certain I read
18 all of those emails when -- her attachments when I first
19 got this. We've -- this is not my first crack at this
20 case. We've been here once or twice before. But I need
21 to review all of them, and I need to take that to heart,
22 particularly with regard to constitutional provisions.
23 I'm sworn to uphold the law. That certainly includes the
24 United States Constitution. And yet, as I indicated,
25 there are limits to every one of our fundamental rights

1 under the Constitution.

2 MR. JACK: Agreed, your Honor.

3 THE COURT: And I'm going to have to weigh that.
4 So, Mr. Jack, I'd just ask you if you've got any more
5 comment at all. I'm happy to hear it. I'm particularly
6 interested in whether I should give the other side an
7 opportunity to present to me any other messages, or
8 correspondence, or emails.

9 MR. JACK: I think you have -- I think you have
10 what you have. If there are others, I'd sure like to see
11 them first. I've not seen anything to suggest --

12 MR. THOMAS: So would I.

13 MR. JACK: Yeah.

14 THE COURT: Well, because it's been a while
15 since I've reviewed all of the ones I now have, and you've
16 given me another sheaf of them, I can't tell you if
17 there's the ones that Cheryl McCloud referred to here on
18 the bench just now where she makes that connection. For
19 example, she's basically saying a particular lady wrote to
20 the Better Business Bureau. What's of key importance is
21 whether or not Ms. Shepler put that lady up to doing it.
22 And Ms. McCloud says, by golly, she did; I've got an email
23 or something to prove it. I've got to have that, and, in
24 its absence, I think that argument fails. I've got to
25 have evidence. I suppose we could subpoena Ms. Shepler.

1 I suppose we could subpoena the lady who wrote that letter
2 and I could adjourn this trial and say we're going to
3 conclude this in six weeks and everybody is going to be
4 here.

5 MR. THOMAS: Well, I'd love to cross-examine
6 Mrs. Shepler. I think that'd cure up a lot of stuff. If
7 she was testifying under oath, we could tell if she's
8 asking other people to do these things.

9 THE COURT: Well, it's whether we want to make a
10 federal case out of it or not is ultimately where we're
11 at.

12 MR. JACK: You know, one thing I would like is
13 the exhibit from the Better Business Bureau, because I've
14 not seen that before today. And I don't know --

15 THE COURT: I'll have a member of my staff copy
16 that right now.

17 MR. JACK: That would be great.

18 THE COURT: I have the exhibits up here on the
19 bench. There it is right there.

20 MR. JACK: Thank you, ma'am.

21 THE COURT: And I was given another sheaf of
22 them. Do one of you have that? I had Plaintiff's Exhibit
23 1 and Plaintiff's Exhibit 2. Do either of you --

24 MR. JACK: I think -- I think Plaintiff's
25 Exhibit 2 were the Culbertson, Shepler exchange.

1 THE COURT: Okay. I don't see that anymore. I
2 don't know if I did something with it or if one of you
3 have got it.

4 MR. JACK: I don't have it. Do you have it,
5 Terry?

6 THE COURT: Terry, do you have something stapled
7 together about that.

8 MR. THOMAS: Oh, I thought I handed it to you.

9 THE COURT: A quarter inch? Cheryl, are you
10 saying you have that one or not?

11 THE PETITIONER: Which one?

12 THE COURT: It should have a sticker on it that
13 says exhibit two, Plaintiff's Exhibit 2.

14 MR. THOMAS: Well, you read it into the record.

15 THE COURT: Well, we'll look at that -- Mr.
16 Thomas, do you have anything else you want to say on the
17 record before we meet in chambers?

18 MR. THOMAS: No, we've -- we've heard much too
19 much than we needed to hear today.

20 THE COURT: I'd like to meet with Counsel in
21 chambers. All right. We'll meet with Counsel in
22 chambers.

23 COURT RECORDER: All rise.

24 THE COURT: Jessie, will you look for that extra
25 exhibit?

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COURT RECORDER: Yes, your Honor.
(At 4:36 p.m., proceedings concluded)

1 STATE OF MICHIGAN)

2 COUNTY OF NEWAYGO)

3

4 I certify that this transcript, consisting of 91 pages, is
5 a complete, true, and correct record of the proceedings and
6 testimony taken in this case on Wednesday, March 21, 2018.

7

8

9 DATED: April 09, 2018

10

Nicole M. Shick, CER 7993

11

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