Illinois Official Reports

Appellate Court

***Carolyn Anne H. v. Robert H.*, 2015 IL App (2d) 150409**

Appellate Court Caption	CAROLYN ANNE H., Petitioner-Appellant, v. ROBERT H., Respondent-Appellee.
District & No.	Second District Docket No. 2-15-0409
Filed	December 3, 2015
Decision Under Review	Appeal from the Circuit Court of Ogle County, No. 15-OP-3; the Hon. John C. Redington, Judge, presiding.
Judgment	Reversed and remanded with directions.
Counsel on Appeal	Brandi L. Chudoba, of Chudoba Law Firm, LLC, of Stillman Valley, for appellant. No brief filed for appellee.

Panel PRESIDING JUSTICE SCHOSTOK delivered the judgment of the court, with opinion.
Justices Zenoff and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 Petitioner, Carolyn Anne H., appeals a judgment denying her petition under the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West 2014)) for an order of protection against respondent, Robert H., her husband. Petitioner argues that (1) the judgment is against the manifest weight of the evidence and (2) the trial court erred in allowing respondent to question petitioner about her mental state as it existed after the incidents on which her petition was based. We reverse and remand with directions.

¶ 2 Petitioner and respondent were married April 20, 2002, and have two children: a son, R.J., born June 11, 2010, and a daughter, A., born May 23, 2013. On January 6, 2015, petitioner filed for an order of protection. At that time, the family resided in a house in Byron. The petition alleged that "[e]motional and physical abuse ha[d] been an ongoing thing for some time" and, specifically, that that morning respondent had "physically push[ed] [petitioner] into the corner of the cabinet" and bruised her elbow during their confrontation over whether she could have access to the keys to the family's only car. The petition alleged further that petitioner called the police and that an officer came over and later arrested respondent. The petition requested that respondent be prohibited from harassing petitioner, that he be ordered to stay away from their house, that she be granted possession of the car, and that he be ordered to make available a monetary gift over which he now had control.

¶ 3 On January 6, 2015, the trial court issued an emergency order of protection, effective until January 27, 2015. On January 27, 2015, the court entered a modified order, effective until February 24, 2015, that allowed the parties to communicate by telephone about finances and the children. On February 24, 2015, the court extended the order until April 7, 2015, and set that date for a hearing on petitioner's petition.

¶ 4 We summarize the evidence from the April 7, 2015, hearing. On direct examination, petitioner testified as follows. The parties had been residing at their current home for almost a year and a half; previously, they had lived with respondent's mother and before then, in San Diego. Respondent was a machinist, but had been a military policeman in the Navy, where he was trained in restraint techniques, such as the use of "pressure point tactics."

¶ 5 Petitioner testified that, on the morning of January 6, 2015, respondent came home from work, and she went to the grocery store. When she returned, he went to the driveway in order to close the garage door. He noticed that petitioner had not pushed back the rear driver's-side seat, as was necessary to give A. sufficient room. (According to the emergency order of protection, respondent was 6 feet, 2 inches tall and weighed 285 pounds.) Petitioner and respondent argued over the car seat. She said that he should not complain about her failure to move the seat back, since he never gave her the courtesy of moving it forward. Respondent called her "the most ungrateful housewife he ever knew or ever met" and disparaged her intelligence. She laughed and told him to "[j]ust go to bed and stop." Respondent continued

to insult her. At this point, he was standing in the doorway to the second floor, where their bedroom was, and she was standing in the kitchen, six to eight feet away.

¶ 6 Petitioner testified that she told respondent that he was "not going to do this anymore," *i.e.*, verbally and emotionally abuse her. He asked sarcastically whether she had gotten the idea from her sister Jackie. Petitioner responded that the idea came from a domestic-violence website that she had visited " 'the night that [he] smashed all those dishes in the sink.' " Respondent then "snapped" and told petitioner that she could not have the car anymore, because he was going to take the keys away from her. Petitioner protested that she needed the car, but he grabbed her purse, which was sitting on a chair in the playroom, and removed the keys.

¶ 7 Petitioner testified that she and respondent continued to argue; she insisted that she would need the car, and he responded that, when she did, she could wake him and he would give her the keys. She said that this was unacceptable. They continued to argue, moving from the playroom into the kitchen. Eventually, petitioner tried to "get the key out of his hand or get the key ring out of his hands, and he shoved [her] and [she] hit [her] right elbow on a cabinet" that they used for a pantry. The push bruised her right elbow. They went through the baby gate to the landing of the staircase to the basement. At that point, petitioner "kind of had [her] hands on the keys trying to get them out of his hands." Respondent told her that he was bigger and stronger than she was and that she would not get the keys. He then used a "pressure-point tactic" by placing his thumbnail into hers; her hands flew back, she screamed, and she said that she would call the police. He laughed and told her to go ahead.

¶ 8 At trial, petitioner identified photographs that she had taken with her iPhone, depicting the bruise to her elbow. The first photograph was taken the day of the incident and the others were taken over the following five days. Also, she identified two photographs of the injury to her thumbnail. She testified that this injury lasted until about February 11, 2015.

¶ 9 Petitioner testified further that, after using the pressure to her thumbnail, respondent entered the basement while she went to the playroom, took her phone from her purse, walked to the front doorway, and called 911. Respondent returned upstairs and put the chain with her keys back into her purse. He was within hearing distance of her call. He went to the bedroom and "canceled" her call; petitioner could not dial out, although the call to 911 went through. Shortly afterward, Officer Kevin Most arrived, and respondent was arrested.

¶ 10 Petitioner testified that January 6, 2015, was not the first time that respondent had been physically violent to her. The first time that she could recall was in 2008 or 2009, when they were living in Maryland. During an argument, respondent punched a closet door about four to six inches from where petitioner was standing. The punch damaged the door. The next violent incident was in 2010, when they were living in San Diego and R.J. was three weeks old. Petitioner was taking care of R.J. around the clock. Respondent was working, and he refused to help her on his days off. One Friday, they argued because she wanted him to stay home and he wanted to go to his lodge meeting. He called her an "entitled bitch" and " 'ungrateful.' "

¶ 11 Petitioner testified that, after they moved to another home in San Diego, respondent, who was working part time, became angry at her for failing to inform him in advance of her dentist appointment. The attached garage had a door; respondent slammed it in petitioner's face. The next incident occurred in October 2012 at the same address, when they were in the bedroom and petitioner was holding R.J. in her hands. They argued. He called her a "fucking

bitch" and went downstairs. She followed him. He ripped out a baby gate at the bottom of the stairs, then threw baby toys all over the house, denting the walls. Respondent identified a video showing the damage. The court admitted the video into evidence.

¶ 12 Petitioner testified that respondent had also abused her verbally and emotionally on other occasions. He had called her "a horrible mother"; called her a "bitch" before the children; told her that she was "entitled" and "ungrateful"; and, once, told her (to her best recollection), " 'R.J. is a fucking asshole and everyone thinks it, and it's all your fault because you've been his caretaker.' " There were "a million different [other] things" that he had told her "to beat [her] down."

¶ 13 Petitioner also testified that, in 2013, while they were living with respondent's mother, petitioner asked him to take care of A. while she went to the grocery store. He told her that she was not going to leave him, and then "[h]e was out of here." She tried to block his way. He came at her, picked her up, and shoved her as she was holding a gallon of milk. She fell to the floor. Both children were there, and R.J. said, " 'Oh, no, Mama. Are you okay?' " Petitioner ran after respondent as he went out the front door. She told him that he could not leave in that situation. Respondent got into the car and drove away. Petitioner called respondent's mother, who came over with her husband. They checked out petitioner. She had a red mark underneath her armpit, but no other visible injury.

¶ 14 Petitioner testified next that, on the morning of December 24, 2014, R.J. ran upstairs and woke respondent up. Petitioner ordered R.J. back downstairs. Respondent came downstairs and asked her whether she had told R.J. to wake him up. Petitioner said that she had not. Respondent entered the bathroom and showered, came back downstairs, and again asked petitioner whether she had had R.J. wake him up. She denied it, but he refused to believe her and repeatedly asked her the same question. She finally told him that the answer was going to be the same. Respondent had been "looking for a fight throughout November and December."

¶ 15 Petitioner testified that, on December 27, 2014, at about 10 p.m., as respondent was watching television in the living room, A. woke up and started to cry. Petitioner changed her diaper and took her to respondent, asking him to spend time with her. Petitioner went to the playroom to fold laundry. She heard respondent walk into the kitchen. She also heard glass breaking. She entered the kitchen and saw respondent holding A. in one hand while walking to the refrigerator to get her some milk. As he went along, he took dishes and smashed them. Petitioner asked him what he was doing. He looked at her coldly and said that he did not know what she was talking about. He complained that she woke him up "with a screaming baby." She pointed to the sink, which contained numerous broken dishes. He picked up a bowl and smashed it into the sink. Petitioner identified an exhibit as a set of pictures that she took, showing the damage. The court admitted the exhibit into evidence.

¶ 16 Petitioner testified that respondent used both alcohol and cannabis. Also, he had kept guns in the house until the police removed them on January 6, 2015, because his firearm owner's identification card had expired. Petitioner sought a plenary order of protection because she feared that respondent would harm her; she was "scared for [her] safety."

¶ 17 Petitioner testified on cross-examination as follows. During the struggle on January 6, 2015, she attempted to take the car keys out of respondent's hand. She did not try to pry his hand away, but, as he was going to the top of the stairs, she tried to get her hand on the keys to take them out. In her statement for the police on January 6, 2015, she wrote that, after

respondent applied the pressure-point tactic, she stopped trying to get the keys out of his hand. Also, she wrote that respondent pushed her " 'into the corner of a wall.' " Petitioner admitted that, in her petition, she did not mention that she had gone after respondent to get her keys back.

¶ 18 Respondent next asked petitioner whether she had interacted with the police on January 30, 2015. She answered that she had and that the police had told her that they were conducting a "welfare check" on her. At this point, petitioner objected that any further inquiry was barred by the Mental Health and Developmental Disabilities Confidentiality Act (Mental Health Act) (740 ILCS 110/1 *et seq.* (West 2014)), as her mental health had not been placed into issue. The court allowed respondent to ask another question. He asked petitioner whether she "had claimed to [have] hurt herself." Petitioner renewed her objection, arguing that the Mental Health Act barred any evidence of what had happened after the check, as the statute "protects anybody who seeks or receives mental health services." The court noted that there had been no testimony that petitioner had sought or received any such intervention, and it overruled the objection.

¶ 19 Respondent then asked petitioner whether, on January 30, 2015, she planned to hurt herself. Petitioner objected again; the court overruled the objection but noted her continuing objection. Respondent then asked whether petitioner had "attempted to hang [herself] with a sheet tied to a dresser." The court sustained the objection and told the parties "to move on to something else." Respondent did not ask any more questions.

¶ 20 Petitioner called Officer Most, who testified as follows. On the morning of January 6, 2015, he was dispatched to the parties' home. Petitioner met him and told him that an argument with respondent had become physical; he had pushed her into what she first described as a wall but later said was a tall kitchen cabinet that stood along the wall. Petitioner was very "shook up" and scared. Most spoke to respondent, who told him that there had been a verbal altercation over the use of the car. He did not indicate that he had injured petitioner. Respondent was uncooperative and did not answer Most's questions about what had happened. Most saw that petitioner's elbow was freshly bruised, with the skin broken. The bruise was about the size of a dime. Most asked her whether she needed an ambulance; she said that she did not. Later on, Sergeant Jeremy Bailey arrived and dealt with guns that were found in the house. That day, respondent was arrested and served with the order of protection.

¶ 21 Sergeant Bailey testified as follows. On January 6, 2015, he first saw respondent at the police station. Respondent wanted to obtain some personal items from the home. Bailey agreed to meet him there. He went to the home, met petitioner, and decided that the car keys would be left with her. Respondent and his mother drove up and they retrieved his items.

¶ 22 Jacqueline Irwin, petitioner's sister, testified as follows. On December 27, 2014, early in the evening, petitioner called her. She sounded distressed and upset, and she told Irwin that respondent was breaking dishes. Irwin could hear dishes breaking in the background. Irwin told petitioner to stay away from respondent. Previously, when petitioner was living with her mother-in-law, she told Irwin that respondent had pushed her down. Irwin had never directly witnessed respondent abuse petitioner.

¶ 23 Petitioner was recalled as her final witness. She admitted that she had not feared for the children's safety as long as the family had been residing with respondent's mother. She also had no objection to respondent texting her about matters involving the children. The children

had witnessed respondent abusing her. He had been carrying A. in his arms when he was smashing plates, and both children had been in the room when he pushed her and the milk spilled.

¶ 24 In her closing argument, petitioner contended that the evidence showed that respondent's physical abuse of petitioner dated back to 2008 or 2009 and that he had abused her emotionally throughout the marriage. She reasoned that the Act defines "abuse" broadly and that, given respondent's conduct to date, there was a real chance that he would mistreat her again. In response, respondent contended that the only abuse that the petition had alleged was physical and then only the January 6, 2015, incident. He maintained that the parties had engaged in a "mutual argument," with petitioner initiating the contact by trying unsuccessfully to take the keys away from respondent. In reply, petitioner noted the dish-smashing incident and respondent's use of tactics that he had learned in the military police to restrain and harm petitioner.

¶ 25 The trial court began the explanation of its decision as follows:

> "[T]he court's heard testimony about several instances of being a bad husband. Slamming the door in my [*sic*] face. Threw a baby gate. Threw some toys around the house; that was the video. Broke some dishes in the sink; that was the photographs that the Court saw.
>
> I don't find any of those facts to be evidence of anything other than being a bad husband. Maybe a bad, questionable person with a very bad temper. I don't find those instances to rise to the level of intimidation or threats. There's no testimony they rose to the level of physical contact."

¶ 26 The court then turned to "[t]he main allegation of physical contact," the incident of January 6, 2015. The evidence showed that respondent had the car keys in his hand and that "the physical struggle over the keys was initiated and pursued by the petitioner. He had the keys and she wanted them back, and she was struggling with him to get the keys back." During the struggle, respondent pushed on petitioner's thumb to stop her from taking the keys. The court continued:

> "Somewhere along the line she hit her elbow into [*sic*] a cabinet. I don't know that that necessarily seems sufficient proof that he pushed her into the cabinet or she hit it during a struggle. I don't know.
>
> But in any event, I don't believe that the allegations put forth today rise to the level necessary for me to enter this plenary order of protection."

The court denied the petition. The court then noted that, although "[t]his really isn't part of the record," there was "a bond condition protecting [petitioner] during the pendency of criminal proceedings." The court observed that, "depending on what happens on the criminal case, that could be extended [as] a condition of probation or condition of conditional discharge, if necessary." Petitioner timely appealed.

¶ 27 Respondent has not filed an appellee's brief, but we may decide the appeal on its merits. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 28 On appeal, petitioner argues first that the trial court erred in finding that she had not proved the factual predicate for obtaining an order of protection under the Act–that respondent had committed abuse against her. For the following reasons, we agree.

¶ 29 As pertinent here, the Act enables a person to obtain an order of protection upon proof by a preponderance of the evidence that she has been abused by a family or household member (750 ILCS 60/201(a)(i), 205(a), 214(a) (West 2014)). "Abuse" includes "physical abuse, harassment *** interference with personal liberty or willful deprivation." 750 ILCS 60/103(1) (West 2014). "Harassment," in turn, means "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner." 750 ILCS 60/103(7) (West 2014). The Act is to be construed and applied liberally in order to promote its underlying purposes, which include expanding the remedies for victims of domestic violence. 750 ILCS 60/102(6) (West 2014). The trial court's finding on the issue of abuse will be upheld on review unless it is against the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). Here, we conclude that the trial court's judgment is against the manifest weight of the evidence.

¶ 30 We turn to several opinions that are of great assistance. In *Best*, the trial court found that the respondent had abused the petitioner, his wife. The primary evidence was her testimony that, during an argument, the respondent had grabbed her by the throat, then forced her backward against the door, causing her to hit her head. She testified that the pressure on her throat made it difficult to breathe and left a red mark on her neck, and that the collision with the door created a large lump on her head. *Id.* at 345. Her testimony was partially corroborated by the investigating police officer's testimony that she saw a small red mark on the petitioner's throat, although she could not recall whether she had seen any bump on her head. *Id.* at 346. The supreme court held that the abuse finding was not against the manifest weight of the evidence. *Id.* at 350.

¶ 31 In *In re Marriage of Blitstein*, 212 Ill. App. 3d 124 (1991), the trial court found that the respondent had abused the petitioner, his wife. The finding was based primarily on a protracted confrontation that the parties had had one day, although the petitioner also testified that the respondent had physically abused her on three occasions over the preceding two years. *Id.* at 127. As to the confrontation, she testified that the respondent grabbed her and slapped her in the face; grabbed the bedroom phone out of her hand, pushed her down onto the bed, and pulled the phone out of the wall as she tried to call the police; followed her into another room and took another phone out of her hand as she was trying to call the police; then followed her to a third room and pulled the phone out of the wall as she again tried to call the police. In the course of the confrontation, he also tried to block her movement and called her names. *Id.* A police officer who investigated testified that three telephone cords had been pulled from the wall but that he did not arrest the respondent, because his observations led him to conclude that the respondent had not assaulted or battered the petitioner. *Id.* at 128.

¶ 32 The trial court found that the respondent had not physically abused the petitioner but had harassed her by pulling out the telephone cords. Also, the court concluded, there was a risk of further abuse, given that the respondent had come close to physically abusing the petitioner by blocking her exit at one point. *Id.* at 129. The appellate court affirmed, explaining that harassment is a form of abuse under the Act and that the evidence allowed the trial court to

conclude reasonably that the respondent had gratuitously caused the petitioner emotional distress by pulling the telephone cords out of the wall. *Id.* at 131.[1]

¶ 33 Finally, in *In re Marriage of Hagaman*, 123 Ill. App. 3d 549 (1984), the trial court awarded the petitioner an order of protection against the respondent, her husband. *Id.* at 550. The judgment was supported by the following evidence. The parties argued in their bedroom. The respondent left, went to their daughter's bedroom, and asked her to tell the petitioner to leave him alone. She screamed at him to leave her alone, but he dragged her into the living room, where she struggled to escape him. The petitioner entered and tried to pull the respondent away from their daughter. According to the petitioner's testimony, he knocked her away by throwing his arm back. She also testified that he had beaten her once eight or nine years before and had hit and shoved her numerous times. *Id.* at 551-52. The appellate court affirmed the judgment, holding that the court properly found that the respondent had abused the petitioner by his combination of violence, "threats, harassment, and interference with her living." *Id.* at 552.

¶ 34 We turn to the facts here. Much of the evidence was undisputed, as respondent put on none. Petitioner testified that respondent, who was far bigger and stronger than she was and had worked as a military policeman, shoved her hard enough to cause her to collide with a cabinet, bruising her right elbow, and, according to both her and Officer Most, breaking her skin. Most also testified that the encounter had left petitioner very "shook up" and scared. Petitioner testified that respondent also applied a sophisticated "pressure point" tactic to her thumb that not only made her hands fly back and caused her to scream but also left an injury that lasted approximately five weeks.

¶ 35 Essentially no evidence contradicted or undermined these facts. The trial court stated that, although "[s]omewhere along the line" petitioner had hit her elbow against the cabinet, that was not sufficient proof "that he pushed her into the cabinet or she hit it during a struggle." We simply cannot accept this characterization of the evidence. Although a reviewing court must defer to the fact finder's prerogative to draw *reasonable* inferences from the evidence, it may not allow *unreasonable* inferences. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Petitioner testified straightforwardly that, as an immediate result of respondent's push, she collided with the cabinet and was injured. Even had respondent not intended to push petitioner into the cabinet, he did intend to push her, he did push her, and, as the natural and probable consequence of his action, she hit something hard and was injured.

¶ 36 Further, the court said nothing about the use of the "pressure point" tactic that caused petitioner pain and injury (also undisputed, whatever the precise extent of the pain and the injury) or the undisputed evidence, from both petitioner and the impartial investigating

[1]The court stated that a finding of abuse under the Act should not be reversed on appeal unless it was "an abuse of discretion." *Blitstein*, 212 Ill. App. 3d at 131. In *Best*, the supreme court disapproved of this language and held that a finding of abuse should be reversed on appeal only if it is "against the manifest weight of the evidence." *Best*, 223 Ill. 2d at 350. However, the court did not discuss whether there is any practical difference between the two tests. In all three opinions we cite–*Blitstein*, which used the "abuse of discretion" language; *Best*, which used the "manifest weight" language; and *In re Marriage of Hagaman*, 123 Ill. App. 3d 549 (1984), which did not use either formulation–the inquiry appears to have been identical: was the evidence sufficient to make it reasonable to conclude that the petitioner had suffered abuse? Any theoretical effect of *Best*'s overruling of *Blitstein* and other opinions gives us no concern about the helpfulness of *Blitstein* and *Hagaman* in our resolution of this appeal.

officer, that the incident left petitioner shaken up and scared. We observe here that, to the extent that the court required "physical manifestations of abuse on the person of the victim," the court erred. 750 ILCS 60/214(a) (West 2014).

¶ 37 We also observe that the court further erred to the extent that it based its denial of the petition on the bond condition in the criminal prosecution of respondent. Beyond the fact that the bond condition was not "part of the record," it is perfectly proper for a plenary order of protection to exist alongside conditions imposed during the pendency of criminal proceedings. See 725 ILCS 5/112A-20(b) (West 2014).

¶ 38 We must conclude that the trial court's judgment is against the manifest weight of the evidence. We recognize that, in addition to drawing factual inferences that we have rejected, the court also stated that, even assuming the truth of petitioner's allegations, they did not collectively "rise to the level necessary" for entering an order of protection. We cannot agree. Although the court had the prerogative to draw reasonable factual inferences from the evidence, the application of a legal standard to a given set of facts is a question of law that we review with no deference to the fact finder. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 172-73 (2011). The violence that respondent used on petitioner on January 6, 2015, and the physical injury that he inflicted, was hardly less serious than what the petitioners suffered in *Best* and *Hagaman*, and the psychological effect of the abuse was comparable to that suffered by the petitioner in *Blitstein*. Even discounting respondent's dish-smashing outburst two weeks earlier and his previous outbursts, the facts of this case fit into the Act's definition of abuse. Respondent never argued to the trial court that, were petitioner to prove the factual predicate for an order of protection, the court should nevertheless decline to issue one.

¶ 39 Given our resolution of this appeal, we need not consider petitioner's contention that the trial court erred in allowing respondent to introduce evidence of the events of January 30, 2015, and their relationship, if any, to her mental health.

¶ 40 We reverse the judgment of the circuit court of Ogle County, and we remand the cause with directions to enter a plenary order of protection consistent with this disposition. The court shall exercise its discretion in setting the terms of that order. However, the court shall enter that order within five days of this disposition, with which we hereby issue our mandate.

¶ 41 Reversed and remanded with directions.