

FOURTH DIVISION  
OCTOBER 27, 2011

No. 1-10-3717

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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KATHERINE BYCZEK,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 OP 7396
	)	
MICHAEL M. BYCZEK,	)	Honorable
	)	Ann Collins-Dole,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

**ORDER**

¶ 1 *Held:* Petitioner proved by a preponderance of the evidence that respondent committed abuse under the Domestic Violence Act of 1986 by harassing and stalking her. This court affirmed the judgment of the circuit court granting petitioner an order of protection prohibiting further abuse.

¶ 2 On December 8, 2010, the circuit court entered a plenary order of protection under the Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West 2008)) on behalf of petitioner Katherine Byczek against her father, respondent Michael M. Byczek, prohibiting stalking and harassment. Respondent now appeals from that judgment. He contends the court

erred in granting the order of protection, and prior to that, the emergency order of protection because they were based on false allegations. We affirm.

¶ 3 Petitioner, age 22, filed a petition for an order of protection on November 17, 2010, and appeared in court the same day. She alleged that her father was harassing and stalking her by repeatedly calling her on the telephone and monitoring her whereabouts, despite her attempts to "break contact," and that his behavior caused her emotional distress.

¶ 4 The court issued a no-contact emergency order of protection proscribing any such further conduct. Respondent subsequently filed a motion to dismiss the order of protection and vacate the court's judgment. Counsel, the son of respondent and brother of petitioner, appeared in court on respondent's behalf. He argued the petition was based on "false statements and fabrications," but made no legal argument, then moved to vacate the emergency order. The court denied the request, citing the need for an evidentiary hearing, which was set for December 8, 2010.

¶ 5 At the hearing, petitioner appeared *pro se* and respondent with his attorney son representing him. Petitioner testified in narrative form that her father had been stalking and harassing her since her time at the university, where he would park outside her dorm and "sit there" to intimidate her, and also send letters to various departments stating she had mental problems. Petitioner testified that respondent continued to harass and stalk her by repeatedly calling and texting her, sometimes 10 to 15 times per day. Respondent again stated that petitioner had mental problems and also conveyed that he was monitoring her whereabouts. He threatened and sometimes did contact third parties associated with petitioner, such as her landlord and friends. The event that precipitated petitioner's court appearance was her week-long vacation to South Korea during which her father repeatedly called her, then filed a missing-persons report with police. Petitioner testified that she could not "go anywhere [or] do anything without him finding out," but she did not want to have contact with respondent.

¶ 6 As exhibit number one, petitioner presented multiple pages of text messages from respondent spanning July to November 2010. Counsel for respondent acknowledged they were text messages from respondent. As exhibit number two, petitioner also presented screen shots of her phone showing missed calls from respondent the prior week. These exhibits do not appear in the record on appeal.

¶ 7 Petitioner further testified that even after securing the emergency protective order on November 19, she discovered her father parked outside her apartment as she and her friend Francis Lackner drove home from work. Respondent sped towards them and chased them by trailing their car and blocking them in parking spots for about 30 minutes.

¶ 8 Lackner testified at the hearing and substantially corroborated petitioner's testimony regarding the November 19 incident. Lackner, who was driving, testified that petitioner was "extremely distraught," very emotional, and crying at the time.

¶ 9 Rhonda Kuligowski, petitioner's cousin, also testified on her behalf that she was "constantly contacted" by respondent, but did not want to be. She testified, for example, that respondent texted petitioner asking why she was parked on a particular street, why respondent was not invited, and questioning why petitioner had not relayed the information. Petitioner had called Kuligowski "scared" when petitioner's father was outside her apartment.

¶ 10 Respondent essentially denied harassing and stalking petitioner, testifying that he contacted petitioner as a natural parent would and out of concern because of petitioner's drinking habits. Respondent testified, for example, that on November 19, he and his wife drove to petitioner's apartment to determine whether she had arrived home. As there was no indication anyone was home, respondent turned around on a dead-end street, but a red car passed his vehicle. He testified that he had to follow it into the alley, but "there was no evidence that we knew who was in the car."

¶ 11 Following the parties' arguments, the court stated that it had listened to the witnesses, observed their demeanor, and reviewed petitioner's exhibits. The court found petitioner "to be a more credible witness than \*\*\* Mr. Byczek," especially with respect to the November 19 incident, which was corroborated by Lackner's credible testimony. The court found that petitioner did not wish to be in contact with respondent. Given the November 19 incident, the number of emails, the number and content of the text messages, and telephone calls, as well as the witness testimony, including the credible testimony of Kuligowski, the court determined that respondent had committed stalking and harassment of petitioner. The court concluded that petitioner had met her burden of proof, then entered a no-contact order of protection prohibiting respondent from harassing and stalking petitioner and associated third parties. This appeal followed.

¶ 12 Although petitioner has elected not to file an appellee's brief, we proceed in our review pursuant to the principles stated in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13 In any proceeding to obtain an order of protection, the central inquiry is whether the petitioner has been abused by a household or family member. 750 ILCS 60/214(a) (West 2008); *Best v. Best*, 223 Ill. 2d 342, 348 (2006). Once the trial court makes a finding of abuse, a protective order must be issued. *Id.* A plenary order must issue if the court has jurisdiction, the requirements of section 214 are satisfied, and the respondent has filed a general appearance and has answered. 750 ILCS 60/219 (West 2008).

¶ 14 In this case, respondent does not challenge jurisdiction or his appearance in the matter. Rather, he contends that the requirements of section 214 were not satisfied. Respondent argues petitioner failed to establish that respondent had stalked or harassed her such that she was entitled to protective order proscribing future conduct of the like.

¶ 15 Under section 214, a petitioner is entitled to an order of protection prohibiting the respondent from harassing and/or stalking if such abuse "has occurred or otherwise appears likely to occur if not prohibited." 750 ILCS 60/214(b)(1) (West 2008). The Act defines harassment as "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 2008). Conduct that is presumed to cause emotional distress includes, *inter alia*, creating a disturbance at the petitioner's place of school; repeatedly telephoning the petitioner's home or residence; repeatedly following petitioner in public places; and repeatedly keeping the petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner. *Id.* Under the Act, and in accordance with the Criminal Code of 1961 (720 ILCS 5/12-7.3 (West Supp. 2009)), a person "commits stalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to \*\*\* suffer other emotional distress." 750 ILCS 60/214(b)(1) (West 2008); 720 ILCS 5/12-7.3(a)(2) (West Supp. 2009). "Course of conduct," in relevant part, means two or more acts where respondent – directly, indirectly, or through third parties, by any action, method, device, or means, including electronic communications – follows, monitors, observes, surveils, threatens, or communicates to or about, a person; and engages in other non-consensual contact. 720 ILCS 5/12-7.3(c)(1) (West Supp. 2009).

¶ 16 Whether petitioner has been abused is a question of fact that must be proven by a preponderance of the evidence. *Best*, 223 Ill. 2d at 348. A reviewing court will reverse the judgment of the trial court only if it is against the manifest weight of the evidence. *Id.* at 348-49. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly

evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Id.* at 350.

¶ 17 In this case, petitioner testified that she did not wish to have contact with respondent, but in spite of her wishes, respondent repeatedly called and texted his adult daughter, as well as her friends and family members, to determine her whereabouts. As exhibits, petitioner presented what the court called a "compendium" of respondent's text messages and also records showing missed calls from respondent. Petitioner testified that respondent followed her as she arrived home from work and surveyed her while in college; he emailed her university derogatory statements about her mental health; he called her while she was on vacation and, absent her response, filed a missing persons report. The trial court, which is in the best position to observe the conduct and demeanor of the parties and witnesses, found petitioner more credible than respondent, and her testimony corroborated by Lackner and Kuligoski. Respondent did not satisfactorily contradict petitioner's evidence. The evidence therefore supported a finding that petitioner harassed and stalked petitioner, *i.e.* on two or more occasions respondent knowingly followed, monitored, surveyed, and communicated with his daughter or to or about her through third parties, and his unreasonable conduct caused her emotional distress. See 720 ILCS 5/12-7.3(c)(1) (West Supp. 2009); 750 ILCS 60/103(7) (West 2008). We cannot say the trial court's judgment issuing the protective order was unreasonable, arbitrary, or not based on the evidence presented.

¶ 18 In reaching this conclusion, we reject respondent's argument that a family agreement was the better remedy because respondent did not present a future risk of abuse. Under section 214 of the Act, a court fashions the remedy based on what abuse "has occurred or otherwise appears likely to occur if not prohibited." 750 ILCS 60/214(b)(1) (West 2008). Given the evidence presented and the purpose of the Act, the court was required to issue the protective order

prohibiting respondent from contacting (see 750 ILCS 60/214(b)(3) (West 2008)), harassing, and stalking both petitioner and certain third parties associated with petitioner.

¶ 19 Respondent further argues that petitioner filed the petition for a protective order to conceal a drunk driving arrest from family and friends, thereby manipulating the legal system. Respondent has attached documents to his brief showing petitioner received various tickets, some for driving under the influence of alcohol, in September 2010, prior to the hearing. Although respondent testified at trial that petitioner had engaged in heavy drinking, the court did not find respondent credible, and respondent offered no other evidence in support of his factual assertion. This court cannot consider evidence not before the trial court. See *Palmros v. Barcelona*, 284 Ill. App. 3d 642, 645 (1996). Even if respondent had properly offered the attached documents to the trial court, given the trial evidence, they do not support the inference that petitioner filed the petition for a protective order solely to conceal her drunk driving arrest from her family or to manipulate the legal system. Respondent's claim fails.

¶ 20 Respondent also argues that the court failed to rule on the motion to dismiss the order of protection and to vacate the court's judgment. While the court did not explicitly deny respondent's motion to dismiss, such a ruling is implicit. We cannot disagree with the ruling, as respondent made no demonstrable argument in his motion that there was a legal basis for dismissing the petition, which was supported by evidence and signed and certified as true and correct. See 735 ILCS 5/2-615 (West 2008).

¶ 21 To the extent respondent makes additional arguments, we decline to consider them as they are not cohesively articulated or developed. A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented; an appellant may not foist the burden of argument and research on this court, as it is neither our function nor obligation to act as an advocate or search the record for error. *People v. Universal Public*

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*Transportation, Inc.*, 401 Ill. App. 3d 179, 198 (2010).

¶ 22 Based on the foregoing, we affirm the decision of the circuit court of Cook County.

¶ 23 Affirmed.