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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

NASEEMA BANU,)	Appeal from the Circuit Court
)	of Du Page County.
Petitioner-Appellee,)	
)	
v.)	No. 08—P—709
)	
HABIB WALA,)	Honorable
)	Thomas C. Dudgeon,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Burke concurred in the judgment.

ORDER

Held: The trial court's entry of an order of protection was proper, as its finding that respondent had abused petitioner was not against the manifest weight of the evidence: despite petitioner's uncertainty as to when respondent made an allegedly harassing phone call, the court was entitled to credit her unequivocal testimony that he did make it; although respondent asserted that the call was not harassing in that it would not cause a reasonable person emotional distress, the fact that respondent threatened petitioner with death, in light of their antagonistic relationship, was sufficient.

¶ 1 Respondent, Habib Wala, appeals a judgment granting a plenary order of protection to plaintiff, Naseema Banu. We affirm.

¶ 2 Petitioner is respondent's sister. On December 9, 2009, she petitioned for an order of protection under the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West 2008)). Her petition alleged that respondent had committed four acts of abuse (see 750 ILCS 60/103(1) (West 2008)) against her and several relatives. The only allegation pertinent here is that, on November 30, 2009, respondent called petitioner from his office and threatened to harm her, her son, and her daughter-in-law.

¶ 3 On December 9, 2009, and again on December 21, 2009, the trial court entered a preliminary order of protection. On December 21, 2009, the court consolidated the cause into an ongoing one involving the estate of the parties' disabled mother. Respondent filed a response. The cause was continued several times, and the preliminary order of protection was correspondingly extended. On August 12, 2010, the trial court held a bench trial on the request for a plenary order of protection. We summarize the trial evidence.

¶ 4 Petitioner testified on direct examination that, on November 30, 2009, while she was at home in Naperville, respondent called her. He told her that he would "slay" her. She took "slay" to mean "kill." Petitioner became frightened and was "very much afraid" that respondent would come over and kill her. She testified that she heard "two words, one was slay me and that's it."

¶ 5 On cross-examination, petitioner testified that respondent said "more [than two] words." The judge took judicial notice of "the existence of the disabled adult guardianship estate pending." Asked whether she presently had a "relationship" with respondent, petitioner said that she did not.

¶ 6 Petitioner called respondent as an adverse witness. He testified that he owned Compare Travel and worked at its office in the Loop. On November 30, 2009, he did not call or speak to petitioner. That day, four other people—Collin Manuele, Sonny Kumar, a woman named Cathy, and

a fourth person whose name respondent could not recall—had been working there. They were authorized to use the telephone, but respondent never told any of them to call petitioner. That day, respondent spent the morning at the office, but he left at 1 p.m.

¶ 7 Respondent admitted that, in 2008, he consented to the entry of an order of protection against him and on behalf of petitioner. He explained that he agreed to the order only because his lawyers implied that he had no alternative, and he denied that religious conflict had played any role.

¶ 8 After petitioner rested, the trial court granted respondent a directed finding on all of the petition's allegations of abuse except that respondent had harassed her (and only her) by telephone on November 30, 2009. Respondent then called Manuele, who testified that, on November 30, 2009, he arrived at Compare Travel's office at 9:30 a.m. and left at 6 p.m. Respondent arrived before Manuele but left at 1 p.m. to attend the wake for Father Vota. Everyone at Compare Travel had a cell phone. Manuele was aware that members of respondent's family were suing him for the return of thousands of dollars that they claimed he had misappropriated; Manuele admitted that, if the lawsuit put Compare Travel out of business, he would be harmed.

¶ 9 Acterjahan Wala, respondent's ex-wife, testified that, on November 30, 2009, she attended Father Vota's wake at a church in Rogers Park. She arrived about 5:30 p.m. Respondent was already there. She left about 8:30 or 9 p.m. By then, respondent had departed, although she did not see him leave. Acterjahan Wala testified equivocally about whether she had been aware that members of respondent's family were suing him over money that he had allegedly misappropriated.

¶ 10 Respondent testified that, on November 30, 2009, he arrived at the office at 9 a.m. Three other people arrived shortly afterward. At 1 p.m., respondent left to attend Father Vota's wake at

a church in Rogers Park. He arrived at about 2:15 p.m., stayed until 6 p.m., and went to his home in Rogers Park. He did not return to the office that day. He did not call petitioner at all that day.

¶ 11 After arguments, the judge explained his decision as follows. The first factual issue was whether respondent had called petitioner on November 30, 2009. Although petitioner had been vague about the time of the call, and several witnesses had testified that respondent had not been in his office after 1 p.m., the issue came down to witness credibility. Thus, the judge had to consider not only the testimony but also factors that were “not necessarily apparent on the face of a transcript”—primarily the witnesses’ demeanor while testifying. The judge explained:

“Mr. Wala appear[ed] to this Court to be somewhat of a rigid person during his testimony. His testimony was delivered rather sharply, curtly, and he appears to be a man who has a temper. The petitioner by contrast is very quiet, appeared here in a very mild-mannered fashion, and strikes the Court as a person with a gentle personality.

All of those findings are important because it goes to the question of the likelihood that this statement that the phone call was made is true. I find that phone call was made. I find that it did contain the contents that was [*sic*] stated by [petitioner].”

¶ 12 The judge acknowledged that when respondent called, and whether he used a cell phone or his office phone, were not clear. However, “the phone call was made.” The judge then concluded that the call amounted to abuse—specifically, harassment (see 750 ILCS 60/103(1) (West 2008)). Thus, the trial court entered the order of protection. Respondent timely appealed.¹

¹The record on appeal does not contain a notice of appeal. However, respondent filed in this court a copy of a notice of appeal file-stamped September 10, 2010. Petitioner does not contest this proof that respondent timely appealed.

¶ 13 On appeal, respondent argues first that the judgment is against the manifest weight of the evidence. Specifically, he challenges the trial court's finding that he made the allegedly harassing call to petitioner. Respondent contends that petitioner's testimony that he did was inherently incredible because it was inconsistent and because respondent proved that he was not in his office at the time of the alleged call. For the reasons that follow, we disagree.

¶ 14 The trial court's finding that respondent made the call must stand unless it is against the manifest weight of the evidence. See *Frank v. Hawkins*, 383 Ill. App. 3d 799, 812 (2008). We defer to the trial court's decisions on the credibility of the witnesses, the weight to be given their testimony, and the reasonable inferences to draw from the evidence. *Id.* This is in large part because the trial judge was able to observe the demeanor of the witnesses as they testified. *Id.* Here, the trial judge was faced with a credibility contest and explained that he relied heavily on his observations of petitioner and respondent as they testified. This was proper, and we see no error.

¶ 15 As the judge acknowledged, petitioner was inconsistent about when she received the call, but she was unequivocal that she *did* receive it. Her uncertainty more than seven months later about when respondent called was not a fatal weakness. Also, what respondent calls his "alibi" evidence was not decisive even if credited in full. Whether he made the call was the issue, not whether he did so before or after he left his office.² Even had petitioner been required to prove that respondent had called from his office, and even had the evidence compelled the finding that the call had come in the

²Although petitioner's petition alleged that respondent made the call from his office, respondent does not now assert that any variance between the pleadings and the proof is a basis for reversal. See *Tomlinson v. Dartmoor Construction Corp.*, 268 Ill. App. 3d 677, 684 (1994).

afternoon—neither of which we accept—the judge could have found that respondent called early in the afternoon before leaving the office. Thus, respondent’s first argument fails.

¶ 16 Respondent argues second that the trial court erred in finding that the call amounted to harassment. Under the Act, abuse includes “harassment” (750 ILCS 60/103(1) (West 2008)), which the Act defines 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” (emphasis added) (750 ILCS 60/103(7) (West 2008)). Respondent’s argument relates only to the emphasized language.

¶ 17 A person suffers emotional distress when she becomes “worried, anxious, or uncomfortable.” *People v. Reynolds*, 302 Ill. App. 3d 722, 728 (1999). The plain meaning of “slay” is “kill,” and, generally speaking, it is not inherently unreasonable for a person to become worried, anxious, or uncomfortable upon receiving a death threat. Respondent contends, however, that the context shows that petitioner’s emotional distress was not reasonable. We disagree.

¶ 18 The trial judge noted that the parties had been involved in bitter litigation in the guardianship proceeding and (inferrably) the suit to recover money that respondent had allegedly misappropriated. Also, in 2008, petitioner had been granted an order of protection against respondent. Respondent uses this background to argue that the death threat should not have been taken seriously, because the parties’ long-standing conflict had not *yet* escalated into violence. This logic borders on Panglossian. In context, respondent’s threat to “slay” petitioner would naturally have caused her to worry that he would cross the line into attempting violence against her. We note that the Act required proof only that the death threat would make a reasonable person “worried, anxious, or uncomfortable” (*id.*), not

that it would make a reasonable person *certain* that respondent would try to carry out the threat or even that he meant the threat literally.

¶ 19 Respondent relies on *People v. Spencer*, 314 Ill. App. 3d 206 (2000), in which this court held that the State did not prove beyond a reasonable doubt that the defendant's single telephone call to his former girlfriend, Apryl, was harassment. The evidence showed that the defendant called Apryl's mother's house and asked whether Apryl was home; Apryl answered and said that she was not home; he responded, " 'Apryl, I know it's you' "; and Apryl became frightened and hung up. *Id.* at 207.

¶ 20 We held first that this evidence did not prove that the defendant had made the call for an improper purpose; indeed, there was no evidence at all of his purpose. *Id.* at 208. We held next that the State had not proved that the defendant had intended to harass Apryl, as his call had none of the usual indicia of harassment; he "did not call repeatedly. He did not swear at the complainant, and *he did not threaten her.*" (Emphasis added.) *Id.* Finally, we held that the evidence did not prove that the call would have caused a reasonable person emotional distress. Without anything about the call itself to support such a finding, we reasoned that the parties' prior relations, which included contacts that Apryl had initiated, were too ambiguous to fill the gap. *Id.* at 209.

¶ 21 *Spencer* is easily distinguishable, primarily because the contents of the two calls were radically different. Here, respondent does not contend that petitioner failed to prove that his call lacked a reasonable purpose, and unlike in *Spencer*, the content of the call—a death threat—was sufficient to prove that it lacked a reasonable purpose. Similarly, insofar as respondent can be seen as challenging the proof of his intent to harass, that intent could be inferred from the call's sinister content. Further, the call's content proved that a reasonable person would suffer emotional distress; unlike the defendant in *Spencer*, respondent *did* make a threat.

¶ 22 Finally, unlike the defendant and the alleged victim in *Spencer*, the parties here had been either distant or overtly antagonistic throughout the time preceding the alleged harassment. They had fought each other in court over the guardianship proceeding, respondent's alleged misappropriation of funds, and the 2008 order of protection. Otherwise, according to petitioner, they had had no "relationship," a term that the trial judge as fact finder could have taken to mean positive interaction. Thus, content and context both distinguish the telephone call here from the one at issue in *Spencer*.

¶ 23 The trial court's conclusion that respondent called petitioner and harassed her must stand. Therefore, so must the order of protection.

¶ 24 The judgment of the circuit court of Du Page County is affirmed.

¶ 25 Affirmed.