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).

No. 3--10--0246

Order filed February 4, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

SVETLANA HENDERSON,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit
Petitioner-Appellant,	)	Rock Island County, Illinois
	)	
v.	)	No. 10--OP--101
	)	
TERRY HENDERSON,	)	Honorable
	)	Mark A. Vandeweile
Respondent-Appellee.	)	Judge Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Carter and Justice Holdridge concurred in the judgment.

ORDER

Held: In ruling on petition for order of protection, the trial court did not err in (1) excluding a police report from evidence, or (2) denying the petition where the evidence showed that the minor's father called her a vulgar name but did not threaten or physically harm her.

Petitioner, Svetlana Henderson, sought an emergency order of protection on behalf of her daughter against respondent, Terry Henderson. Following a hearing, the court denied the petition

but entered an order prohibiting Terry from using corporal punishment or exposing his daughter to second-hand smoke. Svetlana appeals, arguing that the trial court erred in (1) excluding a police report from evidence, and (2) denying her petition for an order of protection.

On February 22, 2010, Svetlana filed a petition for an emergency order of protection on behalf of her daughter, Anna, against Anna's father, Terry. According to the petition, Terry had visitation with Anna on February 20, 2010. During the visit, Anna and Terry got into an argument about going to Anna's uncle's house. When Anna said she did not want to go, Terry allegedly called her names and threatened to slap her.

On March 17, 2010, the court held a hearing on the petition. Anna testified that she is 14 years old. She was very young when her parents divorced. She said she is afraid to have disagreements with her father.

On February 20, 2010, during visitation with her father, he told her that they were going to her uncle Richard's house. She said did not want to go because her uncle and his girlfriend smoke in the house, and she is concerned about second-hand smoke. Her father told her that second-hand smoke would not affect her health. She told her father she disagreed but denied calling him "stupid" or telling him that he did not know what he was talking

about. Her father then called her a "bitch" and a "shit hole." He also said: "Most parents would slap someone as smart as you." She became scared and cried. Her father immediately drove her home. When he reached the driveway, Anna got out of the car and ran into her house.

Svetlana testified that Anna ran into the house crying after visiting with Terry on February 20, 2010. After Anna was in the house, Svetlana went outside and saw Terry pointing at Anna and repeatedly screaming, "bitch, bitch." When Terry saw Svetlana, he called her "shit hole" or "slut." Then, he threw Anna's belongings in the snow and left. Svetlana called the police and filed a report.

Svetlana showed the court an e-mail that Terry sent her on February 21, 2010. In that e-mail, Terry apologized for his behavior the day before. The e-mail stated in part: "No one deserves being spoken to the way I spoke to you." Terry did not object to the admission of the e-mail. Svetlana also tried to introduce as evidence a police report created on February 20, 2010. Terry objected to admission of the police report. The trial court sustained the objection, finding that the police report was inadmissible hearsay.

Vitali Apirine, Svetlana's brother, lives with Anna and Svetlana. He testified that after Anna came home from

visitation with her father on February 7, 2010, a strong odor of cigarette smoke was coming from her hair and clothes. Soon after that, he heard Svetlana call Terry and ask him to keep Anna away from cigarette smoke because it could affect her health.

On February 20, 2010, he heard a hard knock at the door. Svetlana opened the door, and Anna ran inside. She was frightened and in tears. Then, he saw Terry at the door. Terry was pointing at Anna and two times said: "She's a bitch."

Terry testified that he and Svetlana divorced in 1998. Svetlana has custody of Anna, and he has visitation with her every other weekend. He and Svetlana "don't get along at all." Svetlana demeans him and calls him "stupid."

He has only had one argument with Anna. That happened just a few weeks earlier, on February 20, 2010. When he picked up Anna, she told him she was not going to Uncle Richard's house because his second-hand smoke was going to kill her. He told her that he was raised in a house with second-hand smoke and had no problems. Anna told him that was stupid and that he did not know what he was talking about. Terry then told Anna that she needed to be more respectful. He told her that if he had spoken to his parents the way she was speaking to him, "I would be slapped."

Terry then drove Anna home. Anna got out of the car and ran into the house crying. Svetlana met Terry at the door, and they

argued. Terry admitted calling Svetlana some names. He denied using foul language in front of Anna but said that when he was arguing with Svetlana, he may have referred to Anna as a "bitch." He realizes that is totally inappropriate. He has never done that before and never intends to do that again.

Anna visited him the weekend before the hearing. He and Anna did not have any arguments then. For part of the weekend, Anna was "somewhat friendly." He said that he loves his daughter and misses her. He believes that Svetlana is trying to drive a wedge between him and Anna.

At the conclusion of the hearing, the trial court denied the petition for an order of protection but entered an injunctive order, prohibiting Terry from (1) taking Anna "to locations where people are smoking," and (2) using corporal punishment to discipline Anna.

I

Svetlana argues that the trial court erred in excluding the police report from evidence at the hearing.

The admission of evidence is within the sound discretion of the trial court, and its decision will not be reversed on appeal absent an abuse of discretion. *Daria W. v. Bradley W.*, 317 Ill. App. 3d 194, 199 (2000).

Generally, police reports are inadmissible. *Camco, Inc. v.*

Lowery, 362 Ill. App. 3d 421, 434 (2005); *Steward v. Crissell,* 289 Ill. App. 3d 66, 70 (1997). The reason behind this rule is that the information contained in a police report is generally hearsay or states conclusions. *Lowery*, 362 Ill. App. 3d at 434, *Steward*, 289 Ill. App. 3d at 70.

Here, the trial court properly prohibited Svetlana from introducing the police report into evidence because it constituted inadmissible hearsay. See *Lowery*, 362 Ill. App. 3d at 434, *Steward*, 289 Ill. App. 3d at 70. We find no error.

II

Svetlana also argues that the trial court's decision to deny her order of protection was against the manifest weight of the evidence.

The primary purpose of the Illinois Domestic Violence Act of 1986 (Act) is to aid victims of domestic violence and to prevent further violence. *Radke ex rel. Radke v. Radke*, 347 Ill. App. 3d 264, 268 (2004). The Act provides that an order of protection must be issued "[i]f the court finds that petitioner has been abused by a family or household member." 750 ILCS 60/214 (West 2008). The central issue in a proceeding to obtain an order of protection is whether the petitioner has been abused. *Best v. Best*, 223 Ill. 2d 342, 348 (2006).

The Act defines "abuse" as "physical abuse, harassment,

intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent." 750 ILCS 60/103(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).

Becoming "angry, upset and loud" does not constitute harassment under the Act. *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 1166 (2000). Nor does using curse words. See *In re Marriage of Healy*, 263 Ill. App. 3d 596, 600 (1994). The Act was not intended "to exaggerate every petty argument into a basis for an order of protection." *Wilson*, 312 Ill. App. 3d at 1166.

A trial court's finding of abuse or lack of abuse under the Act will be reversed only if it is against the manifest weight of the evidence. See *Best*, 223 Ill. 2d at 348-49. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the finding is unreasonable, arbitrary or not based on the evidence presented. *Id.* at 350. Under the manifest weight standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and

witnesses. *Id.* A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn. *Id.* at 350-51.

Here, the trial court heard the testimony of Terry, Svetlana, Anna and Anna's uncle. The evidence established that Terry called Anna a "bitch," either directly to her or to Svetlana so that Anna overheard. Terry also told Anna that he would have been slapped by his parents if he was as disrespectful to them as she had been to him. It is undisputed that Terry never slapped or threatened to slap Anna.

The trial court's finding that no abuse occurred was not against the manifest weight of the evidence. Although Anna testified that she was not comfortable disagreeing with her father after their argument, Terry's actions did not rise to the level of abuse or harassment. There is no evidence that his conduct would have caused emotional distress to a reasonable person and did, in fact, cause emotional distress to Anna. The trial court did not err in denying Svetlana's petition.

The order of the Rock Island County circuit court is affirmed.

Affirmed.