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2012 IL App (3d) 110307-U

Order filed March 1, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

LATISHA ANDREWS,) Appeal from the Circuit Court
) of the 12th Judicial Circuit,
Plaintiff-Appellant,) Will County, Illinois,
)
v.) Appeal No. 3-11-0307
) Circuit No. 10-OP-961
WILLIAM ANDREWS,)
) Honorable
Defendant-Appellee.) Robert P. Brumund,
) Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice McDade concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held:* The trial court's denial of a wife's petition to extend a plenary order of protection against her husband was against the manifest weight of the evidence when the factual basis for the original plenary order had been conceded by the husband and the wife's testimony that there was no material change in circumstances and she still feared her husband was uncontroverted.

¶ 2 The plaintiff, Latisha Andrews, brought a civil action under the Illinois Domestic

Violence Act of 1986 (IDVA) to obtain, and later extend, a plenary order of protection against

her estranged husband, the defendant, William Andrews. The trial court denied the request to extend the plenary order of protection, and the plaintiff appealed. We reverse and grant the plaintiff's request to extend the plenary order of protection until March 30, 2013.

¶ 3

FACTS

¶ 4 On May 17, 2010, the trial court granted the plaintiff an emergency order of protection, finding a pattern of physical abuse, prohibiting the defendant from harassing or abusing the plaintiff, and ordering the defendant to stay away from the family home. The petition alleged that the parties had an argument two days earlier, at which time the defendant threw some pictures in the plaintiff's face, twisted the plaintiff's arm, and yelled at the plaintiff. On June 2, 2010, at the expiration of the emergency order, the parties appeared in court and agreed to the entry of a plenary order of protection, effective until September 22, 2010. The trial court granted the plenary order of protection, finding that good cause was shown for the reasons listed in the emergency order.

¶ 5 The plaintiff filed a motion to extend the plenary order of protection. She appeared in court on September 8, 2010, and stated that nothing had changed with respect to her situation with the defendant, other than she filed for divorce. The plaintiff stated that she still feared the defendant. The trial court extended the order of protection for six months, for good cause shown. The order was extended one more time to allow the parties time to prepare for a hearing on another extension.

¶ 6 On March 30, 2011, the parties appeared for a hearing on the plaintiff's motion to extend the plenary order. The plaintiff testified that, other than filing for divorce, there had been no significant change in the situation between her and the defendant, and she still feared the

defendant. In response to questioning by the trial court, the plaintiff stated that there were prior instances of physical abuse, and the plaintiff had filed for divorce before, but she had never called the police nor sought an order of protection for those prior incidents. The plaintiff relayed an incident that occurred in October 2010, where the defendant yelled at her at their son's football game, in front of their son, reportedly angry because she had a new boyfriend. She did not report the incident as a violation of the order of protection.

¶ 7 The trial court ordered that an injunction issue in the parties' divorce action with the same terms and conditions as the order of protection against the defendant. As for the extension of the plenary order of protection, the trial court stated that it would not have granted the original plenary order and denied the extension, finding that the plaintiff failed in her burden of proof. The plaintiff appealed the denial of the extension, arguing that the trial court erred in applying the wrong statutory standard for the extension of plenary orders of protection and that the denial of the extension was against the manifest weight of the evidence.

¶ 8 ANALYSIS

¶ 9 The plaintiff argues that, under section 220(e) of the IDVA (750 ILCS 60/220(e) (West 2008)), to be entitled to an extension of the plenary order of protection, she only needed to show that there had been no material change in relevant circumstances since the original plenary order was granted. The plaintiff contends that she made this showing by a preponderance of the evidence, and the trial court's finding that she failed to meet her burden of proof was against the manifest weight of the evidence. Although the defendant has failed to file an appellee's brief, we proceed to our review in accordance with the principles stated in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976).

¶ 10 In a proceeding to obtain an order of protection under the IDVA, the key inquiry is whether the protected person was abused. *Best v. Best*, 223 Ill. 2d 342, 348 (2006). The trial court “shall” issue an order of protection when it finds that a protected person has been abused by a family or household member. 750 ILCS 60/214(a) (West 2008). The petitioner must prove abuse by a preponderance of the evidence. 750 ILCS 60/205(a) (West 2008). We will reverse a trial court's finding on the issue of abuse only if it is against the manifest weight of the evidence. *Best*, 223 Ill. 2d 342. A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *Best*, 223 Ill. 2d 342.

¶ 11 The IDVA provides that a plenary order of protection may be extended, as long as the requirements of section 217, 218, or 219 (750 ILCS 60/217, 218, 219 (West 2008)) are satisfied. 750 ILCS 60/220(e) (West 2008). If the motion is uncontested, and the petitioner seeks no modification of the order, the order may be extended based upon the petitioner's motion or affidavit stating the reason for the requested extension and stating that there has been no material change in relevant circumstances since the entry of the prior plenary order. 750 ILCS 60/220(e). An extension may be granted upon good cause shown. 750 ILCS 60/220(e).

¶ 12 We find that the trial court applied the correct statutory standard. Although the plaintiff sought no modification of the order, the motion was contested. The trial court held a hearing and heard testimony regarding whether there had been a material change in circumstances and whether there was good cause shown.

¶ 13 However, we find that the trial court's denial of the extension was against the manifest weight of the evidence. The original plenary order was uncontested, and it was granted based

upon the agreement of the parties. By agreeing to the entry of the plenary order, the defendant conceded the factual basis required for the order. See *Lutz v. Lutz*, 313 Ill. App. 3d 286 (2000). In addition, the trial court made the finding that good cause was shown. Also, the plaintiff's testimony regarding the original acts of abuse and a verbal altercation while the order of protection was in effect was uncontroverted, as was her testimony that she still feared the defendant. The trial court did not make any finding that the plaintiff was not credible. In fact, the trial court ordered that an injunction issue against the defendant in the parties' divorce action under the same terms and conditions of the order of protection.

¶ 14 We note that while the protections provided by the injunction and the order of protection overlap, the violation of an order of protection is a criminal offense. See 720 ILCS 5/12-30 (West 2008). In addition, an order of protection is entered on the day it is issued in the Law Enforcement Agencies Data System (LEADS), 750 ILCS 60/302(a) (West 2008), and a police officer can verify the existence of the order of protection and make an arrest if he has probable cause to believe the order of protection has been violated, 750 ILCS 60/301(a), (b) (West 2008). If a person is charged with such an offense, there are a whole host of bond conditions that may be placed upon the violator. 725 ILCS 5/110-10(d)(1) (West 2008). On the other hand, the violation of a divorce injunction would be enforced through contempt proceedings. See, e.g., *In re Marriage Betts*, 200 Ill. App. 3d 26 (1990). The differences in enforcement and consequences between a plenary Order of Protection and a civil no contact order are so great that the latter is simply not a reasonable substitute for the former. However, the basis for the issuance of both is the trial court's determination that a proper complainant needs protection from threatened harm by the person complained of. We find that the trial court's determination that the plaintiff had

not shown good cause for the extension was against the manifest weight of the evidence.

CONCLUSION

¶ 15 The judgment of the circuit court of Will County is reversed and the plenary order of protection is extended until March 30, 2013.

¶ 16 Reversed.

¶ 17 JUSTICE HOLDRIDGE, dissenting:

¶ 18 I dissent. The record established that the original plenary order of protection was entered covering the period from June 2, 2010, to September 8, 2010. The record does not establish why a plenary order of protection, which could be entered for a period up to two years, was only to remain in effect for approximately 90 days, other than to indicate that the parties mutually agreed on June 2, 2010, to extend the "final" plenary order until September 8, 2010. The record also established that the plaintiff filed a petition for dissolution of marriage sometime between June 2, 2010, and September 8, 2010. The original plenary order expired on September 8, 2010; however, it was extended twice to accommodate the need for a contested hearing. The petition to extend the plenary order of protection was then transferred to the same judge assigned to the dissolution proceeding.

¶ 19 The contested hearing on the petition to extend the plenary order of protection was finally held on March 30, 2011, more than six months after the original order was set to expire.

Following presentation of evidence by both parties, the trial judge determined that the plaintiff had failed to establish by a preponderance of the evidence that the requirements necessary for an extension of the order had been met. Instead, the trial court found that issuance of a civil injunction as part of the dissolution proceeding provided greater protection against any future

abuse than extending the order of protection. The trial court pointed out to the parties that any violation of the civil injunction would result in the immediate incarceration of the violating party without the need for the lengthy indictment and trial that would follow any alleged violation of an extended order of protection. The record indicates that the trial judge went to great lengths to impress upon the defendant the swift justice that would result from his "even look[ing] cross-eyed at [the plaintiff]."

¶ 20 At issue in the instant matter is whether the trial court erred in not granting an extension of the plenary order of protection. The Illinois Domestic Violence Act (IDVA) provides:

"Any emergency, interim, or plenary order may be extended one or more times, as required, provided that the requirements of Section 217, 218 or 219, as appropriate, are satisfied. If the motion is uncontested and petitioner seeks no modification of the order, the order may be extended on the basis of petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested extension. An extension of a plenary order of protection may be granted, upon good cause shown, to remain in effect until the order of protection is vacated or modified. Extensions may be granted only in open court and not under the provisions of subsection (c) of Section 217, which applies only when the court is unavailable at the close of business or on a court holiday."

(Emphasis added.) 750 ILCS 60/220(e) (West 2008).

¶ 21 Unlike an emergency (section 217), interim (section 218), or a plenary (section 219) order of protection, each of which "shall" issue upon a finding of abuse, section 220(e) of the IDVA, as quoted above provides that any such order "may" be extended upon good cause shown. 750 ILCS 60/217, 218, 219, 220(e) (West 2008). Clearly, section 220(e) gives the circuit court discretion to extend an order of protection upon the showing of good cause and also provides that the findings in the original order can be the basis for extending the plenary order, but only if the motion to extend the plenary order is "uncontested and petitioner seeks no modification of the order." 750 ILCS 60/220(e) (West 2008). If the petition to extend the plenary order of protection is contested, the plaintiff must establish "good cause" for extending the order beyond its original expiration date. Here, the motion to extend the plenary order was contested, so the findings in the original order could not be the basis for extending the plenary order.

¶ 22 A trial court's decision regarding the extension of an order of protection will not be overturned on appeal unless the court abused its discretion. *Lutz v. Lutz*, 313 Ill. App. 3d 286 (2000). In the instant matter, I would find that the trial court's decision not to extend the order of protection beyond its original expiration date was not an abuse of discretion. A trial court abuses its discretion when its ruling is "arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). An abuse of discretion standard of review is highly deferential to the circuit court. *Davis v. Kraff*, 405 Ill. App. 3d 20, 28 (2010).

¶ 23 Here, since the motion for extension of the plenary order was contested, the plaintiff needed to prove more than the mere fact that there had been no material change in relevant circumstances since the original order was granted. She also needed to show, by a preponderance

of the evidence, that abuse warranting an extension of the original order had occurred. The trial court obviously found that an extension of the plenary order of protection in this matter was not warranted and that the protections provided to the plaintiff by the civil injunction were sufficient to protect her from any potential future abuse.

¶ 24 The majority cites Lutz for the proposition that, by agreeing to the entry of the plenary order, the defendant conceded the factual basis required for a subsequent extension of the original order. However, the Lutz court merely held that the trial court did not abuse its discretion in holding that "the parties' consent to the original order of protection essentially conceded the factual basis necessary to support that order." Lutz, 313 Ill. App. 3d at 289. The court did not hold that the original petition must be accepted as conclusive proof of abuse necessary to extend the original order. The Lutz court also noted the plaintiff therein had established by a preponderance of the evidence presented at the hearing that the original order had been violated and, thus, an extension was warranted. Id.

¶ 25 In the instant matter, contrary to the court's finding in Lutz, the trial court found that the circumstances warranting the original agreed order were not sufficient to establish abuse for purposes of extending the plenary order. In addition, the trial court held that the plaintiff's testimony regarding the single instance of a confrontation at the football game in October 2010 was insufficient to warrant the extension of the plenary order. I would not find that the trial court abused its discretion in reaching that conclusion, particularly in view of the trial court's admonition to the defendant that the civil injunction in the dissolution proceeding would be strictly enforced.

¶ 26 Nor am I convinced that the trial court abused its discretion in denying the request to extend the plenary order by the majority's observation that a violation of an order of protection is a criminal offense, subject to police oversight, while the civil injunction is not. While this observation is, of course, correct, the issue before this court is not whether the trial court should have extended the order of protection instead of issuing a civil injunction. The issue is whether the trial court abused its discretion in denying the petition to extend the order of protection. As I have previously stated, the record does not support a finding that the trial court abused its discretion in denying the petition to extend the plenary order of protection.

¶ 27 For the foregoing reasons, I would affirm the judgment of the trial court.