

No. 1-12-1355

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ZANDRA GUTIERREZ,)	Appeal from the
)	Circuit Court of
Petitioner and Appellant,)	Cook County.
)	
v.)	12 OP 71022
)	
PEDRO ESTRADA,)	The Honorable
)	Mauricio Araujo,
Respondent and Appellee.)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justices Epstein and Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court’s decision denying petitioner’s protective order was against the manifest weight of the evidence because the court was mistaken regarding the facts and the evidence was sufficient to warrant issuance of the protective order. Reversed and remanded.

¶ 2 Following an evidentiary hearing, the trial court denied Zandra Gutierrez’s petition for a protective order against her former boyfriend, respondent Pedro Estrada. Gutierrez, hereinafter petitioner, now appeals contending the trial court’s decision was against the manifest weight of the evidence because the court misconstrued the facts and, regardless, she presented sufficient evidence to warrant issuance of the protective order.

¶ 3 **BACKGROUND**

¶ 4 Petitioner and respondent dated from approximately November 2008 to November 2011.

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Following months of alleged abuse, on February 17, 2012, petitioner filed a petition for an emergency order of protection against respondent, which the circuit court granted. Consistent with the allegations set forth in the petition, the protective order prohibited respondent from contacting petitioner and also proscribed any physical abuse, harassment, interference with personal property, and stalking of petitioner. The protective order was extended until March 21, 2012, at which time the trial court held a hearing on the petition.

¶ 5 Evidence at the hearing, set forth in support of the petition, revealed that petitioner and respondent dated for about three years and lived together for one. Following their November 2011 breakup, respondent began harassing and stalking petitioner. Petitioner testified, for example, that respondent repeatedly called and texted her and threatened suicide because she had “ruined his life,” and he was “done with everything.” Initially, petitioner responded to the calls because of the suicide threats and because he also threatened either to present himself in front of her apartment or not to make payments on a car purchased in petitioner’s name; respondent, in addition, took the keys to the car, which he left on the street, so that petitioner could not move it. However, by late December, petitioner ceased texting respondent and ceased responding to his emails in mid-January 2012. Respondent’s actions prompted petitioner not only to change her telephone number, but also to block him from her Facebook account. Relentless, respondent managed to send petitioner over 30 messages through his friend’s Facebook account between December 25 and 26, 2011, calling petitioner a whore and posting the cross-streets of her residence to advertise available sex. He continued to send vulgar and sexually-explicit messages through his deceased brother’s Facebook account, wherein he called petitioner names, accused

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her of cheating, demeaned her, and again threatened suicide, stating: “I feel like ending it. You made me feel like this. You didn’t force a gun to my head, but I believed you were it and my all.” Petitioner read these explicit messages for the record in court. A number of electronic messages were admitted into evidence at trial but have not been included in the record on appeal.

¶ 6 Petitioner testified that this harassment segued from cyberspace to the streets of Chicago on January 17, 2012, as petitioner drove from her workplace around 5 p.m., accompanied by coworker Yammily Hidalgo, with respondent following in his car. At a stoplight, respondent bolted from his car, banged on her window and demanded that she roll it down and talk. After refusing, petitioner drove to the nearest police station, where the angry respondent once again banged on her window and stood before her car for some 10 minutes insisting that he needed to speak to her, maintaining she owed him an apology, and stating that he still loved her. Hidalgo corroborated this incident in her testimony at the hearing. Hidalgo added that petitioner was nervous, scared, shaking, and trembling. Hidalgo also testified this was her third encounter with respondent, the first being at a baseball game and the second when he drove them to the airport in February 2011.

¶ 7 Following these incidents, respondent emailed petitioner on January 17. He stated “today wasn’t and it isn’t something I thought I would ever do,” but explained he wanted face-to-face interaction because he’s a “confrontational person” and they hadn’t spoken since late December. He stated he would rather that than communicating via email and the phone, but instead, he wrote, she treated him like a “lunatic,” “psycho,” and “like dirt.” Respondent continued to contact petitioner with emails soliciting her attention on January 20, 28, 29, and February 1 of

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2012. She did not respond to his emails. In spite of this, on February 8, respondent called petitioner at her workplace about four times and threatened to post naked photographs of her there. On February 11, respondent emailed petitioner twice inviting her out and giving her his number. On February 13, he sent her song lyrics in an email. Again, she did not respond. On February 14, respondent called petitioner's workplace once more and also sent her flowers there, then emailed her reassuring her that he would store away the naked photographs for his "own personal memories." On February 18, he sent another email. With feelings of extreme nervousness, stress, and her work performance plummeting, petitioner filed for a protective order on February 17. Petitioner testified that following the issuance of the protective order, respondent finally ceased contacting her.

¶ 8 Respondent testified at the hearing denying the alleged abuse. He testified that it was he who broke off the relationship in November 2011 and, thereafter, it was petitioner who sought out respondent calling him and knocking on his door. He denied threatening to stop car payments, setting up a fake Facebook account, or contacting petitioner through his deceased brother's account, and testified that he did not follow her from her job on January 17, 2012. Instead, respondent testified he was in Westmont, Illinois that day with his sister, mother, and English bulldog and only left around 11 p.m. His sister testified corroborating this alibi. He testified that he called petitioner at her workplace on February 8, 2012, because he hadn't spoken to her in a while and wanted to invite her to lunch. During their two-hour conversation, he did not threaten to post naked photographs of petitioner or threaten her. According to respondent, petitioner did not want to hang up the telephone with him, but wanted to ask questions like "what

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gym to I go to, what am I doing now,” while in the same breath, she also blamed respondent for the demise of their relationship. Respondent stated he no longer wanted to speak to respondent, but then informed her he was going to send flowers on February 14 and that would be the last contact. Respondent admitted sending emails on January 17, 20, 28, 29 and February 1, 9, 11, 13, 14, and 18 of 2012, explaining that he still loved petitioner and the relationship was “very emotional.”

¶ 9 Although respondent maintained that he ended the relationship in November 2011, he admitted giving petitioner a Christmas gift in December, contacting her at work in February, and also sending her flowers then. Similarly, although he denied sending petitioner Facebook messages through his deceased brother’s account, he admitted at trial that one message said, “I won’t be using my brother’s account anymore.” He also admitted he was no longer friends with petitioner on Facebook and had only one brother. And, although respondent denied seeing petitioner in person on January 17, on cross-examination he admitted sending her an email about their interaction that day. He acknowledged writing petitioner an email December 29 stating: “I hope for a text every day or a private call, an e-mail, a message on Facebook, an appearance at an event I was mixing at. Something, a knock on the door, a letter. What did I get? Nothing[.]” He further acknowledged sending the numerous other emails to petitioner in which he solicited her attention, included his telephone number, stated he loved her, and invited her to an event. At one point, he wrote, “Yes, I have said some things I regret on your Facebook page[.]” and at another, “Good night. Don’t worry. You won’t hear from me again,” and yet another, “When you truly care about someone you’ll be willing to do whatever it takes to be with that person.”

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He acknowledged writing “[t]hose are my own personal memories,” although denied that was in reference to the naked photographs of petitioner. Respondent admitted that petitioner never responded to these emails. Respondent also acknowledged that he had not contacted petitioner since the protective order issued.

¶ 10 Following this cross-examination, the trial court asked respondent whether he had taken petitioner and Hidalgo to the airport, and respondent said he had on February 11. In rebuttal, petitioner clarified that respondent had driven her and Hidalgo to the airport the year before in February 2011.

¶ 11 Following the hearing, on April 12, 2012, the court terminated the protective order. In doing so, the court noted that although petitioner testified that respondent had taken her to the airport in February of 2011, the court essentially could not believe that testimony because it was not corroborated by the petitioner’s witness, Hidalgo. The court noted that Hidalgo was the most disinterested party and for that reason credited her testimony as true. The court stated that it believed respondent took petitioner to the airport on February 11, 2012 (sic), and then shortly thereafter applied for the protective order. The court noted that although petitioner in effect had established that she wanted no contact with respondent, based on the airport incident, the court was compelled to deny the protective order. The court specifically stated: “When I go back around and around, although I do believe that she wants you to stay away from her, that she’s done with you and everything else, I come back around and around to this driving to the airport thing.” This timely appeal followed.

¶ 12

ANALYSIS

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¶ 13 Petitioner contends the trial court's ruling was against the manifest weight of the evidence because in denying the protective order the court was mistaken regarding the facts and, regardless, petitioner proved by a preponderance of the evidence (see 750 ILCS 60/205(a) (West 2010)) that she was entitled to the protective order. Although respondent 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).

¶ 14 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 2010); *Best v. Best*, 223 Ill. 2d 342, 348 (2006). The Act defines abuse, in relevant part, as harassment or interference with personal liberty. 750 ILCS 60/103(1) (West 2010). Harassment 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 2010). Unless rebutted by a preponderance of the evidence, harassment is presumed if respondent disturbed petitioner at work or repeatedly surveilled her outside work, repeatedly telephoned petitioner at work or home, and repeatedly followed petitioner in public. *Id.* If the trial court makes a finding of abuse, a protective order must be issued. 750 ILCS 60/214(a) (West 2010); *Best*, 223 Ill. 2d at 348. We will reverse the trial court's finding only if it is against the manifest weight of the evidence. *Best*, 223 Ill. 2d at 349. 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 351. We believe this presents just such a case.

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¶ 15 Petitioner offered plentiful evidence that was more than sufficient to tip the scales in favor of granting the protective order and to show her allegations were more likely true than not. Petitioner established that for a period of some three months respondent harassed her by sending numerous inappropriate emails and messages through Facebook, in spite of her express desire not to have contact with him. Respondent acknowledged his actions during direct and cross-examination. Petitioner further established that on January 17, 2012, respondent went so far as to appear near petitioner's workplace, follow her in his car, alighting therefrom in the middle of traffic and also at a nearby police station, only to bang on her window and insist that she talk to him. This incident was corroborated by Hidalgo, whose testimony the trial court credited as trustworthy, and who reported that the incident left petitioner in a state of emotional distress.

¶ 16 The trial court found this evidence lacking to warrant the issuance of a protective order based on the court's mistaken belief that respondent drove petitioner to the airport in February 2012, then applied for the protective order a few days later. This fact was not only incorrect – both petitioner and Hidalgo testified it was February 2011 – but it was also inadequate to justify denying the protective order in light of the competent evidence demonstrating that respondent had continuously harassed petitioner for several months following their breakup and, apparently, only ceased such behavior upon the issuance of the protective order. Because the trial court's decision, which hinged on a mistake of fact, was not based on the evidence and because the opposite conclusion is clearly evident, we are compelled to reverse and remand for further proceedings consistent with this order.

¶ 17

CONCLUSION

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¶ 18 Based on the foregoing, we reverse and remand the trial court's decision denying petitioner's protective order as it is against the manifest weight of the evidence.

¶ 19 Reversed and remanded.