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2013 IL App (3d) 110922-U

Order filed June 10, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

CHRISTINE SCHEUER,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Petitioner-Appellee,)	Marshall County, Illinois,
)	
v.)	Appeal No. 3-11-0922
)	Circuit No. 10-OP-50
)	
KIMBERLY BOEDIGHEIMER,)	Honorable
)	Kevin R. Galley,
Respondent-Appellant.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* Trial court erred in granting petition for stalking no contact order where one of the two acts of stalking occurred prior to effective date of Stalking No Contact Order Act.

¶ 2 Petitioner, Christine Scheuer, filed a petition for stalking no contact order against Kimberly Boedigheimer. Following a hearing, the trial court granted the petition and ordered Kimberly to have no contact with Christine for two years. Kimberly appeals, arguing that the court improperly considered an event prior to the effective date of the Stalking No Contact Order Act (Act) (740 ILCS

21/1 *et seq.*) to justify granting the petition. Kimberly alternatively argues that she did not commit any acts of stalking. We agree with Kimberly's first contention and reverse and remand.

¶ 3 On November 30, 2010, Christine Scheuer filed a verified petition for stalking no contact order against Kimberly Boedigheimer. The petition alleged that on November 27, 2010, Kimberly harassed Christine's potential customers and told them not to do business with her. The petition further alleged that on prior occasions, Kimberly confronted Christine, cursed at her, yelled violent words and language at her place of business and in front of her 12-year-old child, sent offensive texts and made harassing phone calls to Christine.

¶ 4 A hearing on Christine's petition was held on November 15, 2011. At the hearing, Christine testified that she and Kimberly were close friends prior to 2009. At some point their relationship changed.

¶ 5 Christine testified that on December 31, 2009, she was at a bar, called Cashes, with some friends. Kimberly went into the bar and confronted Christine. Christine said she did not want to talk to Kimberly. When Kimberly insisted that they talk, Christine agreed to go into the bathroom with Kimberly. In the bathroom, the women had an argument. Christine eventually walked away and returned to her friends.

¶ 6 On August 14, 2010, during Wenona Days, Christine and a friend, Pat Kinsella, were walking toward Christine's vehicle that was parked in a lot next to her business. As she approached her vehicle, Christine saw Kimberly and Kimberly's husband, Lee, approaching her vehicle. Christine told Pat to get in the car. Christine and Pat got in Christine's car and locked the doors. Christine tried to drive away, but Kimberly and Lee stood in front of the vehicle, preventing Christine from leaving. Kimberly knocked on the driver's side window. Christine initially ignored the knocking

but then rolled down the window. Christine said, "I don't want any problems." Kimberly then started screaming obscenities at Christine, including "slut," "whore," and "abortion queen."

¶ 7 In September 2010, Christine testified that she was walking across the street from her business to talk to a customer. Kimberly confronted Christine and called her "three or four names," including "bitch." Christine said nothing. Kimberly then sat in her car outside of Christine's business for about 10 minutes.

¶ 8 In November 2010, there was a wine tasting event on Main Street in Wenona, where Christine's business is located. Kimberly and Lee were present outside of Christine's business, and Christine called the police.

¶ 9 Christine testified that Kimberly's actions have been harmful to her business. She explained that "[i]t's not easy at all in a small town to have someone call you names in front of your business." Kimberly's actions also caused Christine anxiety and emotional distress. She purposely avoids going to community events for fear that she will be confronted by Kimberly.

¶ 10 Molly Stehl testified that she is the step-mother of Christine's child, Braydon. She went to pick up Braydon at Christine's place of business during a wine-tasting event in November 2010. She observed Kimberly and Lee outside Christine's place of business at that time. She did not hear Kimberly or Lee say any disparaging remarks about Christine.

¶ 11 Patrick Kinsella testified that in August 2010, at Wenona Days, he and Christine were walking toward Christine's vehicle when Christine saw Kimberly approaching. Christine instructed him to get in her car. He and Christine got in the car and locked the doors. Kimberly came to Christine's window and repeatedly knocked on it. Christine attempted to leave but Lee stepped in front of the car and would not move. Kimberly began yelling foul and vulgar names at Christine,

like "f***ing cunt" and "diseased." Kimberly also asked Christine, "Did you tell him you have herpes yet?" Eventually, Lee moved from in front of the car, and Christine was able to drive away.

¶ 12 Kimberly testified that she was close friends with Christine prior to 2009. They started having problems after Christine's husband, Brian, began working for Kimberly. On New Year's Eve 2009, Kimberly sought out Christine at Cashes, a bar. Christine said she did not want to talk to Kimberly, but Kimberly insisted. Christine and Kimberly went into the bathroom and argued. Kimberly denied threatening Christine on that occasion or any other occasion.

¶ 13 Kimberly admitted that during Wenona Days 2010, she approached Christine's vehicle and knocked on her window. At first, Christine refused to roll down the window but eventually did. Kimberly said she asked Christine why she thought it was funny to tell people intimate details of her life. According to Kimberly, Christine laughed. Their conversation continued for approximately five minutes until Lee pulled her away. Kimberly denied that Lee ever stood in front of Christine's car preventing her from leaving. She admitted calling Christine several vulgar names during the conversation.

¶ 14 Brian Loudenbach testified that he is Christine's ex-husband. He was present at Wenona Days in August 2010. He witnessed Kimberly and Lee walk up to Christine's vehicle. He then saw Kimberly and Christine "talk" for approximately five minutes. He was approximately 75 to 100 feet away, and it sounded like normal conversation to him. He did not see Lee block Christine's vehicle at any time.

¶ 15 Lee Boedigheimer testified that during Wenona Days in 2010, his wife, Kimberly, saw Christine and wanted to confront her about why she was telling people personal details about Kimberly's life. Kimberly initially asked Christine if she could talk to her. Christine said, "No," but

eventually rolled down her window. Christine and Kimberly then started "squabbling back and forth." Lee admitted that Kimberly said something about Christine having herpes. Lee eventually led Kimberly away, telling her, "It's not worth it."

¶ 16 At the conclusion of the hearing, the trial court found two instances of stalking by Kimberly toward Christine: New-Year's Eve 2009 at Cashes bar, and August 2010, during Wenona Days. The court found that such conduct violated the Act and entitled Christine to a plenary stalking no contact order effective November 15, 2011, to November 15, 2013.

¶ 17 The Stalking No Contact Order Act became effective on January 1, 2010. Pub. Act 96-246 (eff. Jan. 1, 2010). The purpose of the Act is to provide a civil remedy to all stalking victims requiring offenders to stay away from them. 740 ILCS 21/5 (West 2010). The Act allows a victim of stalking to file a petition for a stalking no contact order. 740 ILCS 21/20(a)(1) (West 2010). "If the court finds that the petitioner has been a victim of stalking, a stalking no contact order shall issue." 740 ILCS 21/80(a) (West 2010).

¶ 18 Section 10 defines relevant terms of the Act. 740 ILCS 21/10 (West 2010). The Act defines "stalking" as "engaging 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 fear for his or her safety *** or suffer emotional distress." 740 ILCS 21/10 (West 2010). "Course of conduct" is defined as "2 or more acts including but not limited to acts in which a respondent directly, indirectly or through third parties, by any action, method, device or means follows, monitors, observes, surveils, threatens or communicates to or about a person, engages in other contact or interferes with or damages a person's property or pet." *Id.* Finally, "contact" includes "any contact with the victim, that is initiated or continued without the victim's consent, or that is in disregard of the victim's expressed

desire that the contact be avoided or discontinued, including but not limited to being in the physical presence of the victim *** approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; [or] entering onto or remaining on property owned, leased, or occupied by the victim." *Id.*

¶ 19 Here, the trial court ruled that Kimberly engaged in "stalking" by engaging in inappropriate contact with Christine on two occasions: New Year's Eve 2009, and August 2010 at Wenona Days. Kimberly contends that her contact with Christine on New Year's Eve 2009 should not have been considered by the trial court because that incident occurred before the effective date of the Act.

¶ 20 In assessing whether a statute applies retroactively to conduct that occurred prior to its effective date, Illinois courts have adopted the approach set forth by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). *Commonwealth Edison Co. v. Will County Collector*, 196 Ill. 2d 27, 37-39 (2001). The *Landgraf* analysis consists of two steps. First, if the legislature has expressly prescribed the statute's temporal reach, the expression of legislative intent must be given effect absent a constitutional prohibition. *Allegis Realty Investors v. Novak*, 223 Ill. 2d 318, 330 (2006). Second, if the statute contains no express provision regarding its temporal reach, the court must determine whether the new statute would have retroactive effect, keeping in mind the general principal that prospectivity is the appropriate default rule. *Id.* At 330-31. In making this determination, a court must consider whether retroactive application of the new statute will impair rights a party possessed when acting, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed. *Id.* at 331.

¶ 21 Pursuant to the first step of *Landgraf*, we must first determine whether the General Assembly "expressly prescribed" the temporal reach of the Act. We find that it did not because the Act does

not state that it applies to conduct committed before its effective date.

¶ 22 Thus, we must move to the second step of the *Landgraf* analysis and determine if the Act will 1) impair rights Kimberly possessed when acting, 2) increase Kimberly's liability for past conduct, or 3) impose new duties with respect to transactions already completed. See *Allegis*, 223 Ill. 2d at 330-31. Turning to the first provision, the Act does not impair rights Kimberly possessed when acting because she had no right to engage in stalking, pursuant to the Criminal Code of 1961. See 720 ILCS 5/12-7.3 (West 2010). Turning to the second provision, we must determine if the Act increases Kimberly's liability for past conduct.

¶ 23 "Liability" is defined as the " 'quality or state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment.' " *Central Illinois Light Co. v. Home Insurance Co.*, 213 Ill. 2d 141, 155 (2004) (quoting Black's Law Dictionary 932 (8th ed. 2004)). Under the Act, when a petitioner is found to be a victim of stalking, a no contact order is issued against the respondent. 740 ILCS 21/80(a) (West 2010). A no contact order prohibits a respondent from one or more of the following: (1) threatening to commit or committing stalking, (2) having any contact with the petitioner, (3) knowingly coming within or knowingly remaining within a specified distance of the petitioner or the petitioner's residence, daycare, school, place of employment, or any other specified place frequented by the petitioner, or (4) possessing a Firearm Owners Identification or possessing or buying firearms. 740 ILCS 21/80(b)(1)-(4) (West 2010). The court may also order other injunctive relief necessary to protect the petitioner. 740 ILCS 21/80(b)(5) (West 2010). A respondent who knowingly violates a stalking no contact order commits a Class A misdemeanor. 740 ILCS 21/125 (West 2010). A second or subsequent violation is a Class 4 felony. *Id.*

¶ 24 Sections 80 and 125 of the Act impose "liability" on a respondent who is the subject of a stalking no contact order. Under section 80, the respondent is legally prohibited from performing various acts. 740 ILCS 21/80(b)(1)-(4) (West 2010). A respondent who fails to abide by those prohibitions faces criminal punishment pursuant to section 125. 740 ILCS 21/125 (West 2010). Under these circumstances, we find that the Act increases Kimberly's liability for conduct committed before the Act became effective.

¶ 25 Because the Act attaches new legal consequences to events completed before its enactment, it was improperly applied retrospectively. See *Commonwealth Edison Co.*, 196 Ill. 2d at 39. Since the Act must be applied prospectively, the trial court erred in using an act committed before the effective date of the Act to find that Christine was a victim of stalking.

¶ 26 The Act requires at least two acts of stalking to justify entry of a stalking no contact order. See 720 ILCS 21/10, 80(a) (West 2010). Here, the New Years Eve 2009 incident should not have been considered by the trial court as an act of stalking because it occurred before the effective date of the Act. Since this was one of only two incidents found by the trial court to be stalking, we must reverse the trial court's entry of the stalking no contact order against Kimberly. However, it is unclear from the record whether the trial court's ruling determined that any of the other incidents Christine testified about were stalking. Thus, we remand the case to the trial court to determine if any of the other incidents amounted to stalking. If the court finds that any one of the other events amounts to stalking, then that act along with the Wenona Days incident may be sufficient to establish that Christine was the victim of stalking, and a stalking no contact order shall issue. See 740 ILCS 21/10, 80(a) (West 2010).

¶ 27 If the trial court finds that no other event testified to by Christine amounts to stalking, then

no stalking no contact order may issue. See 740 ILCS 21/10, 80(a) (West 2010). Nevertheless, we admonish Kimberly to refrain from making unwelcomed contact with Christine to avoid being subject to a stalking no contact order in the future.

¶ 28 Reversed and remanded.