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2013 IL App (3d) 120326-U

Order filed August 16, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

JEANETTE C. GIBSON,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Petitioner-Appellant,)	Henry County, Illinois,
)	
v.)	Appeal No. 3-12-0326
)	Circuit No. 11-OP-165
ARTHUR ARRINGTON,)	
)	Honorable
Respondent-Appellee.)	Dana R. McReynolds,
)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Schmidt specially concurred.

ORDER

- ¶ 1 *Held:* Petitioner forfeited her claim that the trial court abused its discretion in refusing to admit evidence from other proceedings initiated by the respondent in Scott County, Iowa, that it found to be irrelevant.
- ¶ 2 Petitioner Jeanette Gibson sought a plenary order of protection against respondent Arthur Arrington for Arrington's alleged harassment of her after their relationship ended. At a hearing on the petition, the trial court refused as irrelevant testimony regarding Arrington's claims against

Gibson in proceedings in Iowa where he sought an order of protection against Gibson. The trial court denied Gibson's petition for a plenary order of protection. She appealed. We affirm.

¶ 3

FACTS

¶ 4 Petitioner Jeanette Gibson filed a verified petition for an order of protection against respondent Arthur Arrington in November 2011. In the petition, Gibson alleged that following the end of their relationship, Arrington harassed her with ongoing phone calls, voice mails and text messages, tried to see her at her workplace and dojo, and invited her to a concert. These incidents occurred between October 14 and November 11, 2011. The petition also alleged that during the relationship, Arrington threatened to tie up Gibson and kidnap her, pushed her down repeatedly on the bed, and blocked her car in a parking lot. Based on the petition, the trial court granted an emergency order of protection prohibiting Arrington from harassing, abusing or interfering with Gibson, being within 500 feet of her, or being at her home or workplace. The emergency order was continued until February 2012, when a hearing took place on Gibson's petition for a plenary order of protection.

¶ 5 The bystander's report reveals that the following evidence was presented at the hearing. Gibson and Arrington had been involved in a relationship. After it ended, Arrington tried to contact Gibson 11 times via text messages, voice mails and phone calls, mostly during a two-week period in October. Arrington denied he threatened to tie up Gibson or to kidnap her or that he attended the dojo at times he knew Gibson would be there. He further denied blocking her car in the parking lot, stating that he pulled up behind her vehicle and they talked. According to Arrington, he and Gibson were into "role playing," which he offered as explanation for her claims that he pushed her down on a bed and prevented her from getting up. Arrington admitted that he attended the same dojo as Gibson and

that he brought flowers to her workplace after their breakup with a note requesting to see her.

¶ 6 Gibson's attorney attempted to question Arrington about a petition Arrington filed in the trial court in Scott County, Iowa, where he lived, seeking an order of protection against Gibson. The following colloquy took place.

“[Gibson's counsel]: Mr. Arrington, once you foun[d] out about Jeanette filing for an order of protection here in Henry in this matter, you sought an order of protection against her in Scott County.”

[Arrington's counsel]: Objection, relevance[.] [Y]our Honor[,] that is a separate proceeding.

The Court: Sustained.

[Gibson's counsel]: Your Honor, it is relevant to the issue of whether abuse has occurred and whether it is likely to continue in the absence of a court order.

The Court: I am going to allow it, but lay that foundation.

[Gibson's counsel]: Yes, your Honor. Mr. Arrington, in the order of protection hearing in Scott County, you claimed that Jeanette is a witch.

[Arrington's counsel]: Objection. Relevance.

[Gibson's counsel]: Your Honor[,] this evidence is relevant to demonstrate the Respondent's obsession with the Petitioner, an obsession that is likely to result in continued abuse if a court order does not issue.

The Court: The proceedings in Scott are not relevant to the matters here today[.] I am going to sustain the objection[. M]ove on.

[Gibson's counsel]: Mr. Arrington, you believe that Jeanette is a witch[?]

Mr. Arrington: She is a witch.”

¶ 7 No offer of proof was made regarding the excluded evidence. Gibson testified that after the relationship ended, Arrington brought flowers to her place of employment and demanded that she see him. She also encountered him at the dojo to which they both belonged. Arrington knew when Gibson would be there, and on one occasion, he demanded she join him for coffee. She declined. While they were dating, Arrington once threatened to tie her up and kidnap her while they were in his car. Another time, he threw her onto his bed, and when she tried to escape, he continued throwing her on the bed. Other times he would not let her leave the bedroom or the car. She denied they were into “role-playing.” Although married, Gibson would spend the weekend at Arrington’s apartment. She described her relationship with Arrington as “friends with benefits.” Gibson described the communications she received from Arrington as “disturbing, unwelcome, harassing.” Arrington shared disturbing dreams he had, “where he was fighting for us; how he saw me in my other form; how evil guys inhabited his body.” Arrington also asked if she would “let him out of the dog house.” The most recent text from Arrington stated, “Paul Simon,” which Gibson stated was a demand she attend the concert with him, an event they had planned before their breakup. Other than to ask him to leave her alone, she contacted Arrington once by text after they broke up when she accidentally sent a photo of herself to him. His response to the text was, “Thanks for the photo. You look pretty.” Gibson acknowledged Arrington’s phone showed 141 incoming text messages from her and 147

outgoing messages from Arrington to her. She also acknowledged that Arrington had not contacted her since the emergency order of protection issued.

¶ 8 On cross-examination, Gibson admitted that Arrington had not texted her during the pendency of the emergency order of protection. On re-direct, her counsel again attempted to raise evidence regarding the proceedings in Scott County, arguing Arrington’s attorney opened the door by “questioning the order of protection hearings in Rock Island and Scott County.” The trial court held the evidence irrelevant and denied its admission. Gibson further testified she felt “frightened, nervous, [and] uneasy” about Arrington and about him showing up at locations where she would be. She was also concerned about his demands to see her, his threats, and confinement by him. She made it clear to Arrington that his actions were unwelcome.

¶ 9 Following the presentation of evidence, the trial court stated that the evidence it heard was “strange” and it would not have granted the emergency order of protection had it known the same information. It noted the case was close but found that Arrington did not act inappropriately in sending flowers; the testimony supports that Arrington and Gibson engaged in role-playing; Gibson’s allegation of physical confinement and her claim of accidentally texting were not persuasive; and Arrington’s response to the text was pleasant and not threatening. Determining that the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.* (West 2010)) was not intended to prevent the alleged occurrences, it denied Gibson’s petition and vacated the emergency order of protection. Gibson filed a motion to reconsider, which the trial court denied. She appealed.

¶ 10

ANALYSIS

¶ 11 The issue on appeal is whether the trial court erred in denying Gibson’s petition for a plenary order of protection. She specifically challenges the trial court’s refusal to allow evidence about the

Scott County proceedings, which she maintains was relevant and would have resulted in the grant of her petition for a plenary order of protection. Arrington has not filed an appellee's brief in this appeal but because the record is straightforward, we can decide the issues without relying on a response brief. *In re Marriage of Rogers*, 213 Ill. 2d 129, 135 (2004).

¶ 12 Relevant evidence is generally admissible. *Bachman v. General Motors Corp.*, 332 Ill. App. 3d 760, 797 (2002). Evidence is relevant when it tends to make the existence of any fact of consequence to the determination of an action more or less probable than it would be without the evidence. *Webber v. Wight & Co.*, 368 Ill. App. 3d 1007, 1028 (2006). It is within the trial court's discretion to determine what evidence is relevant and admissible and we will not reverse its determination unless it is an abuse of discretion. *Bachman*, 332 Ill. App. 3d at 797-98.

¶ 13 Gibson argues that evidence of the Scott County proceeding was relevant to establish whether Arrington harassed her and whether harassment was likely to continue to occur. She equates Arrington's allegations in the Scott County proceeding that she practiced witchcraft with harassment, and argues that the Scott County allegations demonstrated Arrington's obsession with her. She also argues that Arrington opened the door for further inquiry when he questioned her about contact during the term of the emergency order of protection on cross-examination because the Scott County proceedings also took place during the emergency order of protection term.

¶ 14 We decline to address Gibson's arguments, finding that she has forfeited them by failing to present an offer of proof at trial as to the excluded evidence. Generally, when a trial court refuses to admit evidence, a formal offer of proof must be made to preserve the issue for appeal. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002). "The purpose of an offer of proof is to disclose the nature of the offered evidence to which objection is interposed, for the information of the trial judge

and opposing counsel, and to enable the reviewing court to determine whether the exclusion was erroneous and harmful.’ ” *Greater Pleasant Valley Church in Christ v. Pappas*, 2012 IL App (1st) 111853, ¶ 37 (quoting *Sekerez v. Rush University Medical Center*, 2011 IL App (1st) 090889, § 68). However, where it is apparent the trial court clearly understood the nature and character of the evidence sought to be admitted, an offer of proof is not required. *Dillion*, 199 Ill. 2d at 495.

¶ 15 Gibson failed to make an offer of proof at trial and the record does not demonstrate that the trial court understood the nature and character of the excluded evidence. Indeed, as set forth in the colloquy quoted above, it is apparent the trial court did not clearly understand the evidence Gibson sought to introduce. It initially allowed the questioning before ultimately determining the evidence to be inadmissible. As such, an offer of proof was required. Gibson’s failure to present an offer of proof leaves us unable to determine whether the trial court improperly excluded evidence regarding the Scott County proceedings. Accordingly, we find that she has forfeited this issue and we decline to address it.

¶ 16 For the foregoing reasons, the judgment of the circuit court of Henry County is affirmed.

¶ 17 Affirmed.

¶ 18 JUSTICE SCHMIDT, specially concurring.

¶ 19 I simply wish to point out that even if the trial court did improperly exclude evidence, the failure of an offer of proof leaves us in a position where we cannot tell whether any error in excluding the evidence was prejudicial or harmless.