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2013 IL App (3d) 120462-U

Order filed February 11, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

ROSEMARIE BEECHAM,) Appeal from the Circuit Court
) of the 10th Judicial Circuit,
Petitioner-Appellee,) Tazewell County, Illinois,
)
v.) Appeal No. 3-12-0462
) Circuit No. 12-OP-285
)
PAUL MILLER,) Honorable
) Paul P. Gilfillan,
Respondent-Appellant.) Judge, Presiding.

PRESIDING JUSTICE WRIGHT delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's order granting petitioner a plenary no contact order was not against the manifest weight of the evidence. The trial court also correctly denied respondent's motion to continue.

¶ 2 Respondent, Paul Miller, appeals an order of the trial court granting petitioner, Rosemarie Beecham, a plenary no contact order, arguing that the trial court's findings were against the manifest weight of the evidence and the trial court abused its discretion by denying respondent's motion to continue. We affirm.

¶ 3

FACTS

¶ 4 On April 10, 2012, petitioner filed a “Verified Petition for Stalking No Contact Order” in Tazewell County circuit court against her neighbor, the respondent, alleging respondent threw threatening letters in her yard and posted a note about petitioner in his window in June 2011. The petition also alleged that in November 2011, the police were called after a neighbor heard respondent say that petitioner would die that night. After the police arrested respondent on the night in question, defendant posted bond, returned home, and shouted vulgarities loudly enough to be heard by petitioner throughout the course of the night, and he threw eggs at petitioner’s house. In addition, the petition alleged that on April 6, 2012, respondent referred to petitioner, who is Caucasian, as “negor [*sic*]” and “cunt,” told petitioner she should die, and called her pet a “negor [*sic*] dog.” The police again intervened on petitioner’s behalf on Easter Sunday, April 8, 2012, after respondent repeatedly called petitioner a “c**t” while she stood on her driveway.

¶ 5 Based on these allegations, the trial court issued an emergency no contact order on April 10, 2012, and scheduled a hearing for May 1, 2012. The court noted that since the parties were neighbors, respondent could continue to live in his home “so long as he ha[d] no contact with petitioner and commit[ed] no further act or threat of stalking.”

¶ 6 On May 1, 2012, respondent’s attorney requested a continuance of the hearing to request reports under the Freedom of Information Act and subpoena additional witnesses. The court denied the continuance after finding that no contact orders “are emergencies, and they’re pretty important, and absent [*sic*] compelling reason, something other than discovery per se, they need to go to hearing the sooner the better, so I’ll respectfully on that–kind of on a policy basis deny the motion to continue.”

¶ 7 Petitioner testified that on April 6, 2012 and April 8, 2012, respondent called her racial slurs and a “c**t.” She also testified that respondent told her she should die on April 6, 2012. Petitioner further testified that in June 2011, respondent threw notes into her yard and one note said “[r]un, Denny, run, ” presumably referring to petitioner’s husband, Dennis. Petitioner also alleged that respondent put a sign in the window that said he was praying for Denny’s soul. The police could not force respondent to remove the sign; however, respondent did have to delete the word “c**t” from the sign. Respondent admitted that he wrote “c**t” on the sign, but he later crossed the word out.

¶ 8 According to petitioner’s testimony, respondent was arrested in November 2011 for his harassing conduct toward petitioner and, following his release from jail, he screamed at her that this was the night she would die while she remained inside her house. She also suspected that it was respondent who threw eggs at her house, although she did not actually see him throw the eggs. Petitioner also stated that she was unable to enjoy her yard as a result of respondent’s actions, and that she was afraid to leave her home.

¶ 9 Karen Harrison testified that she lived across the street from petitioner and saw respondent place a cardboard sign on the Beecham property that said “die, Denny, die.” Dennis Beecham, petitioner’s husband, also testified. He stated that on April 8, 2012, respondent called petitioner a “c**t” three times. He also said in June 2011, respondent put a sign in his window that said “[r]un, Denny, run.” The sign had some “cuss words” that the police made respondent remove from the sign.

¶ 10 Penny Plowman also testified for petitioner. She stated that during the June 2011 incident, petitioner called Plowman a “c**t,” but Plowman did not hear him say anything directly to petitioner.

¶ 11 After petitioner presented her evidence, respondent moved for a directed finding. The court denied respondent's motion, and respondent testified on his own behalf. Respondent claimed he was friends with petitioner and her husband at one time, but the friendship dissolved after respondent had a property dispute with Plowman. Respondent admitted talking to his dog, and saying statements such as, "be careful, Joe, the witch is out; she'll be sending you to doggy jail again." He also admitted to calling petitioner's dog a "dumb n***er dog" on five occasions. In addition, he admitted that he put a sign in his own yard that said "[r]un, Denny, run." Respondent denied calling petitioner a "c**t" on Easter weekend, and he claimed that he was being harassed by petitioner.

¶ 12 After closing arguments, the trial court found petitioner and her witnesses were "highly credible" and respondent was not credible. The court found that respondent's privacy fence did not protect petitioner from respondent's harassment because respondent's comments reached petitioner, as defendant intended, through the fence. Specifically, the court noted that, "the fact that [respondent] admits walking around in his backyard talking to his dog about the witch is out; she's going to send you to dog jail is classic harassment behavior where he thinks he'll use that as an excuse and get off the hook because he's not talking directly face to face to someone when the clear intent is for that behavior not to be communicated to his dog who cannot communicate back to him but rather to be transmitted to the neighbor."

¶ 13 The court further found the sign in respondent's window as evidence of his intent to harass petitioner. The court agreed that respondent's behavior was both aggressive and passive, but "the aggressive-passive nature of it also supports an intent to harass and stalk." The court granted petitioner's request for the plenary no contact order and respondent appeals.

¶ 14

ANALYSIS

¶ 15 On appeal, respondent argues the trial court improperly granted petitioner’s plenary no contact order. Petitioner has not submitted a brief to this court, but where the record is simple and the issues are not complex, this court may decide the case. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 16 The Stalking No Contact Order Act (“the Act”) allows a victim of stalking to seek a civil remedy requiring a person to stay away from the victim and protected third parties. 740 ILCS 21/5 (West 2010). To date, no published decision has interpreted the provisions of the Act. However, since the protections available under the Act are similar to the characteristics of plenary orders of protection issued pursuant to the Illinois Domestic Violence Act of 1986, 750 ILCS 60/101 *et seq.* (West 2010), we will apply the same standard of review by examining whether the trial court’s decision to issue the plenary order in this case was contrary to the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 348-49 (2006) (holding that appropriate standard of review for orders of protection was whether the order was against the manifest weight of the evidence); 740 ILCS 21/95, 100 (West 2010). 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 350.

¶ 17 Respondent argues petitioner’s testimony was not consistent with the allegations contained in her verified petition or the testimony of her other witnesses. Although there were some minor differences between the testimony of petitioner and her witnesses, petitioner and her husband testified consistently with the allegations in the petition that respondent referred to petitioner with vulgar epithets on April 8, 2012. They also testified consistently that respondent displayed a sign in the window directed at petitioner and her husband, and the language on this sign contained the same offensive word. Moreover, petitioner and Harrison testified that during

the June 2011 incident, respondent wrote a note or a sign on cardboard that said either “die, Denny, die,” or “run, Denny, run.” Respondent admitted writing “c**t” on a sign aimed at petitioner, and agreed he only crossed this word off the sign after the police intervened. Moreover, he also admitted to insulting petitioner during outdoor conversations with his dog which occurred within earshot of the petitioner.

¶ 18 The trial court is in a superior position to a court of review to determine the credibility of the witnesses who testified before the court. *In re Guardianship of K.R.J.*, 405 Ill. App. 3d 527, 536 (2010). Based on this record, we conclude there is no reason to disturb the trial court’s findings of credibility. *People v. Frazier*, 248 Ill. App. 3d 6, 13 (1993) (trial court is in the best position to judge the credibility of witnesses).

¶ 19 Next, respondent argues that, even if the allegations in the petition are taken as true, his behavior did not justify the entry of a no contact order because he did not engage in a “course of conduct” directed at petitioner, and petitioner did not reasonably fear for her safety or suffer emotional distress. The legislature defined “course of conduct” in the Act 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.” 740 ILCS 21/10 (West 2010).

¶ 20 In this case, petitioner described several incidents of harassing behavior that took place over several months, from June 2011 until April 8, 2012. Her testimony demonstrated that respondent engaged in a course of conduct intended to harass and intimidate petitioner as evidenced by him repeatedly calling her a vulgar name, employing racial epithets, and writing

notes to petitioner's husband. Accordingly, we conclude that these incidents, which spanned nearly one year, can easily be construed as a "course of conduct."

¶ 21 Respondent further contends that his conduct would not have caused petitioner to reasonably fear for her safety or suffer emotional distress. According to petitioner's testimony, on two occasions respondent told petitioner that she would die that night. Petitioner also discussed the anxiety she felt, and that she was unable to enjoy her own yard. We conclude this testimony sufficiently establishes that a reasonable person would suffer fear and emotional distress as a result of respondent's behavior.

¶ 22 Finally, respondent argues the trial court abused its discretion by denying his motion to continue. A trial court's decision to deny a motion to continue is reviewed for an abuse of discretion. *In re Nancy A.*, 344 Ill. App. 3d 540, 550 (2003). We agree with the trial court that a stalking no contact order must be heard as expeditiously as possible. See *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 1163-64 (2000) (stating that a proceeding for an order of protection is an expedited proceeding that should not be prolonged unless necessary). Respondent's counsel did not offer any good cause for requesting additional time to contact witnesses or obtain public documents, and she did not assert that any attempts had been made to previously secure this information before requesting a continuance.

¶ 23 CONCLUSION

¶ 24 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 25 Affirmed.