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2013 IL App (3d) 120478-U

Order filed February 15, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

ELIZABETH A. GREGORY,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Petitioner-Appellee,	)	Hancock County, Illinois,
	)	
v.	)	Appeal No. 3-12-0478
	)	Circuit No. 12-OP-6
	)	
DAVID B. ALLEN,	)	Honorable
	)	David F. Stoverink,
Respondent-Appellant.	)	Judge, Presiding.

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

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**ORDER**

- ¶ 1       *Held:* (1) Trial court's finding that respondent's actions constituted harassment under the Domestic Violence Act (750 ILCS 60/103 (West 2010)) was not against the manifest weight of the evidence.  
(2) Plenary order of protection entered by the trial court following oral pronouncement of its ruling satisfied the statutory requirement.
- ¶ 2       Respondent, David B. Allen, appeals from the circuit court's order granting a plenary order of protection in favor of his ex-wife, Elizabeth Gregory, and their two sons. On appeal,

respondent argues that (1) the court's finding of harassment was against the manifest weight of the evidence, and (2) the court failed to comply with the statutory requirement that it make specific findings. We affirm.

¶ 3 In March of 2012, Gregory petitioned for an order of protection on behalf of herself and her children, Daniel Allen, age 16, and Thomas Allen, age 12. At the hearing, Gregory testified that the parties were divorced in Mississippi and that the original divorce decree had been transferred to Lee County, Iowa. She explained that, pursuant to the decree, Allen is allowed visitation with the children over Christmas break and during the summer and that any visitation exchange is to be in a public place. The decree further provides that visitation may be scheduled for other times if it is mutually agreeable to both parties and has been prearranged. Allen now lives in California, and Gregory and the children live in Hamilton, Illinois.

¶ 4 Gregory testified that on March 9, 2012, Allen and his brother, Ray, drove to Gregory's house in Hamilton, walked onto the porch and rang the doorbell. When no one answered, Allen started banging on the door and yelling loudly at his son Daniel to "open up, it's your dad." He then walked over to a window on the porch and pressed his face against it. His brother had a video camera and was recording the encounter. At one point, Allen was banging and beating on the window so loudly that Gregory was afraid it would break. Allen began pacing in front of the living room and the kitchen windows. He noticed Gregory's father in the living room and yelled through the window, "I can see you, mother \*\*\*\*\*." Allen continued to yell for Daniel to come outside, saying "Tell me why you won't talk to me. Come out and tell me why you won't talk to me and I'll leave." Gregory called the

police department.

¶ 5 A few minutes later, an officer arrived. When Daniel and Gregory went outside on the porch, the police officer was talking to Allen and his brother on the street. Daniel told Allen, "You wasted your money coming here, you're dead to me, I don't want to have anything to do with you." Allen indicated that he could not hear Daniel and began walking toward the porch. Gregory told him that she did not want him on her property and that she and Daniel would have to talk louder. The tone of the conversation escalated, and the officer asked Allen to leave. Allen and his brother got into their car and drove away. As he was leaving, Allen yelled out, "God is going to punish you for this. God is going to get you for this." Gregory testified that she took Allen's words as a threat and found his behavior "scary."

¶ 6 Gregory stated that both she and Daniel received several phone calls from Allen immediately after he left. Allen called Gregory two days later and left a voice mail on her cell phone stating that Gregory was an evil person and that God was going to punish her for taking his children away and exposing them to a child predator. Allen told Gregory that "he was going [to court] to take the kids away from [her]." Gregory testified that she did not feel safe or comfortable in her house. She was fearful that Allen would come back, so she took the children and went to her parent's house for the weekend. While she was there, she noticed an unfamiliar vehicle parked out front. Her brother went to investigate, and the person drove away. Gregory claimed that prior to the incident on March 9, 2012, Allen had not exercised visitation with the boys since the summer of 2008.

¶ 7 Officer Brian Finch stated that he was dispatched to Gregory's house on a domestic

disturbance call. He spoke to Allen and his brother outside the residence and told them that they needed to provide some paperwork that gave them authority to be on the premisses. Allen had a video camera and was taping the conversation. Officer Finch asked him to stop, and Allen put the camera in his pocket. Daniel came out of the house, and Allen and Daniel started yelling at each other. Finch intervened, told Daniel to go back inside and asked Allen to leave. Allen and his brother got in their car and left.

¶ 8 Daniel was sixteen at the time of the incident and had not seen his father for almost four years. He testified that he told Allen he wasted his money driving to see him and that he did not invite his father to his house. The incident made Daniel feel "very scared and then very irritated at the same time" because he had sent Allen several emails and letters telling him that he did not want to see him. Daniel stated that he had "seen on the news of [Allen] handling drugs and then all the emails and phone calls that he would try to call and threaten us, it was just nothing that I wanted to deal with." He was afraid that Allen might show up at the house again and try to break in and hurt him and his brother, or his mom, and try to take them away. After the incident on March 9, Daniel received so many phone calls from Allen that he changed his cell phone number. When asked how many calls he received, Daniel said that he had received "about five." Daniel testified that his mother never asked him to refuse contact with his father.

¶ 9 Allen stated that he arrived at Gregory's house, knocked on the door, noticed that Gregory and the boys were inside and yelled at them to answer the door. His account of the incident was similar to the description given by Gregory, although Allen testified that he "deliberately did not say anything threatening." Allen testified that an officer arrived and

asked to speak to him. The officer asked him to stop recording, and he did. Allen stated that he and his brother got in the car and immediately left the state. He admitted that he attempted to call Daniel after he left but claimed that he only called him twice and then sent him a text message. He testified that he was hurt and was only trying to make contact with his son.

¶ 10 On cross-examination, Allen admitted that he had been in prison for "cannabis manufacturing." He testified that he is currently self-employed as a "cannabis physician" in California. He stated that he is required to pay child support and that he has not paid support since last summer.

¶ 11 At the conclusion of the hearing, the trial court found that Allen's conduct constituted harassment of Gregory and Daniel and that a plenary order of protection was appropriate. In its oral pronouncement, the court also stated:

"[Allen] is to have no physical contact with either petitioner nor with either of the children until such time as he can come into court in a proper custody proceeding and establish to the Court that he really cares for his children, is able to do what's right for them, including supporting them."

The court's written order granted a plenary order of protection in favor of Gregory. The order instructed Allen to stay away from Gregory's house, denied all visitation with Daniel and restricted visitation with Thomas to reasonable phone calls, text-messaging and emails.

¶ 12 I

¶ 13 Allen first claims that the trial court's ruling that his actions constituted harassment as defined in the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/103 (West

2010)) was against the manifest weight of the evidence.

¶ 14 Under the Act, an order of protection shall be issued if the trial court finds that the petitioner has been abused by a family member. 750 ILCS 60/214(a) (West 2010). Section 103 states that abuse means "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis." 750 ILCS 60/103(1) (West 2010). The Act defines harassment as "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). Harassment results from intentional acts which cause someone to be worried, anxious, or uncomfortable, and does not necessarily require an overt act of violence. *People v. Reynolds*, 302 Ill. App. 3d 722 (1999). The Act states that its provisions are to be liberally construed to promote the underlying purpose of preventing domestic abuse. 750 ILCS 60/102 (West 2010).

¶ 15 The standard of proof in a proceeding under the Domestic Violence Act is by a preponderance of the evidence. 750 ILCS 60/205(a) (West 2010). A trial court's finding by a preponderance of the evidence will only be reversed if it is against the manifest weight of the evidence. *Best v. Best*, 223 Ill.2d 342 (2006). A finding is against the manifest weight of the evidence if the opposite conclusion is clearly evident or if the finding itself is arbitrary, unreasonable, or not based upon the evidence presented. *Id.* at 350.

¶ 16 Here, the determination that Allen's conduct constituted harassment was not against the manifest weight of the evidence. Allen intentionally drove to Gregory's house and

demanded to see his children. He pounded on the door, peered into windows, and yelled at the children to come outside and talk to him. Gregory testified that Allen's words and acts made her feel threatened and uncomfortable. After he left, she no longer felt safe in her own house. Daniel testified that he was also scared by Allen's actions that day. He testified that he did not want any contact with Allen but that Allen refused to listen to his requests. Allen's use of a video camera demonstrates additional invasive and harassing behavior. His acts created an emotional atmosphere full of fear and anxiety, particularly in light of the presence of his two children. The trial court's finding of abuse in this case was neither unreasonable nor arbitrary, nor was the opposite conclusion clearly evident. Therefore, the court's finding was not against the manifest weight of the evidence.

¶ 17

## II

¶ 18

Allen also claims that the trial court's order should be reversed because the court failed to make specific findings in the record or in writing as required under section 214(c)(3) of the Act. We disagree.

¶ 19

Section 214(c)(3) provides:

"Subject to the exceptions set forth in paragraph (4) of this subsection, the court shall make its findings in an official record or in writing, and shall at a minimum set forth the following:

(i) That the court has considered the applicable relevant factors described in paragraphs (1) and (2) of this subsection.

(ii) Whether the conduct or actions of respondent, unless prohibited, will likely cause irreparable harm or continued abuse.

(iii) Whether it is necessary to grant the requested relief in order to protect petitioner or other alleged abused persons." 750 ILCS 60/214(c)(3) (West 2010).

In cases involving an order of protection, the duty of a reviewing court is to "consider the trial record as a whole and to ignore errors that are harmless." *People v. Robinson*, 368 Ill. App. 3d 963 (2006). A trial court's findings in support of a plenary order are sufficient to satisfy the requirements of the Act where the plenary order is an extension of the emergency order and the emergency order of protection makes specific findings of neglect and abuse. *Mowen v. Holland*, 336 Ill. App. 3d 368 (2003).

¶ 20 In considering this record as a whole, it is clear that the trial court found a plenary order of protection was necessary in order to protect Gregory and Daniel from further abuse. At the conclusion of the hearing, the court noted that Allen's conduct was "despicable" and that a plenary order of protection was appropriate. Admittedly, the form order does not include a handwritten recitation of the court's oral statements. However, it does state that the court considered the required statutory factors, including the nature, frequency, severity, pattern and consequences of Allen's abuse of Gregory and Daniel, and the danger that Daniel and Thomas would be harassed or improperly removed from Gregory's care. See 750 ILCS 60/214(c)(1) (West 2010). It also contains sufficient information as to the nature of the abuse and the type of remedies the trial court intended to order. See 750 ILCS 60/214(a), (b) (West 2010). In addition, the plenary order effectively continued the emergency order in which the court specifically found that Gregory and the children were harassed and intimidated. Therefore, the trial court's findings in support of the plenary order of protection adequately fulfill the statutory requirements and any omissions are harmless error.

¶ 21

### III

¶ 22

Last, Allen argues that the order of protection form does not comply with the trial court's oral ruling because it does not include a statement that Allen "have no physical contact with either petitioner nor with either of the children until such time as he can come into court in a proper custody proceeding and establish to the Court that he really cares for his children, is able to do what is right for them, including supporting them." Allen fails to cite any authority to support his argument that the court's failure to include these conditions in it's written order somehow renders the order of protection unenforceable. See *Ulm v. Memorial Medical Center*, 2012 IL App (4th) 110421 (appellant's failure to cite authority violates Supreme Court Rule 341(h)(7) and forfeits issue on appeal). Nevertheless, Allen's assertions are unpersuasive. We have considered the context surrounding the statement and find that the court was merely expressing its dissatisfaction with Allen's lack of participation in his children's lives. As Allen correctly states, the trial court does not have the authority to condition an order of protection on a respondent's ability to care for or support his children. See 750 ILCS 60/214 (West 2010). For that reason, the court's oral pronouncement was not included as a condition in the written order of protection. We conclude that the plenary order of protection adequately conforms to the trial court's ruling in accordance with the requirements of the Act.

¶ 23

### CONCLUSION

¶ 24

The judgment of the circuit court of Hancock County is affirmed.

¶ 25

Affirmed.