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2013 IL App (3d) 120797-U

Order filed October 10, 2013

IN THE
APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

SAMANTHA WEBB,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Petitioner-Appellee,)	Bureau County, Illinois,
)	
v.)	Appeal No. 3-12-0797
)	Circuit No. 12-OP-63
LINDA GRONBACH and GLEN)	
GRONBACH,)	
)	Honorable Cornelius J. Hollerich,
Respondents-Appellants.)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* Evidence supported the trial court's entry of an order of protection.
- ¶ 2 On August 31, 2012, the Bureau County circuit court granted petitioner's, Samantha Webb, petition for order of protection and entered a plenary order of protection against respondents, Linda and Glen Gronbach.

¶ 3 The trial court found, *inter alia*, that respondents had abused and/or harassed petitioner within the meaning of the Illinois Domestic Violence Act of 1986 (the Act) (750 ILCS 60/101 *et seq.* (West 2010)).

¶ 4 Respondents appeal, claiming petitioner failed to prove abuse by a preponderance of the evidence, and the trial court's finding was against the manifest weight of the evidence.

¶ 5 We affirm.

¶ 6 **BACKGROUND**

¶ 7 On August 16, 2012, petitioner filed a verified petition for order of protection seeking emergency relief against respondents, Linda Gronbach, petitioner's mother, and Glen Gronbach, petitioner's stepfather. Both petitions alleged the same set of facts as the basis for the order of protection. Those allegations can be summarized as follows: (1) during a parenting time exchange, petitioner and Linda got into a heated argument. Glen told petitioner that if she spoke to her mother like that again, he would kill her where she stood; (2) that Linda and another relative continued to call the Illinois Department of Children and Family Services (DCFS) making allegations of abuse and neglect, all of which were later confirmed as unfounded; (3) that both respondents threatened to call DCFS multiple times; (4) that when petitioner was six months pregnant with her youngest child, Glen made sexual advances toward the petitioner; (5) that respondents entered her apartment without permission, and Glen proceeded to get into a physical altercation with petitioner's fiancée; (6) that Linda has used social media as an outlet to threaten petitioner and make false accusations of child abuse; (7) that Linda enlists the help of

others to continue to call, text message and e-mail petitioner regarding allegations of child abuse; (8) that Linda told petitioner she has people watching her all the time and knows where she is, where she takes the kids, and who she has them around at all times; (9) that following an argument with Linda about who was taking care of petitioner's children, Linda shoved petitioner; (10) and that Linda kicked petitioner and her children out of her house in the dead of winter with nowhere to go.

¶ 8 The trial court granted petitioner an emergency order of protection against respondents on August 16, 2012.

¶ 9 On August 31, 2012, petitioner appeared *pro se* for the plenary hearing. Respondents were represented by counsel. Petitioner testified on her own behalf with the trial court conducting the direct examination. The petitioner testified to the events alleged in the petition. The event that served as the catalyst for seeking an order of protection occurred on August 14, 2012, when petitioner learned that respondents had her children at the Princeton police department. According to petitioner, her ex-husband had allowed respondents to have the children overnight. Respondents told petitioner that they wanted to exchange the children at the police station because they "didn't want any trouble." Petitioner arrived at the police station, and an argument with her mother ensued. Petitioner admitted to calling her mother "a bitch." She told her mother to stay away from her family. At that point, petitioner testified that Gary rolled down the window of his car and told petitioner that if she spoke to her mother like that again, he would kill her where she stood.

¶ 10 Petitioner stated that the aforementioned event was not the only reason she was seeking an order of protection—there had been numerous problems involving respondents in the past. Petitioner testified that her mother called DCFS multiple times. DCFS determined that all those cases were unfounded. Two DCFS reports presented to the court by petitioner, and were admitted into evidence without objection as petitioner's exhibits No. 1 and No. 2. Those exhibits confirmed that the allegations made against petitioner and her fiancée were unfounded. The exhibits also showed that there were three prior unfounded reports made against petitioner. However, it remained unclear as to who made the initial report against petitioner. Petitioner also stated that her mother has people harass her by calling her, texting her, and messaging her on Facebook. She has asked her mother to stop, but the communication continues.

¶ 11 Petitioner testified that while she was six months pregnant with her youngest child, her stepfather tried to force her to have sex with him. Had her brother's ex-girlfriend not been in the home, petitioner feared he would not have stopped. Petitioner stated that nothing like that happened again. Petitioner testified that after that incident, which occurred approximately in October 2011, she did not visit her mother's home very often.

¶ 12 In the summer of 2011, petitioner stated that she and her mother got into an argument about the different people petitioner had babysitting the children. The argument escalated, and petitioner testified that her mother shoved her, causing her to stumble a foot or so into the doorway. She stated she did not fall or hit anything. Petitioner's oldest son witnessed the altercation. On cross-examination, petitioner stated that she believed her mother shoved her

intentionally, but did not know if she meant to hurt her. At the time it occurred, petitioner had been walking away from her mother to avoid further confrontation.

¶ 13 Respondents denied all of petitioner's allegations. Linda testified that she and petitioner did get into an argument at the Princeton police department, but denied that Glen ever threatened petitioner. She stated that she "would not have stood for it." Linda stated that Glen only asked petitioner if she had insurance on the car, as Glen's name remained on the title. Linda denied ever calling DCFS, though she admitted she threatened to call the agency and thought that DCFS should be involved.

¶ 14 Glen testified that during the incident at the police department, petitioner called Linda names and used foul language. He denied threatening petitioner. Like Linda, he testified that he rolled the window down and told petitioner that she better have insurance on the car. Glen denied calling DCFS, and stated that Linda never called the agency either. Glen similarly denied the allegation that he tried to force petitioner to have sex with him. He stated that petitioner had been upset about work and school, and he hugged her to comfort her. Linda denied this allegation as well.

¶ 15 At the close of testimony, the trial court sorted through the differing versions of the evidence and applied the definitions of abuse and harassment as required by the Act (750 ILCS 60/103 (West 2010)). In regard to the repeated reports to DCFS, the trial court recognized that there was no doubt numerous reports had been made, and all those determined to be unfounded. However, from the reports entered into evidence and the testimony given, the court could not

determine who made the reports. Respondents both testified to believing that DCFS should be involved, but denied making such reports. The court found there was not enough evidence for it to conclude that respondents had. The court noted, however, that it was concerned with the fact that respondents seemingly had not accepted the results of the various investigations.

¶ 16 As for the incident that occurred outside the Princeton police department, the trial court stated that it was inclined to believe petitioner's version of the events. The court found it unlikely that after the verbal altercation in which petitioner called her mother a number of expletives, Glen's response was to ask petitioner if she had insurance on the car. Furthermore, the court found that Glen tended to insert himself into the middle of situations that he reasonably knew would lead to some kind of confrontation. In closing, respondents' counsel noted that petitioner did not have any other witnesses to corroborate her version of the events. The trial court pointed out that respondents also presented no testimony, aside from their own, to bolster their version of what happened that day. The court found that it was "a he said, she said situation."

¶ 17 In regard to the allegations that Linda had people watching, calling, and e-mailing the petitioner, the court found there was not enough evidence to support that allegation. The trial court did find petitioner's version of the events that transpired in the summer of 2011 more credible than Linda's. Accordingly, the court concluded that while the push could likely be construed as abuse, it believed that respondents' actions were more akin to harassment.

¶ 18 The court took issue with respondents' general and constant interference with the petitioner's parenting of her children. Essentially, the court found that all of the events, taken

together, described harassment, which is a form of abuse under the Act. The court found that, objectively, it was causing the petitioner emotional distress. The court did opine, however, that this is not the kind of case that the statute was primarily designed for—recognizing that this was a family dispute and touched on child custody and visitation.

¶ 19 The trial court entered a finding that respondents had abused petitioner and the minor children and issued a plenary order of protection. The order prohibited respondents from coming within 300 feet of petitioner or the minor children, including their residence, daycare, school, and place of employment. The order also prohibited respondents from committing acts of harassment, interference with personal liberty or stalking.

¶ 20 This timely appeal followed.

¶ 21 ANALYSIS

¶ 22 We initially note that petitioner, as appellee, has not filed a brief in this appeal. A reviewing court generally will not act as an advocate for an appellee who fails to file a brief. *First National Bank of Ottawa v. Dillinger*, 386 Ill. App. 3d 393, 395 (2008). However, when a record is simple and the claimed error can easily be decided without the aid of an appellee brief, the court should decide the appeal on the merits. *Id.*; see also *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128 (1976). Respondents' brief sets their arguments out in bullet-point format. From what we can glean, respondents only argument is that petitioner failed to prove by a preponderance of the evidence that respondents' abused her as required by the Act (750 ILCS 60/214(a) (West 2012)). Respondents' claim can be resolved on this record.

¶ 23 The issuance of a plenary order of protection is governed by sections 214 and 219 of the Act. 750 ILCS 60/214 (West 2012); 750 ILCS 60/219 (West 2007). Section 219 dictates that a plenary order of protection shall issue if petitioner has served notice of the hearing for that order on respondent, and satisfies the requirements of this section for one or more of the requested remedies, including the requirements of section 214. Section 214, in turn, authorizes the issuance of an order of protection "[i]f the court finds that petitioner has been abused by a family or household member or that petitioner is a high-risk adult who has been abused, neglected, or exploited, as defined in this Act." 750 ILCS 60/214(a) (West 2010). As such, the central inquiry in any proceeding to obtain an order of protection is whether the petitioner has been abused. *Best v. Best*, 223 Ill. 2d 342, 348 (2006).

¶ 24 Abuse is defined as "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation." 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).

¶ 25 Respondents provide this court with two competing standards of review for the trial court's issuance of an order of protection: abuse of discretion, citing to *Lutz v. Lutz*, 313 Ill. App. 3d 286, 289 (2000), and manifest weight of the evidence, citing to *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 1165 (2000) (though we would note that while the *Wilson* court discussed the manifest weight of the evidence standard, the court ultimately applied an abuse of discretion

standard). However, the supreme court has clarified such findings made under the Act should be reviewed under the manifest weight of the evidence standard of review. See *Best*, 223 Ill. 2d at 349-50; see also *Stapp v. Jansen*, 2013 IL App (4th) 120513, ¶ 16.

¶ 26 Here, the petitioner testified to events involving both respondents that occurred over a period of approximately two years. The trial court, in a step-by-step fashion, weighed the evidence presented at hearing. Generally speaking, it considered petitioner's testimony more credible. In regard to the incident where petitioner testified Linda shoved her, causing her to stumble approximately a foot into a doorway, the court believed that this could be considered to constitute physical abuse as defined by the Act. The court went on to note that while it did not believe it was chronic and/or constant occurrence, it believed that it did happen. Importantly, the court stated that harassment also constituted abuse under the statute, and that it was harassment that it had in mind in this case.

¶ 27 The same findings were made as to Glen. The trial court accepted petitioner's version of the testimony regarding Glen's sexual advances, but found that those actions alone did not constitute a basis for an order of protection. However, the court stated that it appeared that Glen was involved in most of incidents, and that "some of his specific actions have been the cause of the problems." Again, the trial court noted both Linda's and Glen's continued interference in petitioner's parenting of the minor children constituted harassment.

¶ 28 There is no need for us to rehash the facts of this case beyond what is set out above. The trial court hit the nail on the head when it stated this case is "a he said, she said situation."

Neither petitioner nor respondents provided any additional witnesses. On appeal, respondents cite to no authority, conflicting or otherwise, that would serve to distinguish their case or bring the trial court's decision under closer scrutiny. We defer to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *Best*, 223 Ill. 2d at 350. Where a conflict in the witnesses' testimony exists, a reviewing court will not substitute its judgment for that of the trier of fact, whose function it is to determine the credibility of the witnesses' testimony and the inferences to be drawn therefrom. *Id.* at 350-51. A reviewing court should not overturn a trial court's finding of fact merely because it might have reached a different decision. *Bazydlo v. Volant*, 164 Ill. 2d 207, 214 (1995).

¶ 29 The petitioner made certain allegations, which the respondents denied. The trial court found petitioner's version of events more credible, and thus she proved she was abused by a preponderance of the evidence. The record demonstrates that the evidence was sufficient to support the trial court's finding. Accordingly, the trial court did not err in granting the plenary order of protection.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, the judgment of the circuit court of Bureau County is affirmed.

¶ 32 Affirmed.