



to "scare him off the case."

¶ 3 After a protracted evidentiary hearing the circuit court of St. Clair County declined to enter an order under the Stalking Act, finding that none of the defendant's alleged behavior constituted stalking within the meaning of the Stalking Act. The court concluded that none of the defendant's acts were such as would "cause emotional distress in a reasonable person" and did not constitute stalking within the meaning of the Stalking Act. The court also found that the evidence belied the claim of plaintiff Wendy Dribben that she feared for her safety. The plaintiffs filed their notice of interlocutory appeal on December 21, 2012.

¶ 4 The Stalking Act provides a civil remedy for victims of stalking, allowing for the entry of an order requiring the offender to stay away from the victim. 740 ILCS 21/5 (West 2010). A petition for such an order must allege that the petitioner has already been a victim of stalking by the respondent. 740 ILCS 21/25 (West 2010). The standard of proof is by a preponderance of the evidence. 740 ILCS 21/30 (West 2010).

¶ 5 If the court finds that the petitioner has been a victim of stalking by the respondent, a "stalking no contact order" shall issue. 740 ILCS 21/80 (West 2010). Proof of physical injury is not required for the issuance of the order. 740 ILCS 21/80 (West 2010). The court may award the petitioner costs and attorney fees if the order is granted, but monetary damages are not recoverable. 740 ILCS 21/80 (West 2010).

¶ 6 The Stalking Act carefully defines its terms. 740 ILCS 21/10 (West 2010). Stalking is defined as "engaging in a course of conduct directed at a specific person, and [the stalker] knows or should know that this course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress." Emotional distress is defined as "significant mental suffering, anxiety or alarm." A reasonable person is defined as "a person in the petitioner's circumstances with the petitioner's knowledge of the respondent and the respondent's prior acts." Finally, a 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. A course of conduct may include contact via electronic communications." 740 ILCS 21/10 (West 2010).

¶ 7 The Stalking Act explicitly states:

"Stalking is a serious crime. Victims experience fear for their safety, fear for the safety of others and suffer emotional distress. Many victims alter their daily routines to avoid the persons who are stalking them. Some victims are in such fear that they relocate to another city, town or state. \*\*\* All stalking victims should be able to seek a civil remedy requiring the offenders stay away from the victims and third parties." 740 ILCS 21/5 (West 2010).

¶ 8 In its order denying the plaintiffs' motion for a stalking no contact order, the circuit court concluded that none of the alleged acts of the defendant constituted stalking, primarily because it concluded that no "reasonable person" would suffer emotional distress as a result of the defendant's acts. In so holding, the circuit court erred. The manifest weight of the evidence supports the conclusion that a "reasonable person" as defined in the Stalking Act would indeed suffer emotional distress as a result of the defendant's actions and that the plaintiffs did in fact suffer emotional distress as a result of the defendant's actions.

¶ 9 We note that in its written order denying the plaintiffs' motion for a stalking no contact order, the circuit court sets forth "[a]pplicable parts of the Act," including some of the definitions set forth above. Of particular note is that the circuit court does not set forth or discuss the definition of the term "reasonable person" as defined in the Stalking Act. The definition of a "reasonable person" set forth in the Stalking Act is certainly a different definition of the "reasonable person" usually used in the law. If not, there would have been

no reason for the legislature to specifically define in the Stalking Act a reasonable person as "a person in the petitioner's circumstances with the petitioner's knowledge of the respondent and the respondent's prior acts."

¶ 10 Yet despite this unique definition of the "reasonable person," the circuit court seems to apply the generic "reasonable person" standard to this case. Throughout its order, the circuit court repeatedly concludes that "no reasonable person" would suffer emotional distress as a result of the alleged acts of stalking on the part of the defendant. Indeed, in its order, the court states:

"This litigation has clearly taken a heavy toll on Mrs. Davidson and Mrs. Dribben. This running battle has no doubt soured their thoughts of each other. In the case of Mrs. Dribben, it does appear that this litigation has induced her to assign the most nefarious and menacing of motives to everything Mrs. Davidson does. Laboring under such fears, this Court can see why things have become so upsetting and disquieting for her.

However, the test for stalking is how would a reasonable person react to the alleged offensive conduct. The Court does not find that [the defendant's] conduct is nefarious or menacing. A reasonable person would not conclude otherwise."

The court seems to recognize that the plaintiffs' view of the defendant's acts might be skewed by their knowledge of the defendant and the defendant's prior acts, but proceeds to hold the plaintiffs to the higher standard of the generic "reasonable person." In doing so, the circuit court erred as a matter of law.

¶ 11 Further, given the Stalking Act's definition of "reasonable person," the manifest weight of the evidence supports the conclusion that a person in the plaintiffs' circumstances, knowing what they knew about the defendant and the defendant's prior acts, would have suffered emotional distress, that is, significant mental suffering, anxiety, or alarm, as a result

of the defendant's actions as alleged in the motion for a stalking no contact order. To the extent the circuit court found otherwise, its finding is contrary to the manifest weight of the evidence. Indeed, the evidence below showed that the plaintiffs have altered their daily routines to avoid the defendant and even relocated to another state to avoid the defendant. This is precisely the sort of distress for which the Stalking Act explicitly seeks to provide a remedy. See 740 ILCS 21/5 (West 2010).

¶ 12 The other requirements for a finding of stalking have also been established by the evidence. There is no question that the defendant engaged in a "course of conduct" consisting of two or more acts of monitoring, observing, surveilling, interfering with, and/or communicating to or about the plaintiffs, that this conduct was directed at the plaintiffs, and that the defendant knew or should have known that her conduct would cause a person in the plaintiffs' circumstances, knowing what the plaintiffs knew about the defendant and her prior bad acts, to suffer significant mental suffering, anxiety, or alarm.

¶ 13 Accordingly, we reverse the order of the circuit court denying the plaintiffs' motion for a stalking no contact order. We remand this cause to the circuit court for entry of a stalking no contact order against the defendant and for a determination on the plaintiffs' request for attorney fees and costs.

¶ 14 We have also ordered taken with the case the plaintiffs' motion to "strike post-ruling matters from appellees' brief and appendix" and the defendant's objection to the motion to strike. In its brief and appendix, the defendant makes reference to proceedings in the circuit court which occurred subsequent to entry of the order appealed from. Matters that occurred subsequent to the entry of the order appealed from could not have been considered by the circuit court in entering its order. They are, therefore, irrelevant to a review of the circuit court's order and are properly stricken. The plaintiffs' motion is granted.

¶ 15 For the foregoing reasons the order of the circuit court is reversed and this cause is

remanded for further proceedings.

¶ 16 Reversed and remanded.