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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

<i>In re</i> MARRIAGE OF CHARLOTTE COVELLO,)	Appeal from the Circuit Court
)	of Cook County.
Petitioner-Appellant,)	
and)	No. 10 D 10105
)	
NICHOLAS COVELLO,)	The Honorable
)	David E. Haracz,
Respondent-Appellee.)	Judge, presiding.
)	

JUSTICE HYMAN delivered the judgment of the court.
Justices Lavin and Mason concurred in the judgment.

ORDER

Held: The trial court's finding that petitioner failed to meet her burden for a plenary order of protection was not against the manifest weight of the evidence, and the trial court was not required to make specific findings of fact in dismissing the petition for an order of protection.

¶ 1 Charlotte and Nicholas Covello were in the middle of divorce proceedings when Nicholas took the couple's two children, then ages 9 and 12, on vacation to North Carolina. Nicholas says he gave Charlotte advance notice of the trip as required by the parties' parenting time agreement. Charlotte claims she had no notice and was concerned for the children's safety. While Nicholas

was away, Charlotte sought an emergency order of protection under the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101, *et seq.* (West 2014)), which the trial court granted. After a hearing at which both parties testified, the trial court terminated the order of protection and dismissed Charlotte's request for a plenary order of protection. Charlotte filed a motion to vacate, which the court denied. Charlotte appeals arguing: (1) the trial court's finding that she failed to meet her burden for a plenary order of protection was against the manifest weight of the evidence; and (2) the trial court committed reversible error by failing to make specific findings of fact to support its rulings. We affirm. The trial court's finding that there were no grounds for continuing the order of protection was not against the manifest weight of the evidence. Further, the trial court was not required to make specific findings of fact in dismissing a petition for an order of protection.

¶ 2

BACKGROUND

¶ 3

Charlotte Covello, who with Nicholas Covello had two children, H.C. and N.C., filed for divorce in October 2010. The couple's dissolution of marriage was entered on December 12, 2013. The events giving rise to this appeal occurred while the dissolution proceeding was still pending.

¶ 4

The parties had a court-approved parenting time order that provided that during summer breaks from school Nicholas would have the children during the week and Charlotte would have them on the weekends, except the first weekend of the month. Monday, June 24, 2013, was the last day of school, and Nicholas received the children as agreed. The next day, Nicholas sent Charlotte a text message saying he would be driving to "the Carolinas" with the children. Nicholas claims he told Charlotte about the trip when he saw her over Memorial Day weekend. Charlotte denies that conversation took place, and said she first learned about it when she

received Nicholas's text message. On June 25, Charlotte spoke with her daughter, who told her they were leaving for vacation the next day. On June 26, Nicholas sent a text message to Charlotte telling her they had stopped in Ohio and letting her know where they were staying. Charlotte spoke with both children that day, and they told her they were heading to North Carolina.

¶ 5 On June 26, 2013, the day Nicholas and the children left for vacation, Charlotte filed an emergency order of protection under the Act (750 ILCS 60/201 *et seq.* (West 2014)). Charlotte's affidavit identified three incidents of prior abusive conduct: (i) Nicholas sent a text message to her stating he would only take N.C. to baseball practice if Charlotte cancelled therapy for the children; (ii) Charlotte's doorman told her that Nicholas asked him if he had seen "the guy with the limp who [Charlotte is having sex with]; and (iii) Nicholas interrogated the children about her activities and sent her text messages to try to intimidate her. Charlotte's motion did not mention that Nicholas had taken the children out of the state.

¶ 6 The trial court granted the emergency order of protection until July 16, 2013. Nicholas's attorney notified Nicholas of the emergency order, and he headed back to Chicago, dropping the children off at Charlotte's home on the evening of Saturday, June 29.

¶ 7 At the hearing on the order of protection, Charlotte testified about the incidents she claimed warranted an order. First, she testified that Nicholas sent her a text message stating he would take their son to baseball practice only if she cancelled therapy. Charlotte did not cancel therapy, but it was later discontinued after Nicholas called Dr. Reginald Richardson of the Northwestern Family Institute and told him he did not think the children should be in counseling. Dr. Richardson testified that because the Institute's policy is to terminate therapy if either parent objects, he recommended the therapy sessions stop.

¶ 8 As for her claims of Nicholas's harassing conduct, Charlotte testified that he asked her doorman questions about her whereabouts and visitors. The doorman did not testify, but Charlotte testified that she was upset by what the doorman told her Nicholas said and that she asked the doorman not to share her personal information with Nicholas. She also testified that Nicholas quizzes the children about her whereabouts by, for instance, telling them to ask her to send a picture text to verify she was where she claimed to be, having them ask her if she was with her boyfriend, and asking them if they had seen pictures of Charlotte with her boyfriend.

¶ 9 As for the North Carolina trip, Charlotte testified that Nicholas did not notify her in advance and that she was supposed to have the children on the weekends he planned to be away. Charlotte claimed she filed for the order of protection because she was worried for the children's safety after learning that Nicholas had changed his voicemail message from a standard message to one that said "This is it." Although she claimed she was unable to reach the children by phone, she testified that she spoke to one or both children on June 25, June 26, June 28 and June 29.

¶ 10 Nicholas also testified, primarily about the trip to North Carolina, stating that he told Charlotte about it in advance, as required by the parenting agreement and sent her text messages from the road, so that she knew where they were.

¶ 11 After the hearing, the trial court extended the order of protection until July 19, and then until November 13, 2013. But on August 19, 2013, the trial court entered an order denying Charlotte's petition for a plenary order of protection and terminating the interim order of protection finding, based on the testimony at the hearing, that Charlotte failed to meet her burden of proof. Charlotte filed a motion to vacate the August 19, 2013 order under section 2-1203 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1203 (West 2012)), which the trial court denied. The trial court stated, in part:

"Mr. Covello. *** I now better understand *** your wife's argument here of why your actions or inactions caused her emotional distress. I think this is a very close call. I would not *** have brought this as a petition for an order of protection. I think it's better as a petition for indirect civil contempt. You stepping into therapy, you talking to the doorman, you not having a very clear understanding between the two of you as to the vacation in North Carolina is a very close call. In the end here, I'm going to deny the motion for reconsideration and the motion—and the petition for order of protection will remain dismissed."

¶ 12 The court entered a written order denying the motion to vacate, which it later amended to add language under Supreme Court Rule 304 (eff. Feb. 26, 2010) that there was no just cause to delay appeal. On November 4, 2013, Charlotte filed her timely notice of appeal.

¶ 13 ANALYSIS

¶ 14 Charlotte contends she presented sufficient evidence of abuse and harassment by Nicholas to warrant a plenary order of protection under section 214 of the Act (750 ILCS 60/214(a) (West 2012)). She asks us to reverse the trial court's dismissal and enter a plenary order of protection. Alternatively, she asks that we reverse and remand to permit the trial court to make specific findings of fact as required by the Act.

¶ 15 The primary purpose of the Domestic Violence Act is to aid victims of domestic violence and to prevent further violence. *Radke ex rel. Radke v. Radke*, 347 Ill.App.3d 264, 268 (2004). The central issue in a proceeding to obtain an order of protection is whether the petitioner has been abused. *Best v. Best*, 223 Ill. 2d 342, 348 (2006). The petitioner must prove abuse by a preponderance of the evidence. 750 ILCS 60/205(a) (West 2012). We will reverse a trial court's finding on the issue of abuse only if it is against the manifest weight of the evidence. *Best v.*

Best, 223 Ill. 2d 342, 350 (2006). 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.* The Act defines “abuse” as “physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation.” 750 ILCS 60/103(1) (West 2012). 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.” The Act also lists certain types of conduct that is presumed to cause emotional distress unless the presumption is rebutted by a preponderance of the evidence. 750 ILCS 60/103(7) (West 2012).

¶ 16 Charlotte asserts Nicholas' conduct, including talking to her doorman about her, using the children as "spies," interfering with the children's counseling, and taking the children out of state without notifying her, warranted a finding of abuse and harassment under the Act. We disagree.

¶ 17 The trial court heard testimony from Nicholas, Charlotte, and Dr. Richardson, of the Northwestern Family Institute. The evidence established that Nicholas had a conversation with Charlotte's doorman that made Charlotte uncomfortable, and she told her doorman, "I appreciate you not speaking to others about my personal life." The doorman did not testify, so the content of any conversation with Nicholas was not presented into evidence. The same is true for Charlotte's assertions that Nicholas asked the children to spy on her. While it is understandable that the parties would want to avoid *in camera* interviews with children, in the absence of corroborating evidence about what Nicholas said to the children or asked them to do, her assertions are hearsay. But, even assuming that Charlotte's allegations in both instances are true, Nicholas's conduct did not arise to the type of repeated surveillance and harassment that warrants an order of protection under the Act.

¶ 18 The evidence also failed to provide clarity as to whether Nicholas notified Charlotte about the trip to North Carolina, as required by the parties' parenting time agreement. Nicholas claims he did, Charlotte claims he did not. Charlotte acknowledges Nicholas texted her about the trip the day before they left and the next day to notify her where they were staying. Charlotte also talked with the children on June 25, the day before they left for the trip, June 26, June 28, and June 29, the day they returned. The frequent communication between Charlotte, Nicholas and the children does not suggest that Nicholas was improperly concealing the children. It does suggest, as the trial court found, that Charlotte and Nicholas did not have a clear understanding between them about his plans to take the children on the trip.

¶ 19 Lastly, the evidence indicated Nicholas did not want the children to attend court-appointed counseling and contacted Dr. Richardson of the Northwestern Family Institute to express his objection and, in accordance with their policy, the Institute discontinued the counseling. There was no evidence, however, that Nicholas knew that phone call would result in automatic termination of therapy. Although it may have been improper for Nicholas to contact the Institute directly, it does not constitute harassment or abuse under the Act.

¶ 20 Based on the evidence before us, we cannot say the trial court's order dismissing the petition was against the manifest weight of the evidence, and thus we affirm.

¶ 21 Charlotte alternatively contends the trial court committed reversible error by failing to specifically address the statutory factors listed in section 214(c) of the Act in dismissing her petition for a plenary order of protection and denying her motion to vacate. Section 214(c) provides that the trial court must make findings "in an official record or in writing" (i) that the court considered the applicable relevant factors in determining whether to grant the plenary order of protection, including the "nature, frequency, severity, pattern and consequences of the respondent's past abuse;" (ii) that the conduct or actions of respondent, unless prohibited, will likely cause

irreparable harm or continued abuse; and (iii) that the grant of the requested relief was necessary to protect petitioner. 750 ILCS 60/214(c) (West 2012).

¶ 22 Charlotte cites *In re the Marriage of Healy*, 263 Ill. App. 3d 596, 602 (1994) for support. In *Healy*, the appellate court stated that the Act, as amended, "plainly requires specific findings for an order of protection." The court, however, decided the issue on other grounds, stating that "[w]hether reversal would be necessary in a case where no specific findings are made by the circuit court, but the record justifies the entry of the order of protection, we reserve for another case." *Id.* In other cases, the appellate court has reversed an order of protection where the trial court failed to make specific findings of fact (*In re Marriage of Henry*, 297 Ill. App. 3d 139, 143-44 (1998)) or has remanded the case to permit the trial court to enter findings of fact. *Hedrick-Koroll v. Bagley*, 352 Ill. App. 3d 590, 594-95 (2004). But *Healy*, *Henry*, and *Hedrick-Koroll* are distinguishable because they held that the statute required specific findings of fact when the trial court *grants* a petition for an order of protection, not when it *dismisses* one. Nothing in the statutory language or those cases imposes an obligation on the trial court to enter findings of fact when, as here, the trial court dismisses an order of protection. Thus, the trial court did not err by dismissing her petition and denying her motion to vacate without making specific findings of fact.

¶ 23 Affirmed.