2015 IL App (1st) 142506-U

FIFTH DIVISION
June 30, 2015

No. 1-14-2506

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

EVA WALKUSKI,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 13 OP 76187
	)	
OMID SHARIAT RAZAVI,	)	Honorable
	)	Patrice Ball-Reed,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices Gordon and Reyes concurred in the judgment.

ORDER

¶1 *Held*: The circuit court's decision granting a stalking no contact order was not against the manifest weight of the evidence. The Stalking No Contact Order Act is not unconstitutionally vague and does not violate respondent's first amendment rights.

¶2 Respondent, Omid Shariat Razavi, appeals from a plenary stalking no contact order entered against him by the circuit court of Cook County on July 17, 2014, issued pursuant to the Stalking No Contact Order Act (740 ILCS 21/1 *et seq* (West 2012)). Razavi contends that there was insufficient evidence to grant the stalking no contact order and that the Stalking No Contact Order Act is unconstitutionally vague and violates his right to free speech and assembly.

¶3 BACKGROUND

¶4 On September 16, 2013, petitioner Eva Walkuski filed a *pro se* emergency petition for a civil no contact order under the Civil No Contact Order Act (740 ILCS 22/101 (West 2012)) against Razavi. The circuit court denied the emergency petition upon finding insufficient evidence of stalking and continued the case.

¶5 Walkuski obtained counsel, and, with leave of court, filed an amended petition for a stalking no contact order against Razavi on November 19, 2013, under the Stalking No Contact Order Act. In her attached supporting affidavit, Walkuski averred that she was a student at the School of the Art Institute of Chicago (SAIC) and was previously friends with Razavi. She averred that he had also been a student, but had been expelled. She averred that in January 2012, she communicated to Razavi that she "did not want to have contact with him anymore." According to Walkuski's affidavit, Razavi visited her dormitory room between January and April 2012 approximately once a week and he would knock on her door and look in the peephole. Walkuski usually pretended not to be home, but on more than one occasion she opened the door and told Razavi to leave, "clearly communicating that I did not want to have any more contact with him." She averred that he stopped visiting her dormitory room on a weekly basis in April 2012; she believed he lost housing privileges at the school at that time because he engaged in physical violence against a teacher. She averred that between February and June 2012, Razavi occasionally engaged in "obsessive attempts to have contact with" her and there were "multiple occasions on which he would call my phone several times during the same day." Further, between December 2012 and February 2013, Razavi paced around her desk on more than one occasion while she was at her on-campus job. Walkuski averred that on August 28 and September 4, 2013, Razavi followed her to class. She complained to the school about his conduct

on September 5, 2013. Walkuski averred that when she arrived at school on September 6, 2013, Razavi was standing at the security desk staring at her. After she entered the classroom located across the hall from the security desk, she observed Razavi "peering in through my classroom door." Walkuski immediately reported this incident. She averred that the school advised Razavi and her to "stay away from each other and not to contact each other" and that the school told Razavi that "he was not allowed in the building where my [Walkuski's] business class was until class was over." However, according to Walkuski's affidavit, Razavi again entered the building on September 11, 2013, during her class and he approached the teacher during a break "in an attempt to get into the class." Walkuski indicated that Razavi was subsequently suspended. Walkuski averred that Razavi also stalked her on September 24, 2013, when he watched her through the window of the building next door to the school; she filed a police report after this incident and reported it to the school. She averred that Razavi was expelled as a result of his conduct related to her.

¶6 The matter was continued several times. On April 11, 2014, Walkuski filed a motion for summary judgment on grounds that it had been established in a prior proceeding—the SAIC's student conduct hearing against Razavi in which the school found that he violated several rules of conduct—that Razavi stalked her and Razavi was therefore collaterally estopped from contesting this issue in the current proceedings.[1] Following further briefing, the circuit court

[1] Walkuski argued that the SAIC conducted a Student Conduct Board hearing on October 3, 2013, and determined that Razavi violated several of the school's rules of conduct: (1) causing physical harm to any person, or verbal or physical threats, intimidation, or coercion of any member of the SAIC community; (2) failure to comply with direction of SAIC officials; (3) sexual assault as defined in the Sexual Assault Policy of the school; and (4) discrimination, harassment, or retaliation as defined in the school's handbook. Razavi was expelled in October 2013 as a result. Walkuski attached several items of supporting documentation to her motion, including Razavi's answers to Walkuski's requests for admission; several letters from SAIC to Razavi regarding the decisions to suspend and expel him; Walkuski's affidavit previously submitted with her petition; an affidavit from Arthur Jackson, a security guard for the school, regarding a surveillance video showing Razavi and Walkuski at the school; a police report Walkuski filed with the Chicago Police Department; and an affidavit from professor Anna Cerniglia regarding Razavi's attempts to enter her classroom.

denied the motion for summary judgment on June 12, 2014.

¶7 A hearing on the petition was held on July 17, 2014. Both parties were represented by counsel. At the hearing, Walkuski testified that she used to be friends with Razavi before December 2011 when she was 19 years old; he was approximately 10 years older than her. She testified that at some point, she no longer wanted to be friends and communicated this to him "multiple times in person" and she also left a note under his door in late January 2012. Between January and April 2012, she and Razavi were both living in the dormitories at school, and Razavi came to her door once or twice a week. Walkuski testified that Razavi would knock on her door "obsessively, like ask for me to open the door. Sometimes he would be quiet so I would look through the peephole, and I would see him looking at me." By knocking "obsessively," Walkuski explained that Razavi would knock repetitively then stop for 30 seconds, then knock repeatedly again and wait 30 seconds, and then knock repeatedly again. She testified that she usually would stay in the room and try to be quiet, but on two occasions she had her friend and roommate Ariel Zekelman open the door and tell him to leave her alone. Walkuski testified that Razavi no longer came to her door after April 2012; it was her understanding that he lost his campus housing privileges because he hit a teacher at the school.

¶8 Walkuski testified that between December 2012 and February 2013, she worked at the Neiman Center at the SAIC as a student ambassador giving tours and staffing the information desk. She testified that on "multiple occasions, [Razavi] came around the desk and would pace around usually staring at me, actually always staring at me." Walkuski testified that this made her feel "[e]xtremely uncomfortable and violated because I had repeatedly told him to stay away from me, and I felt like he was continually invading my space."

¶9 During the 2012 to 2013 school year, there were three occasions when Walkuski was

studying with Zekelman and Razavi came up to them and started asking them questions, such as "How are you? Where do you live? Are you living in the residence halls? Do you live off campus now?" Walkuski testified that she "felt extremely uncomfortable, and we would tell him, please, go away. Like, we don't want to talk to you. On one occasion, he actually left the space." Walkuski testified that when she studied alone, Razavi "would always make sure I noticed him after I was already there, or there [*sic*] would be walking by where I was studying many times or staring at—sitting in a position where he could see me from across the space, and I felt very uncomfortable." She testified that this occurred approximately once a week.

¶10 According to Walkuski, she attended campus events at the Neiman Center during the spring of 2013, and while she was conversing with friends during those events, she would "see him [Razavi] staring and glancing at me, usually walking around and kind of like lingering and like looking at me, smiling. And then eventually, I would, like, move with my friends. And then he would kind of follow and talk to people around me, and the whole time he's talking to these people, he would be looking at me. And I felt, again, extremely violated and uncomfortable. And one many occasions, I would leave because I felt very uncomfortable, and I would avoid even going to the Neiman Center at times." She testified that there were about three campus events per week, and these incidents occurred approximately once every two or three weeks.

¶11 In August 2013, Walkuski attended an art opening at the Neiman Center. She testified that she saw Razavi "pacing near where I was standing, lingering around where I'm standing with my friends ***, and continually staring at me. So we moved across the space because I felt uncomfortable, and I let them [her friends] know that. And again, kind of followed, talked to the people around us, but continually staring at me while he's talking to these people. *** [E]ventually I left because I felt very uncomfortable."

¶12 In addition, Walkuski testified that she enrolled in the course "Art Brains Business Smarts" in the fall 2013 semester. Walkuski testified that she observed Razavi in class twice; August 28 and September 4, 2013. She testified that about 15 minutes into class on August 28, she felt that someone was looking at her and she looked out the classroom door window and observed Razavi looking at her. She testified that Razavi "saw me. He smirked, gave me this disgusted look, and walked away. Five minutes later, he entered the classroom and sat down at the table with all the students." She testified that Razavi "kept looking back and staring at" her and she noticed that he was not paying attention to the professor or participating in the class conversations. No one was sitting behind her. Similarly, on September 4, Razavi arrived late to class and Walkuski observed that during group discussions in class, he was staring at her and did not participate in the discussions and "was on his iPad the whole time." After class, Walkuski informed her professor, Anna Cerniglia, that she felt uncomfortable and inquired if she should drop the class. While she was talking with Cerniglia, Razavi "came into the room three times. The first time he came in, he kind of lingered around where we were talking and was looking at me, then left the room. He came in once again, was lingering around. The professor then asked hi, you know, do you need something? And you know, he wanted to talk to her, and she said, well, I'm talking to another student right now, you need to leave the room." Razavi left, but then returned again. Walkuski testified that he looked at her (Walkuski) while he was speaking to Cerniglia. After he left again, Walkuski informed Cerniglia that Razavi was the student making her feel uncomfortable. She testified that Razavi's behavior made her feel "extremely uncomfortable and violated because here I am trying to express my concerns to my professor, and I can't even be left alone by this person to figure out how to feel more safe." Walkuski testified that she reported Razavi's behavior to Anna Brown, the director of student outreach, and

to Arthur Jackson, the head of security, on September 5, 2013.

¶13 She testified that on September 6, 2013, she attended her sculpture design class shortly after 9 a.m. After she entered the building and checked in at the security desk, she looked up and saw Razavi staring at her, "not blinking. I felt extremely uncomfortable. I ran to the classroom and grabbed my friends and started telling them about the situation." She testified that Razavi looked through the classroom window at her as she spoke to her friends. She reported the incident to her professors, Jackson, and the dean of the school.

¶14 Walkuski testified that after she reported Razavi's conduct, the school "told us that neither of us were allowed to contact each other via text message, call, or through a friend. If I was in the elevator and he got on, one of us had to exit the elevator. I was given an escort to all of my classes, a security escort, and I was told that he would not be in the building during my Art Brains and Business Smarts class on September 11th."

¶15 Walkuski testified that on September 23, 2013, she was walking past the restaurant Cosi, which is located in one of the school's buildings, when she observed Razavi sitting inside near the window of Cosi. She testified that Razavi was "staring at me, and as I walked by and made eye contact with him, he was looking at me and smiling. So I immediately called the police because I felt really uncomfortable because, as far as I was concerned, he wasn't allowed to be on campus anymore because he was suspended."

¶16 According to Walkuski, after she filed the petition for a stalking no contact order, Razavi continued to stalk her. After a court date on October 7, 2013, she observed him at the train station by the courthouse when she was leaving with her father approximately 30 minutes after the court hearing had ended. As she went down the escalator, she obserbed someone standing in the center of the train station with his back to her, and as she reached the bottom, the individual

turned his head and she saw that it was Razavi. He smiled at her and continued looking at her. Walkuski felt uncomfortable and she immediately went with her father back up the escalator.

¶17 Walkuski testified that she was still in fear of Razavi and this affected her life because she had an escort to all of her classes, she takes fewer classes, and it has caused her "a lot of fear and anxiety." She testified that she has informed Razavi not to contact her approximately ten times or more and she has asked about 24 people for help.

¶18 Walkuski conceded on cross-examination that, before the spring of 2012 when they were still friends, she had visited Razavi's dormitory room and he had visited hers. She further conceded that she has not observed Razavi on campus since October, nor has he contacted her since then. However, Walkuski testified that she needs a stalking no contact order because she is "very scared. Since he no longer attends SAIC, I feel I have no protection. He has continually shown that he doesn't listen to authority, and after this court date, I have—after having the courage to come out and say these things and get a stalking order, I don't know if he, without the court and this system right now, if—I'm scared that he will come after me and hurt me in some way. I'm afraid he will find me and continue to stalk me once this court and this sort of authoritative structure is gone." Walkuski testified that she has been emotionally affected by this case as she has "trouble sleeping. I have trouble doing my schoolwork. I take less classes at school because I can't even focus on that much work right now. I'm extremely scared. And really, I really need protection, legal protection from this person."

¶19 Following her testimony, Razavi moved to dismiss, arguing that Walkuski failed to show emotional distress by a preponderance of the evidence. The trial court denied the motion.

¶20 Razavi testified that he was 32 years old and began attending SAIC in 2011. He met Walkuski for the first time in November, and they became friends. He maintained that Walkuski

never told him that she no longer wanted to have contact with him and he never received a letter under his door. He testified that he had not talked to her or met with her since January 2012. He testified that Zekelman also never told him that Walkuski no longer wanted to have contact with him. Razavi testified that he only saw Walkuski at her work three or four times and he never approached her, talked to her, or stopped and stared at her. He agreed that after the petition was filed, he was made aware that Walkuski wanted no contact with him. Razavi testified that he has never threatened Walkuski, threatened to come after her, raised his voice at her, suggested any violence toward her, or stayed in her physical space after she told him to go away.

¶21 Regarding the Art Brains Business Smarts class, Razavi testified that he wanted to enroll in this class and attended the class before the add/drop date of the semester that September. Razavi conceded that the school directed him not to register for the Art Brains Business Smarts class. The teacher informed him that another student told her that he could not take the class "for not being in class with her."

¶22 Razavi testified that on September 7, Jackson asked Razavi to go to the security office and meet with him. He testified that Jackson, Patrick Spencer, and Brown were there, and they informed him that someone had filed a complaint against him and instructed him not to contact her. They said she also was not to contact him. This was the first time that someone from the school or anyone else, including Walkuski and her friends, had told him not to have contact with Walkuski. He testified that he did not have any contact with her after that date, other than being present in court.

¶23 Regarding the incident at the Cosi restaurant, Razavi testified that he sat near a wall and did not have a view of people in the street and he did not see Walkuski. He testified that he was sitting at a table with his computer in front of him when two officers entered the restaurant and

asked him to leave, and then they handcuffed him and put him in a police car for 20 or 30 minutes. He was told to come to court on October 7, 2013, but he was not charged with anything. They told him about "some incident" in December 2011 and gave him paperwork for the court date. When he saw Walkuski in court on October 7, he had not seen her since the September business class.

¶24 Walkuski argued that the evidence showed Razavi engaged in a "course of conduct" constituting stalking under the Stalking No Contact Order Act. Walkuski pointed out that despite her clear communication to Razavi that she no longer wanted any contact, he engaged in numerous incidents such as following her, staring at her for extended periods of time, and visiting her residence, classroom, and work place. Razavi argued that Walkuski failed to demonstrate emotional distress.

¶25 The trial court held that Walkuski had proven her case by a preponderance of the evidence as it was "more likely true than not true" that the incidents she alleged in her amended petition had occurred, that there were more than two instances of contact that were unwarranted and unwanted, "that at some point in time, those, when it became more than two, it rose to the level of harassment and surveillance; and therefore she became fearful that some further harm would occur with regard to herself if Mr. Shariat is allowed to continue to have access in some form or fashion." Thus, the trial court entered a plenary stalking no contact order against Razavi, effective until July 15, 2016. The stalking no contact order forbid Razavi from having any contact with Walkuski or from knowingly coming within 100 feet of her residence, school, or place of employment. Razavi filed this Illinois Supreme Court Rule 307(a)(1) (eff. Feb. 26, 2010) interlocutory appeal on August 18, 2014, as a matter of right.

¶26 Initially, we note that Razavi argues that in Walkuski's brief on appeal, she improperly

cites to facts that were contained in documents that were not admitted into evidence at the hearing on the petition. Rather, they were attached to Walkuski's motion for summary judgment, which the trial court denied. Neither the trial court, nor this court, may "consider documents which were a part of the summary judgment proceeding and were never offered or received as evidence at the trial." *Logan v. 3750 N. Lake Shore Drive, Inc.*, 17 Ill. App. 3d 584, 590 (1974) (citing *Estate of Enoch*, 52 Ill. App. 2d 39, 50 (1964)). Accordingly, we disregard Walkuski's reference to these exhibits and confine our review of this appeal to the evidence presented at the hearing on her petition.

¶27 ANALYSIS

¶28 On appeal, Razavi first contends that there was insufficient evidence to support entry of the stalking no contact order.

¶29 Our court has previously observed that, as "'[s]talking is a serious crime,' the legislature passed the civil [Stalking No Contact Order] Act in 2010 to provide a remedy for victims who have safety fears or emotional distress as a result of stalking." *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 10 (citing 740 ILCS 21/5 (West 2012)). The Stalking No Contact Order Act defines "stalking" specifically as "engaging in a course of conduct directed at a specific person, and he or she 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." 740 ILCS 21/10 (West 2012). In turn, a "reasonable person" under the Act is "a person in the petitioner's circumstances with the petitioner's knowledge of the respondent and the respondent's prior acts." *Id.* "Emotional distress" is "significant mental suffering, anxiety or alarm." *Id.* Further, 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." *Id.* The term "contact" under the Act includes:

> "any contact with the victim, that is initiated or continued without the victim's consent, or that is in disregard of the victim's expressed desire that the contact be avoided or discontinued, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; entering onto or remaining on property owned, leased, or occupied by the victim; or placing an object on, or delivering an object to, property owned, leased, or occupied by the victim." *Id.*

¶30 In seeking a protective order under the Stalking No Contact Order Act, the petitioner bears the burden of showing by a preponderance of the evidence that the conduct constitutes stalking. 740 ILCS 21/30 (West 2012); *McNally*, 2015 IL App (1st) 134048, ¶ 10. On appeal, "[a] trial court's determination that a preponderance of the evidence shows a violation of the Act will not be overturned unless such a determination is against the manifest weight of the evidence." *McNally*, 2015 IL App (1st) 134048, ¶ 11 (citing *Nicholson v. Wilson,* 2013 IL App (3d) 110517, ¶ 22). ' "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.' " *Id.* (quoting *Nicholson*, 2013 IL App (3d) 110517, ¶ 22).

¶31 Here, the evidence at the hearing demonstrated that Razavi engaged in a "course of conduct," *i.e.,* two or more acts in which he directly engaged in monitoring, observing, or communicating to Walkuski, and he knew or should have known that his conduct would cause a

"reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress." 740 ILCS 21/10 (West 2012). Indeed, the evidence established that many more than two acts occurred which supported issuing the protective order. The evidence showed that, despite Walkuski informing Razavi multiple times in person, once by written note, and through her friend that she no longer wanted to have contact with him, he came to her dormitory room once or twice a week between January and April 2012, knocked repeatedly, and looked through the peephole; these incidents only ceased after Razavi lost campus housing privileges. Further, the evidence indicated that on two or three occasions while Walkuski was working at the Neiman Center on campus, Razavi came to her desk on multiple occasions, paced around the desk, and stared at her. He also approached her during the 2012-2013 school year on three occasions while she and Zekelman were studying and would ask Walkuski where she lived and whether she currently lived on campus or off campus, despite the two women telling Razavi that they did not want to talk to him and asking him to leave. Approximately once a week when Walkuski was studying alone, Razavi would walk by her and position himself so that he could see her from across the study space.

¶32 According to Walkuski's testimony, Razavi engaged in similar behavior a few times at campus events at the Neiman Center during the spring of 2013, and specifically at an art opening in August 2013. On those occasions, Razavi would linger in her proximity as she talked with friends, staring and glancing at her, smiling at her, and following her as she moved around with friends, and he would continue looking at her while he talked to people.

¶33 The testimony also showed that Razavi's conduct continued into the classroom setting as well, as Walkuski testified about incidents on August 28 and September 4, 2013, where Razavi stared at Walkuski through the classroom window and continually stared at her during class, and

he repeatedly entered the classroom after class while Walkuski was attempting to speak with the professor. After she reported the behavior to the school, another incident occurred on September 6, 2013, when she checked in at the security desk prior to class and Razavi was staring at her, unblinking, from nearby the security desk. He then looked through the classroom window at her after she ran into the classroom. Although Razavi essentially denied all the allegations, "questions of witness credibility and conflicting evidence are matters for the trial judge to resolve as the trier of fact, and not this court." *McNally*, 2015 IL App (1st) 134048, ¶ 14. We do not find that the trial court's determination that these incidents occurred were against the manifest weight of the evidence.

¶34 Razavi nevertheless maintains that there was no finding that he knew or should have known that his course of conduct would cause a reasonable person to fear for her safety or suffer emotional distress. However, this court has explained that "the [Stalking No Contact Order] Act for obvious reasons does not require that a victim contact her stalker to communicate conduct is unwanted ***. See 740 ILCS 21/ 10 (West 2012). The Act's focus is properly on whether 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.' (Emphasis added.) *Id.* The Act merely requires that the stalker's contact be nonconsensual." *McNally*, 2015 IL App (1st) 134048, ¶ 14. As such, Walkuski was not required to establish that she specifically contacted Razavi and informed him that his various attempts to contact her and his staring conduct was unwanted. Nevertheless, she testified to multiple instances in which she informed Razavi verbally or by letter that she no longer wanted contact with him, in addition to instances where her body language would have clearly communicated the same, *e.g.*, running away from him into a classroom. Moreover, Razavi was informed by the school about her complaints, and

he would also have been apprised that his contact was unwanted after she filed her initial petition for a no contact order on September 16, 2013. However, more incidents followed in September at the Cosi restaurant and on October 7 after the court date.

¶35 Razavi also asserts that even if the incidents complained of actually occurred, they would not make a reasonable person fearful or cause emotional distress. As noted, a "reasonable person" in this circumstance is someone with "petitioner's knowledge of the respondent and the respondent's prior acts." 740 ILCS 21/10 (West 2012). Based on the hearing testimony, a reasonable person would have knowledge of Razavi's repeated and disturbing contacts which persisted despite being informed multiple times that Walkuski wanted no contact with him, *i.e.*, that he continued to contact her, stare at her, and follow her despite her attempts to inform him that his contact was unwanted; and that, even after intervention by school officials and the filing of the petition, the disturbing behavior continued. This would also include knowledge that he had lost his school housing privileges due to hitting a teacher.

¶36 Moreover, there was ample evidence of Walkuski's fear and emotional distress, and we do not find her testimony merely conclusory, as Razavi suggests. Walkuski testified that she was "very scared" and needed protection, that Razavi did not listen to authority, and that she was fearful that he would "come after me and hurt me" and continue stalking her without such protection. Further, Walkuski testified to difficulty sleeping and completing her homework, and she avoided taking more classes as a result. Given this record, we defer to the trial court's determination regarding Walkuski's testimony about her fear and distress. As stated, "questions of witness credibility and conflicting evidence are matters for the trial judge to resolve as the trier of fact, and not this court." *McNally*, 2015 IL App (1st) 134048, ¶¶ 14, 16 (where the respondent sent the petitioner numerous emails under his name and aliases, criticized her on

professional websites, contacted her family and friends, and appeared at her residence, the court found that the respondent's conduct would cause a reasonable person to fear for her safety or suffer emotional distress where the petitioner testified that "she did in fact suffer these things and changed her daily routine because of the harassment."). Here, the record demonstrates "a multitude of contacts that would reasonably cause a person to fear for her safety or suffer emotional distress" (*McNally*, 2015 IL App (1st) 134048, ¶ 16), and Walkuski testified to her fear, distress, and how the harassment affected her own behavior. See *Nicholson*, 2013 IL App (3d) 110517, ¶ 24 (finding that the petitioner would likely suffer emotional distress where she sought assistance from her employer and indicated she was "very upset" about the respondent's surveillance conduct). We therefore affirm the trial court's finding that Razavi's "course of conduct established a pattern of behavior that is stalking under the Act, thus warranting a plenary order of protection ***." *McNally*, 2015 IL App (1st) 134048, ¶ 16.

¶37 Razavi emphasizes that he had no contact with Walkuski for the eight months prior to the time the plenary order was entered. However, as the plenary order was entered on July 17, 2014, this eight-month period occurred after Walkuski filed the amended petition in November 2013. The fact that Razavi did not continue to engage in the above course of conduct as the case proceeded in the trial court is not surprising, and it is certainly not convincing evidence that the order was against the manifest weight of the evidence.

¶38 Razavi also urges this court to look to the Domestic Violence Act of 1986 (750 ILCS 60/201 (West 2012) for guidance and likens this situation to *People v. Mandic*, 325 Ill. App. 3d 544 (2001). He asserts that the trial court should have considered whether he was lawfully present on campus, the size of the public space, the number of people present, his purpose for being present, and whether he knew the other party would be present. However, *Mandic*

involved criminal proceedings against a defendant for violating an order of protection (720 ILCS 5/12–30 (West 2000)) that was imposed pursuant to the Illinois Domestic Violence Act of 1986, a situation distinguishable from the present case, where the trial court was determining whether to grant a civil plenary stalking no contact order under the Stalking No Contact Order Act in the first instance. In obtaining such an order, the Stalking No Contact Order Act does not require the trial court to make findings regarding a respondent's lawful presence at a particular location. We also find unpersuasive Razavi's reliance on *In re Marriage of Healy,* 263 Ill. App. 3d 596, 601 (1994), where the court found insufficient evidence to support entry of an order of protection and held that the trial court failed to make statutorily required findings under the Domestic Violence Act. The Domestic Violence Act of 1986 is a separate statutory scheme from the one involved here and its provisions specifically require the trial court to make certain findings in determining whether to grant an order of protection. See 740 ILCS 60/214(c)(3) (West 2012). The Stalking No Contact Order Act, on the other hand, contains no such provision.

¶39 Razavi also argues that an order of protection is essentially a preliminary injunction, and as such, the court must consider the likelihood of serious future harm in deciding whether to grant an order of protection. We find this argument unpersuasive as the statutory language in the Stalking No Contact Order Act does not require this. *Gabriel Builders, Inc. v. Westchester Condominium Association,* 268 Ill. App. 3d 1065, 1068 (1994) (This court interprets statutory language with the aim of giving effect to the legislature's intent, and therefore must enforce clear and unambiguous language as written). Section 80 requires only that "[i]f the court finds that the petitioner has been a victim of stalking, a stalking no contact order shall issue; provided that the petitioner must also satisfy the requirements of *** Section 100 on plenary orders." 740 ILCS 21/80 (West 2012). Section 100 requires that the respondent receive notice of the hearing and

either make an appearance or have been served properly, that the court have jurisdiction, and that the respondent answer the petition or is in default. 740 ILCS 21/100 (West 2012).

¶40 On appeal, Razavi also contends that the Stalking No Contact Order Act is unconstitutionally vague and overbroad as applied to him and violates his first amendment right to free speech and assembly.

¶41 Initially, we address Walkuski's argument that Razavi waived his constitutional arguments because he failed to notify the Attorney General in accordance with Illinois Supreme Court Rule 19 (eff. Sept. 1, 2006). "Illinois Supreme Court Rule 19(a) requires a party challenging the constitutionality of a statute to serve notice on the Attorney General or proper state agency in cases where the State is not a party." *Doe v. Weinzweig*, 2015 IL App (1st) 133424, ¶ 35. "Moreover, the requisite notice must be served 'promptly after the constitutional *** question arises as a result of a circuit or reviewing court ruling or judgment.' " *Id.* (quoting Ill. S. Ct. R. 19(b) (eff. Sept. 1, 2006)).

¶42 We believe Rule 19 applies in this case because Razavi is arguing that the statute is unconstitutionally vague and violates his first amendment rights. "Failure to comply with the requirement to provide notice under Rule 19 notice results in a forfeiture of the constitutionality argument." *Weinzweig*, 2015 IL App (1st) 133424, ¶ 36. However, our supreme court has determined that "a party's failure to timely comply with Rule 19 does not deprive the court of jurisdiction to consider the constitutional issue. *** [F]ailure to strictly comply with the rule may result in waiver. Nevertheless, because waiver is a limitation on the parties, not on the court ***, a circuit court or the appellate court has the discretion to permit late compliance with Rule 19 and thereafter to address the constitutional issue if the purpose of the rule has been served." *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 118-19 (2004). Here, Razavi makes no

response in his reply brief to Walkuski's Rule 19 argument and there is no indication from the record that Rule 19 notice was provided to the Attorney General. Accordingly, we conclude that this issue has been waived on appeal. Nevertheless, even if we were to exercise our discretion and address Razavi's constitutional claims, we would conclude that they lacked merit.

¶43 "Whether a legislative enactment is constitutional presents a question of law, which is reviewed *de novo.*" *Nicholson*, 2013 IL App (3d) 110517, ¶ 11 (citing *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill. 2d 390, 406 (2006)). "Statutes are presumed constitutional, and the burden of rebutting that presumption is always on the party challenging the statute." *Id.* ¶ 13 (citing *City of Chicago*, 224 Ill.2d at 406). A statute may be unconstitutionally vague on two bases: " '(1) if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits, or (2) if it authorizes or even encourages arbitrary and discriminatory enforcement.' " *Id.* (quoting *City of Chicago*, 224 Ill.2d at 441–42). "A law survives a vagueness challenge so long as it 'give [s] a person of ordinary intelligence a reasonable opportunity to know what conduct is lawful and what conduct is unlawful' and 'convey[s] sufficiently clear standards so as to avoid its arbitrary enforcement.' " *Id.* ¶ 15 (quoting *People v. Bailey*, 167 Ill. 2d 210, 228 (1995)).

¶44 This court previously rejected a challenge to the Stalking No Contact Order Act's constitutionality based on vagueness in *Nicholson*. There, the respondent argued that Stalking No Contact Order Act was vague because no reasonably intelligent person could determine what conduct was prohibited. The court rejected this argument, finding that the respondent's own conduct fell squarely within the statute's prohibition such that he could not maintain that no person could understand what conduct was prohibited. *Nicholson*, 2013 IL App (3d) 110517, ¶ 14. The respondent engaged in videotaping and GPS surveillance of the petitioner. *Id.* ¶ 15.

Further, the court held that the Act clearly defined the term "stalking" in section 10 (740 ILCS 21/10 (West 2010)). *Id.* ¶ 14. The court additionally concluded that the statutory definition of a "reasonable person" constituted an objective standard and was not a "subjective test, which would require a respondent to be able to predict the subjective emotional state of the petitioner in order to conform his conduct to the requirements of the Act." *Id.* (quoting 740 ILCS 21/10 (West 2010)). The court held that, under the facts of the case, the Act was clearly constitutional as the respondent's conduct, objectively viewed, would cause a reasonable person to fear for his safety or cause emotional distress. *Id.*

¶45 Here, Razavi argues that the Stalking No Contact Order Act is vague because it does not contain a requirement that the conduct be "knowing," unlike the criminal stalking statute counterpart (720 ILCS 5/12-7.3 (West 2012)).[2] According to Razavi, he could not know nor "should know" that his engagement in multiple instances of "day-to-day" activities at school constituted a stalking "course of conduct" as he simply gazed at Walkuski at least twice while both were in a public place. Thus, the stalking statute fails to provide people of ordinary intelligence with a reasonable opportunity to understand what it prohibits and encourages arbitrary enforcement.

¶46 We disagree with Razavi's argument that the Stalking No Contact Order Act is impermissibly vague. Based on the evidence presented and discussed at length, *supra*, the record belies his contention that he merely engaged in simple "everyday" activities that he had no way of knowing were causing Walkuski to fear for her safety or causing her emotional distress. Moreover, as found in *Nicholson*, the "reasonable person" standard in the Act is not subjective or

[2] Section 12-7.3(a) provides that "[a] person commits stalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to: (1) fear for his or her safety or the safety of a third person; or (2) suffer other emotional distress." 720 ILCS 5/12-7.3(a) (West 2012).

vague, but based on an objective standard of someone in the petitioner's shoes with the petitioner's knowledge of the respondent and his prior acts. Here, Razavi overlooks that multitude of acts that were presented as evidence of his course of conduct at the hearing. He also overlooks the numerous attempts she and others made to inform him not to contact her. Further, the evidence does not support that he merely gazed at her while they happened to be in the same public space. Rather, the testimony indicated that he made an effort to look through the windows of the classrooms and the peephole of her residence, and he otherwise stared at her, repeatedly and for extended periods of time, on these occasions. He turned around and stared at her in class despite the fact that she was sitting behind him while class was ongoing, and he stared at her at campus social events even while conversing with other people. The record does not support that this was mere inadvertent staring conduct. We conclude that a person of ordinary intelligence would be on notice that such conduct was unlawful and prohibited by the Act. *Nicholson*, 2013 IL App (3d) 110517, ¶ 15.

¶47 Razavi next asserts that the Stalking No Contact Order Act violates his first amendment right to free speech and assembly because he was lawfully attending school and associating and assembling with other students at school functions.

¶48 The definition of "stalking" set forth in section 10 of the Act provides that "[s]talking does not include an exercise of the right to free speech or assembly that is otherwise lawful or picketing occurring at the workplace that is otherwise lawful ***." 740 ILCS 21/10 (West 2012). In *Nicholson,* this court rejected the respondent's first amendment challenge that the Act violated his right to freedom of speech. *Nicholson*, 2013 IL App (3d) 110517, ¶ 20. In ruling, the court held that the Stalking No Contact Order Act "narrowly restricts only the act of stalking, *i.e.*, following, monitoring, observing, surveilling, or interfering with a person, and does not seek to

regulate speech. Further, we note that the only speech that is prohibited by the Act are threats of violence or intimidation, which are not constitutionally protected in any event." *Id.* The court additionally held that "the Act specifically exempts from prohibition any lawful 'exercise of the right of free speech or assembly.' " *Id.* (quoting 740 ILCS 21/10 (West 2010)).

¶49 Here, Razavi argues that he was lawfully attending school and associating with classmates, and that this conduct cannot be used to form the basis of the stalking no contact order without violating his first amendment rights. However, the trial court did not grant the petition for a stalking no contact order on the basis of his "lawful" conduct in merely being present in the common areas of school. Rather, as we have previously discussed at length above, the order was based on his multiple acts of contacting Walkuski at her residence, work place, and classroom, despite her clearly communicated preference for no contact, and his behavior in staring at her at these locations and in other public places and during campus events. Razavi's first amendment challenge lacks merit.

¶50 CONCLUSION

¶51 For the forgoing reasons, the order of the circuit court of Cook County is affirmed.

¶52 Affirmed.