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2015 IL App (3d) 140602-U

Order filed December 7, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

KATHLEEN M. GESO,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellee,)	
)	Appeal No. 3-14-0602
v.)	Circuit No. 14-OP-1053
)	
SCOTT G. CURRAN,)	Honorable
)	Marilee Viola,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Justice Schmidt dissented.

ORDER

- ¶ 1 *Held:* The trial court's entry of a plenary order of protection against respondent was against the manifest weight of the evidence.
- ¶ 2 Petitioner Kathleen Geso (petitioner) requested the court to issue a plenary order of protection against Respondent Scott Curran (respondent) after she terminated a long-term extramarital affair with respondent. Following a hearing, the trial court entered a plenary order of protection. Respondent appeals.

BACKGROUND

¶ 3

¶ 4 Petitioner was involved in a two and one-half year extramarital affair with respondent. Petitioner ended the romantic relationship with respondent on March 29, 2014, but continued to initiate contact and interact with respondent socially until June 1, 2014 when she informed respondent she would no longer speak to him.

¶ 5 On June 8 and June 11, 2014, respondent contacted petitioner's husband by telephone. During the first conversation respondent informed petitioner's husband about their affair. In addition, respondent advised petitioner's husband of her purported current relationship with another man, with a criminal history, that began after petitioner and respondent's affair ended in March. During the second voice message respondent left on petitioner's husband's business telephone, respondent informed petitioner's husband that respondent provided petitioner with a cell phone to facilitate communication and suggested petitioner may be currently using the same cell phone to maintain contact with the other man.

¶ 6 Respondent was a Cook County Sheriff's Department sergeant. On June 12, 2014, petitioner filed an Office of Professional Review complaint against respondent through the Cook County Sheriff's Department. On June 17, 2014, petitioner filed a verified petition for order of protection (petition) against respondent.

¶ 7 On July 7, 2014, the trial court conducted a hearing on petitioner's request for a plenary order of protection. During her testimony before the trial court, petitioner advised the court that she engaged in an extramarital affair with respondent that began during the summer of 2011. According to the record, this relationship continued for two and one-half years without her husband's knowledge.

¶ 8 Petitioner testified that she terminated the affair with respondent on March 29, 2014, on the same day she returned from attending a ten-week inpatient treatment program for alcoholism and related issues in Florida. According to petitioner, she told respondent she wanted to end their relationship and return to a traditional family life. Initially, respondent was supportive and they maintained a social relationship.

¶ 9 Petitioner stated that sometime in mid-April 2014, she telephoned respondent to ask him to stop following her. During this call, petitioner noticed respondent was intoxicated and learned he was present at the “Stray Bar,” about one mile from her residence. During this conversation, respondent told petitioner that if she started seeing someone else respondent did not know what he would do. Petitioner conceded that respondent did not threaten anyone during this telephone conversation.

¶ 10 Before the mid-April telephone conversation, petitioner began to believe respondent was following her. She told the trial court she observed respondent’s personal car parked at a gas station across the street from where she was parked at a Dunkin’ Donuts restaurant. Petitioner testified that she recognized respondent’s car and saw a male with gray hair seated in the car, but she could not be certain if the male was respondent. She admitted the man in the car did not follow her when she left the Dunkin’ Donuts parking lot.

¶ 11 Petitioner stated she attends AA meetings in Mokena. Petitioner saw respondent driving on Wolf Road on three occasions when she was in the parking lot of the AA meeting location. However, she did not observe him following her car.

¶ 12 On May 31, 2014, petitioner texted respondent that she had informed her husband of their affair. In her testimony, petitioner stated, “I was emphatic that I was going to talk to [my husband] myself and that please leave us alone, and [respondent] said don’t worry, nothing is

going to happen until you get back from vacation, and I did not know what that meant, and so when I got back from vacation, I was watering my flowers and he drove by.”

¶ 13 Petitioner said respondent contacted her husband on June 8, 2014, told him about their affair, and said “he was going to drop things off at the house.” In addition, respondent advised petitioner’s husband that she was currently communicating with a man named Vince, using a telephone respondent had earlier given to her. As a result, while petitioner’s son was having a surgery, her husband left work and came directly to the hospital where he rifled through petitioner’s purse searching for the telephone respondent provided.

¶ 14 Petitioner explained to the court that Vince was a fellow AA member. Petitioner believed respondent observed Vince’s car at the AA location and investigated his license plate. When asked, petitioner stated she was afraid because respondent had been following her, investigating her friend, and carries guns. Petitioner stated she did not know what respondent was capable of doing to her. Petitioner also told the trial court her husband was close to divorcing her and stated respondent’s actions caused her emotional turmoil.

¶ 15 On cross-examination, petitioner agreed that several months after their affair began in 2011 respondent purchased a cell phone for her. Petitioner testified she used this cell phone purchased by respondent to contact him several times between March 29 and June 8.

¶ 16 According to her testimony, petitioner knew respondent was distraught and drinking heavily. Consequently, she called him to ask how respondent was doing and agreed to check in with him. She stated she used the cell phone to send text messages that were admitted into evidence. Petitioner also told the court that she last texted respondent on June 8, 2014, the day respondent dropped off the items at petitioner’s home. She used the phone to notify respondent she was going to the police.

¶ 17 Petitioner's husband testified that he and petitioner had been married for 22 years. Petitioner first told him of the affair with respondent on May 31, 2014, the day before their Florida vacation. On June 8, 2014, respondent called the home telephone and caller ID showed the call originated from phone number "630-336-7243." Respondent identified himself to petitioner's husband and asked if he knew respondent and petitioner had been involved in a more than two-year-long affair. Respondent also informed husband that he placed a box containing some of petitioner's belongings, and a recorder containing some of petitioner's messages and photo texts to respondent, at their front door.

¶ 18 During this call, respondent also told petitioner's husband that petitioner admitted to respondent that she was having a relationship with a person named Vince. Respondent said Vince attended AA meetings and drove either a gold Mercedes or a white Toyota. Respondent provided petitioner's husband with Vince's license plate number. Following this call, husband realized that he received two calls from the same phone number on June 7, 2014, but the caller did not speak.

¶ 19 Petitioner's husband said that on June 11, 2014, at 5:45 a.m., he was driving to work and checking his work voice mail when he discovered a message from respondent. Respondent told husband he obtained husband's work number from the internet, and respondent stated the reason he and petitioner had been successful with their affair was that respondent had given her a cell phone to use when she wished to reach respondent. Respondent suggested to petitioner's husband that petitioner might be using this cell phone to now communicate with Vince. Respondent stated the cell phone he provided for petitioner to use was kept by petitioner in her ski jacket. Husband described this message as "disturbing." About midnight on June 21, 2014,

husband received a call on his cell phone from the 630-336-7243 number, but the caller did not speak.

¶ 20 By agreement of the parties, telephone messages from April 18, May 30, May 31, June 1 and June 8, 2014, were admitted into evidence. The unedited messages are reproduced below for the convenience of the reader by the date each conversation began, with all misspellings included in the original text. The messages read as follows:

April 18, 2014: 3:46 p.m. – 3:58 p.m.

Petitioner (3:46 p.m.): Hey I'm at the subway getting a sandwich...waiting for new stereo intal at best buy...r u around¹

(3:46 p.m.): In tinley by target

Respondent (3:48 p.m.): I can be are you sure

Petitioner (3:53 p.m.): I'm going to walk back over to best buy...meet me in the home theater area ...they have seating

Respondent (3:55 p.m.): Ok...didn't see you at the meeting

Petitioner (3:58 p.m.): I went to an estate sale in oak park with my friend nancy...it was fun but dusty

May 30, 2014: 8:23 p.m.- 9:28 p.m.

Petitioner (8:23 p.m.): I'm very sorry ihurt you.

Respondent (8:28 p.m.): What are you doing

(8:29 p.m.): Don't do this to your family

Petitioner (8:30 p.m.): Packing for florida..not drinking

Respondent (8:31 p.m.): I'm not talking about drinking

Petitioner (8:34 p.m.): I know you have been following me...it kind of creeps me out..I also know you are right. I'm sick in several ways.

Respondent (8:36 p.m.): You can beat this don't please don't go any further

Petitioner (8:44 p.m.): I am planning on ending it, it has not progressed very far. I'm asking you to please stop following me, let me make my own choices and don't involve the other families. PLEASE it would be horrible.

Respondent (8:46 p.m.): I cannot make that promise he has taken significant action and has a significant criminal history I do not think he's going to let you go
(8:51 p.m.): And I'm sorry but I am NOT going to make that promise and I am going to do something

Petitioner (8:55 p.m.): He has not taken any action against me that I wasn't a part of. You have got to leave this alone.

Respondent (8:55 p.m.): No

Petitioner (8:57 p.m.): I feel violated by you not him. I can't even sleep worried about what you r doing

Respondent (9:03 p.m.): Nothing is going to happen until you have had a vacation with your family

Petitioner (9:07 p.m.): I don't know what kind of peace that is supposed to bring me.

(9:18 p.m.): What the hell r u doing this for

Respondent (9:18 p.m.): Because your relationship has progressed that far.

Petitioner (9:21 p.m.): No it has not and even if it did its my bs..you are being vindictive. I feel like you are stalking me.

Respondent (9:22 p.m.): If you can't protect your family I know [husband] will

Petitioner (9:28 p.m.): So this is what? A bribe? Your going to tell [husband]? You will destroy me. So if you can't have me nobody can? He will leave me and I will drink myself into a grave. Bravo..and I will.

Respondent (no time shown): Now who is acting sick

May 31, 2014: 4:57 a.m.-9:28 a.m.; and 2:02 p.m.-7:12 p.m.

Petitioner (4:57 a.m.): Do whatever you want...but if you keep having me followed I'm going to your boss

Respondent (4:58 a.m.): Due to the potential for violence in this incident I have notified my employer are all parties involved

5:12 a.m.): Of all parties involved

Petitioner (6:40 a.m.): I've told [husband] about you and your obsession with me. You've nothing to gain but embarrassing yourself, and your family. I'm not in any danger except from you.

(6:47 a.m.): He is willing to forgive me and move on. Anything more will kill him, this is seriously not who I thought you were.

Respondent (6:48 a.m.): Just to make sure I will be sending him your photo texts to me and the messages you left on my phone while we were together

Petitioner (6:51 a.m.): Nice..I thought this was about safety....apparently not

Respondent (6:52 a.m.): And let's not forget about vince

Petitioner (7:36 a.m.): What do you want from me? This is psycho...you need to move on. I told [husband] about us and you were no angel either, you took liberties when I was drinking and you know it. I never claimed to be perfect..I told u that repeatedly. Vince and I are [incomplete text]

Respondent (7:02 a.m.): The voice messages were loaded onto a Olympus personal digital recording device

(8:30): Let's let lisa decide if you two are friends

Petitioner (8:46 a.m.): Quit bribing me...or did you leave that part out of your discussion with your employer.

Respondent (8:47 a.m.): What do you mean by bribe and there was no discussion it was in the form of a memo

Petitioner (8:59 a.m.): This *** whole mess is a bribe and you know it.

Respondent (9:28 a.m.): Look up the definition of bribe

Petitioner (2:02 p.m.): whatever this is its wrong. I'm talking to [husband] now

Respondent (2:07): [illegible]

Petitioner (3:34 p.m.): He's devistated ...please leave us alone

Respondent (3:35 p.m.): I'm sorry

Petitioner (3:48 p.m.): And he's making me tell the kids. Elizabeth will never forgive me, neither will he. he's made that clear

Respondent (3:50 p.m.): Then get help from your psychologist. .and deal with this A A has not helped

Petitioner (4:16 p.m.): You forced me into disclosing our affair to my family and are following me or having me followed. You win. Game over.

Respondent (4:18 p.m.): Hate me all you want I was not going to stand by and let you do that to your family

(4:21 p.m.) the issue with Vince is not over

Petitioner (4:23 p.m.): Its over for me. You do whatever

(4:33 p.m.): u need to have ur facts straight before u go to lisa...she does not deserve it..

Respondent (4:34 p.m.): Did you think you were his first one

Petitioner (4:37 p.m.): No and that's not the point...we didn't have an affair, it did not happen...period.

Respondent (4:42 p.m.): When I sent a memo in weeks ago my department acts independently of me I'm just as big a suspect as you and vince that's why I know I wasn't stalking. But when you give my personal information to that guy and he follows me he doesn't do that for nothing

Petitioner (4:53 p.m.): That's bs he knows nothing about u, not even ur name. Not from me

(4:54 p.m.): What r u talking about

Respondent (4:55 p.m.): The lying can stop now. Concentrate on your family

Petitioner (5:01 p.m.): The only person I gave ur name to is [my husband] ...about an hour ago because he made me. You concentrate on yours.

Respondent (5:18 p.m.): I will not approach lisa.

Petitioner (6:46 p.m.): Or [my husband] ...he's been thru enough..please!

Respondent (6:48 p.m.): I agree he has been through enough if he calls me as far as I'm concerned I was the only affair

Petitioner (7:07 p.m.): Just to let you know...I spent time with him but NEVER slept with him. You were the only affair.

Respondent (7:09 p.m.): That is the same as an affair you had to hide it. You told me you were sick you know that activity was going to lead somewhere if it already hasn't

Respondent (7:12 p.m.): And another thing practice what you preach. When Elizabeth has an issue you send her off to a psychologist when John Paul has an issue you send him off to a psychologist why aren't you doing it

June 1, 2014: 10:32 a.m.-10:50 a.m.

Petitioner (10:32 a.m.): I did see dr beldord last week..she said it wasn't uncommon for caregivers to go off the deep end also decend into addiction ..just don't drink over it. I'm trying to repiar my marriage here. It is NOT going well. You backed me into a corner...my husband wants a divorce. I'm not speaking to you anymore.

Respondent (10:36 a.m.): I understand....

(10:50 a.m.): Keep this in mind even if he files it can be stopped at any moment keep working on him

June 8, 2014:

Petitioner (no time shown): You hurt the person most who deserved it the least. And you said you wouldn't.

¶ 21 Respondent testified he is a sergeant with the Cook County Sheriff's Police. Respondent had contact with petitioner by text and voice messages via cell phone on numerous occasions after March 29, 2014. On that date, their relationship ended when petitioner told respondent she wanted to return to a traditional life with her family. Respondent testified he supported her decision and sent text messages to friends informing them that petitioner returned to her husband. Respondent denied following petitioner to AA meetings.

¶ 22 Respondent and petitioner kept in contact because he had strong feelings for her and previously supported her through hospitalizations and other family issues. Respondent knew petitioner was in AA and he attended more than three meetings with her at Wolf Road in Mokena from late 2011 into early 2012. After March 29, 2014, respondent stated they maintained a social friendship.

¶ 23 At the time of the hearing, respondent lived in Tinley Park, but he socialized at the Stray Bar in Frankfort, which he previously frequented with petitioner. In addition, he continued to

socialize at Fox's Pizza, a bar in Mokena that he and petitioner had introduced respondent to. Respondent explained that Fox's Pizza is located in the same shopping complex as the Dunkin' Donuts store.

¶ 24 According to respondent, Fox's Pizza has a regular clientele and one night while respondent was in this establishment he noticed a man, whom he did not know as a regular customer, enter the bar. This man appeared to be looking for someone or "searching."

¶ 25 Respondent testified that when the man entered the room, respondent was part of a crowd of ten or twelve people. Respondent noticed when individuals spoke to respondent, these conversations seemed to draw the unknown man's attention. Respondent noted there were multiple televisions the man could have focused on, but he seemed interested in respondent's conversations with other persons. Respondent told the court the unknown man did not approach or speak directly to respondent. When respondent went to the parking lot, for reasons he did not recall, he noted a Mercedes convertible parked there. Respondent said, "I had occasion to go to work, and I had taken the license plate down, and I received the information about the ownership from the license plate."

¶ 26 When asked on direct examination about his decision to record the license plate number, respondent explained that his training in the police academy taught him to be vigilant about his own safety, even when off duty. Respondent said he made a report to his superiors about this incident.

¶ 27 When cross-examined regarding the reason respondent contacted husband on June 8, 2014, respondent replied:

 "[Petitioner] introduced me to the Fox's Pub. I had occasion to be there. I *** knew that her car was there. I had to drive by it. I don't know why her [sic] and this guy were coming into that area knowing I'm right around the corner in the area there.

And the other issue is, *** another thing [petitioner] gave me was a forest preserve path that I walk on LaPorte Road. I walk it daily. I walked it this morning, so, yes, and [petitioner]’s car may be coming down there. I might observe it. I’m not actively doing anything. I go to that forest preserve different times, different couples recognize me.”

¶ 28 Respondent said petitioner sent him a text message describing him as obsessed with her. Therefore, respondent called husband to tell his side of the story and make sure the husband knew he was not a threat to petitioner. Respondent described his communication with husband as “information.”

¶ 29 After arguments, the trial court read text messages dated May 30, 2014, from petitioner asking respondent not to contact her, stating she knew respondent had been following her, and asking respondent to stop doing so. The court observed that respondent replied he was not going to make that promise and he was going to do something. The trial court noted the phone calls respondent made to husband and the fact that respondent provided petitioner’s recorded messages to husband, which the court thought “in and of itself is a little bit scary.”

¶ 30 The court also noted that respondent left messages for petitioner and respondent had run the license plate of someone he believed petitioner was having an affair with based only on having seen the car in the parking lot near petitioner’s vehicle. Based on this evidence, the trial court found respondent’s combined acts constituted a pattern of harassment. Consequently, the court granted petitioner’s request for a one-year plenary order of protection effective until July 7, 2015.

¶ 31 Respondent timely appealed the order of protection.

¶ 32 ANALYSIS

¶ 33 Respondent argues the trial court “abused its discretion” when granting petitioner’s petition for an order of protection. Respondent argues his behavior was reasonable and he was

not consciously aware that his conduct would cause emotional distress to petitioner or her husband.

¶ 34 Proceedings to obtain an order of protection are governed by the rules of civil procedure and a petitioner must prove that the abuse occurred by a preponderance of the evidence. 750 ILCS 60/205(a) (West 2014); *Best v. Best*, 223 Ill. 2d 342, 348 (2006). A reviewing court will reverse the trial court’s finding of abuse only if the finding is contrary to the manifest weight of the evidence received by the trial court. *Best*, 223 Ill. 2d at 348-49.

¶ 35 Persons protected under section 201 of the Illinois Domestic Violence Act of 1986 (the Act) and entitled to receive a plenary order of protection include, “any person abused by a family or household member.” 750 ILCS 60/201(a)(i) (West 2014). Under the Act, family and household members include, “persons who have or have had a dating or engagement relationship.” 750 ILCS 60/103(6) (West 2014). It is undisputed that petitioner and respondent had recently ended a long-term extramarital affair. Thus, petitioner was a protected person under the Act.

¶ 36 Next, we examine whether the evidence presented to the trial court during the plenary hearing established respondent abused petitioner as alleged in the petition. Abuse is defined, in part, under the Act as “harassment.” 750 ILCS 60/103(1) (West 2014). Harassment is described, in part, as:

“[K]nowing 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. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:

- (i) creating a disturbance at petitioner’s place of employment or school;

- (ii) repeatedly telephoning petitioner’s place of employment, home or residence;
- (iii) repeatedly following petitioner about in a public place or places;
- (iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner’s windows.”

750 ILCS 60/103(7) (West 2014).

¶ 37 It appears the trial court concluded respondent’s conduct fell within the parameters of section (iii) in that respondent repeatedly followed petitioner in public places. According to petitioner, the harassment began after March 29, 2014, and led to her filing a petition for a plenary order of protection on June 17, 2014.

¶ 38 We carefully examine the record to determine if the trial court’s finding that respondent engaged in a pattern of harassment for a purpose that was not reasonable under the circumstances. In this case, petitioner alleged respondent may have followed her to at least three AA meetings beginning in mid-April.

¶ 39 The record reveals that in spite of her belief that respondent may be following her beginning in mid-April, on April 18, 2014, *petitioner* contacted respondent with the intent to arrange a face-to-face visit. Petitioner’s text message to respondent told him she was at “the [S]ubway” and waiting for a new stereo to be installed at Best Buy. Petitioner asked “r u around.” Respondent replied, “I can be are you sure[?].”

¶ 40 Thereafter, petitioner clearly invited respondent to meet her at a public place, namely Best Buy, and suggested they should meet in “the home theater area ... they have seating.” This exchange does not support the view that on April 18, 2014, respondent had begun a pattern of

harassment. In fact, it appears when petitioner contacted respondent, he expressed initial doubts about the propriety of the meeting.

¶ 41 Next, we examine respondent's conduct after April 18 and up to June 17, 2014, to determine if a pattern of harassment becomes evident of record. Petitioner testified that she observed respondent's car in public places after their affair ended. Based on her observations, she believed respondent was following her. However, she testified that respondent's vehicle did not leave the public locations and she did not observe him following or driving behind her vehicle. The record suggests there was no attempt by respondent to initiate communication with petitioner between April 18, 2014 until May 30, 2014.

¶ 42 The first documented communication after April 18, 2014 occurred at 8:23 p.m. on May 30, 2014, when *petitioner* initiated telephone contact with respondent. On that date, petitioner texted, "I'm very sorry ihurt [sic] you."

¶ 43 The ensuing conversation between petitioner and respondent continues for over an hour on May 30, 2014. The following morning, on May 31, 2014, at 4:57 a.m., *petitioner* again initiates text messaging. Petitioner states that she will contact respondent's boss if respondent does not stop following her. Their text messaging once again sporadically continues for many hours and concludes at 7:12 p.m. on May 31, 2014, when respondent tells petitioner to make an appointment with a psychologist.

¶ 44 In these May text messages, petitioner implores respondent as follows: "don't involve the other families. PLEASE it would be hor[r]ible." Respondent replies that due to the potential for violence "in this incident," respondent had already notified his employer "of all parties involved[.]"

¶ 45 In response, petitioner states that she has told her husband about their affair. Respondent replied, “[j]ust to make sure I will be sending him your photo texts to me and the messages you left on my phone while we were together[.]”

¶ 46 The next morning, at 10:32 a.m. on June 1, 2014, petitioner contacts respondent to tell him her husband wants a divorce. She also tells respondent, “I’m not speaking to you anymore.” Respondent replies, “I understand.” Presumably, once petitioner and her family left on a Florida vacation as planned, no attempts at communication by either person took place over the course of the week of vacation.

¶ 47 The record reveals that respondent initiated contact by driving by petitioner’s home and calling petitioner’s home telephone twice on June 7, 2014. However, he did not stop to speak to petitioner when she was outside the house on June 7, 2014. Similarly, he did not speak to petitioner’s husband when husband answered each telephone call on that date.

¶ 48 The next day, respondent spoke to petitioner’s husband by telephone on June 8, 2014. On the same date, respondent dropped off personal communications that documented the mutual nature of the affair.

¶ 49 On June 8, 2014, *petitioner* attempted to contact respondent by text message. However, no text conversation between petitioner and respondent occurred on June 8, 2014, because the evidence presented shows respondent did not reply.

¶ 50 We must consider whether the evidence established respondent’s conduct was not reasonable under the circumstances and whether the trial court’s finding concerning a pattern of harassment was against the manifest weight of the evidence. We recognize the information respondent disclosed and delivered to petitioner’s husband on June 8, 2014, must have been extremely difficult for petitioner’s husband to receive after a family vacation. Petitioner’s

husband described the telephone message he received from respondent on June 11, 2014 as “disturbing” news when he learned petitioner had access to a cell phone respondent provided.

¶ 51 Based on this record, we conclude disclosing a recent affair to the spouse of an ex-paramour is not *per se* unreasonable conduct. Here, respondent notified petitioner he would be sharing the information with her spouse after their vacation, giving her an opportunity to truthfully disclose the affair to her husband. After the family vacation, respondent elected to convey the information to petitioner’s husband by telephone and by written documentation without a face-to-face confrontation with petitioner present.

¶ 52 Obviously, petitioner’s husband’s reaction to details of the relationship caused petitioner additional emotional distress when her husband required petitioner to tell her daughter about her infidelity. Petitioner feared her daughter would never forgive her. In addition, petitioner was upset because her husband now wanted a divorce. Nonetheless, the emotional distress petitioner suffered when her husband learned about the affair was a foreseeable negative consequence inherent in any extramarital affair.

¶ 53 The record establishes that both parties continued to go to locations they enjoyed together before the affair ended. In addition, both parties participated in multiple, lengthy, text conversations. Importantly, petitioner initiated all but one of the text conversations prior to June 7, 2014 and both parties traded unpleasant predictions of future conduct towards the other. For example, on May 31, 2014, petitioner threatened to contact respondent’s boss. Respondent retorted he would be delivering photo texts and other romantic communications to petitioner’s husband to make sure petitioner truthfully reported the affair to her spouse. Both carried out these predictions.

¶ 54 On June 8 and June 11, 2014, respondent ended the mutual secrecy of their affair and directly contacted petitioner's husband. The next day, June 12, 2014, petitioner initiated a complaint against respondent by filing an Office of Professional Review complaint through the Cook County Sheriff's Department. We would be remiss if we did not recognize that respondent took advantage of the database available to him as a law enforcement officer to discover the identity of petitioner's male friend. The complaint filed by petitioner with the Office of Professional Review began an investigation of his conduct to determine if the "incident" reported by respondent to his superiors justified his conduct.

¶ 55 On June 17, 2014, petitioner filed a verified petition for order of protection against respondent. The testimony presented to the court in support of this petition established both parties caused each other to suffer negative personal and/or professional consequences when their affair ended. Their interaction between April 18, 2014 and June 7, 2014 indicates neither person feared the other, but both were having difficulties severing all ties to the other paramour. Their written communication after April 18, 2014 was mutual, but often initiated by petitioner.

¶ 56 Based on the unique facts in this record, we conclude respondent's failure to keep a mutual secret, in spite of a prior history of doing so, did not rise to the level of a pattern of harassment as provided by the statute. 750 ILCS 60/103(7) (West 2014). Consequently, we conclude the trial court's issuance of the plenary order of protection based on a pattern of harassment by respondent is not supported by this record and was against the manifest weight of the evidence.

¶ 57 CONCLUSION

¶ 58 For the foregoing reasons, the judgment of the circuit court of Will County is reversed.

¶ 59 Reversed.

¶ 60 JUSTICE SCHMIDT, dissenting.

¶ 61 A court's decision is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *Tedrowe v. Burlington Northern Inc.*, 158 Ill. App. 3d 438 (1997). Our job is not to reweigh the evidence, but to determine whether there was evidence to support the trial court's judgment.

¶ 62 Evidence presented would allow one to reasonably infer that respondent's actions in following petitioner and informing her husband of the affair were based on the fact that petitioner ended the affair with respondent and respondent believed that petitioner was now having an affair with a third person. While respondent came up with reasons why he was in the same places that petitioner frequented, the trial court did not have to accept those reasons. There were huge credibility issues involved here which were for the trial court, not the appellate court, to resolve. While three, six or eight out of ten trial judges might have ruled the other way, that does not render the trial court's finding against the manifest weight of the evidence. That is, the appellate court is to examine not whether the evidence could have supported a judgment for the appellant, but whether a contrary judgment is clearly evident. *Id.*

¶ 63 Based on our standard of review, I would affirm the trial court. Therefore, I respectfully dissent.