2015 IL App (4th) 140561-U

NO. 4-14-0561

FILED
July 17, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

ZOE AHEARN,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
ADIL W. AHMAD,	)	No. 13OP531
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pope and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Issues related to the propriety of the trial court's emergency stalking no-contact order are moot.

(2) The trial court improperly considered evidence outside the record when determining whether to issue a plenary stalking no-contact order, resulting in prejudice to defendant.

¶ 2 Defendant, Adil W. Ahmad, *pro se*, appeals the trial court's entry of a two-year, plenary stalking no-contact order, which prohibited him from contacting plaintiff, Zoe Ahearn, and entering or remaining at plaintiff's school, the University of Illinois College of Law. On appeal, defendant argues (1) the court initially entered an emergency stalking no-contact order, which set forth an improper remedy and should be vacated; (2) the court improperly relied on matters outside the record when entering its plenary order; and (3) there was insufficient

evidence to support the court's plenary order. We reverse and remand.

¶ 3 I. BACKGROUND

¶ 4 On October 29, 2013, plaintiff filed a *pro se* verified petition for a stalking no-contact order pursuant to the Stalking No Contact Order Act (Act) (740 ILCS 21/1 through 135 (West 2012)). At the time of the underlying proceedings, both plaintiff and defendant were third-year law students at the University of Illinois College of Law. Plaintiff alleged that, beginning in January 2013, she and defendant were enrolled in a Talmudic Law class together. In February 2013, defendant sent plaintiff a series of e-mails, asking her on a date. Plaintiff declined defendant's offer. She alleged defendant's e-mails made her uncomfortable and she found them insulting, offensive, and scary.

¶ 5 Plaintiff attached the e-mails to her petition. They indicate defendant e-mailed plaintiff on February 14, 2013, and stated as follows:

> "You just ran out on me… So I know you specialize in old, balding, rich Jewish guys from jdate, but perhaps I can convince you to expand your portfolio to guys with a little more hair.
>
> Can I steal you away from your jdate boyfriends for a drink this weekend? Saturday evening at 7?"

On February 16, 2013, defendant sent plaintiff a second e-mail, stating: "So, did you forget to pay your bills and can't answer e[-]mails anymore?" Plaintiff responded, declining defendant's invitation and stating she had plans and had "started seeing somebody." On February 28, 2013, defendant e-mailed plaintiff a third time, stating as follows:

> "So you had a good excuse last time. What's your excuse this

time? I was going to talk to you after class but I had to call the devil. Is your number on the intranet the right one?"

Plaintiff alleged in her petition she considered the reference about the devil to be "bizarre" and "even scary." Further, she alleged she was "scared" that defendant was looking up her contact information. Plaintiff responded to this final e-mail, noting she "didn't clarify enough two weeks ago, but [she] was not interested in [defendant] that way." She asked that he not send her any further e-mails following the parties' shared class.

¶ 6 Plaintiff further alleged that, on October 24, 2013, defendant approached her in the law school cafeteria and wanted to discuss their previous e-mail correspondence. Plaintiff alleged she repeated that she was not interested in defendant and, as he was leaving the area, defendant "punched [plaintiff] in [her] left arm." She described the punch as "not hard enough to cause [her] severe physical pain" but asserted it scared her and she found it "quite offensive." Plaintiff asked the trial court to enter an order prohibiting defendant from stalking or contacting her and requested that he be ordered "to leave the vicinity if he sees [plaintiff] in common areas of [the] law building and surrounding area."

¶ 7 Following a hearing on November 4, 2013, the trial court (Judge Thomas J. Difanis) found good cause for granting plaintiff emergency relief. It entered an emergency order, prohibiting defendant from stalking or contacting plaintiff. The court also prohibited defendant from entering or remaining at the parties' law school. The court's emergency order was effective until November 15, 2013, the date set for the plenary hearing.

¶ 8 At the plenary hearing on November 15, 2013, plaintiff appeared *pro se* while defendant appeared with counsel. Plaintiff testified and described her interactions with

defendant through e-mail in February 2013. She stated defendant initially e-mailed her on February 14, 2013, following the parties' Talmudic Law class and asked her out on a date. In the e-mail, defendant commented that plaintiff dated "old, balding, rich Jewish men." Plaintiff did not respond to the e-mail. Approximately two days later, defendant sent a second e-mail, asking if plaintiff had not responded to the first e-mail because she had not paid her bills. Plaintiff responded and declined defendant's offer; however, about two weeks later, defendant sent a third e-mail, asking plaintiff "out again" and "what was [her] excuse this time." She stated she replied to defendant's e-mail stating she would not go on a date with him and "to clarify that [she] was saying no."

¶ 9 Plaintiff testified she and defendant had classes together since their first year of law school. She did not recall having any individual conversations with defendant but stated he might have entered her conversations with other students. On cross-examination, plaintiff testified she did not recall speaking with defendant in either January or February 2013, while attending an event for the Jewish Law Students Lunch and Learn program. Further, she did not recall telling defendant that she was "signed up on the website JDate."

¶ 10 Plaintiff also described the incident that occurred in October 2013. She testified defendant approached her while she was sitting in the law school cafeteria, sat across from her, and asked "what happened last year." Defendant inquired why plaintiff had said "no" and noted he had been "very persistent." Plaintiff testified she responded that her answer was "still no and it's always going to be a no." She stated defendant got up to leave and then "punched [her] in the arm." She considered the incident to be insulting and stated she was scared because "it wasn't a playful punch." Plaintiff asserted she was "very much offended" and was fearful that defendant's

behavior would escalate or continue.

¶ 11 On cross-examination, plaintiff testified the punch on her arm "didn't hurt [her] very much" but it also "didn't feel good." Further, she acknowledged defendant never threatened her during their conversation.

¶ 12 Plaintiff testified she contacted the dean of the parties' law school and was directed to put defendant on notice that he was not to contact her by any means. Subsequently, defendant sent plaintiff an e-mail stating plaintiff was "out of [her] mind."

¶ 13 Defendant testified he and plaintiff were both involved in the Jewish Law Students Lunch and Learn program. He stated that, at an event, he spoke to plaintiff and others about dating in general and plaintiff mentioned "she was on JDate.com." According to defendant, plaintiff reported "that the only kind of people who were responding to her ads were old, balding Jewish people." She also showed him an e-mail containing some of the responses she had received. During the conversation, defendant got the impression plaintiff was flirting with him when she turned to him and stated " [']all a handsome guy has to say is yes and I would go out with you.['] "

¶ 14 Defendant testified comments in his initial e-mail to plaintiff about "JDate" and "older, bald Jewish men" were meant to be a light-hearted reference to their previous conversation. Also, a comment in his third e-mail about the devil was a reference to a discussion about morality and ethics during the parties' class, as well as his phone "ringing off the hook" during class. Defendant testified that, aside from being in the same class as plaintiff, he had no contact with her between March 1, 2013, and October 24, 2013.

¶ 15 Defendant stated he approached plaintiff in the law school cafeteria on October

24, 2013, because he wanted to make sure there was "no bad blood from the previous year." He denied that he asked her out or threatened her. Defendant also asserted he did not punch plaintiff, but, instead, "patted her on the shoulder." He stated that, in his country, "patting people on the shoulder merely means it's okay." On cross-examination, defendant testified he e-mailed plaintiff after she initially declined his invitation for a date because he was persistent and plaintiff had been staring at him and he wanted to make sure they were "on the same picture." On re-direct, defendant denied that, prior to October 24, 2013, plaintiff indicated she wanted no contact at all from him.

¶ 16 Upon questioning by the trial court, plaintiff further testified that defendant's "volatile behavior at the law school" affected her feelings toward her interactions with him. She testified regarding a specific incident when defendant gave a "very inappropriate presentation" in their Talmudic Law class on "sex in the Koran and sex in the Talmud."

¶ 17 Thereafter, defendant was recalled to testify and asserted he discussed his presentation with his professor who found it "completely acceptable." Defendant also denied having any previous trouble at the law school and asserted there was "no volatility." At that point in defendant's testimony, the trial court interjected: "That was not going to be part of this, but you brought it up. Let's take about 10 minutes, counsel." After the break, and without further testimony or argument, the court announced its ruling, finding it appropriate to enter a two-year, plenary order. The court reiterated the evidence presented and stated as follows:

> "This amounts to a question of credibility. The [defendant] apparently believes that [plaintiff] invited the contact, was flirting with him at this luncheon and then stared at him and couldn't take

her eyes off of him. It's a question of credibility, counsel. She has it and he doesn't."

At the conclusion of the hearing, the trial court entered a written plenary stalking no-contact order. Again, it prohibited defendant from stalking or contacting plaintiff, and from entering or remaining on the premises of the parties' law school. The court's plenary order was to remain effective until November 15, 2015.

¶ 18 On December 13, 2013, defendant, with the aid of counsel, filed a petition for substitution of judge for cause, a motion to vacate the plenary order, and a motion to reconsider. In connection with his motion to reconsider, defendant argued there was insufficient evidence to support issuance of the plenary order. In both his petition for substitution and motion to vacate, he asserted the trial judge, Judge Difanis, improperly considered evidence outside the record. He attached the affidavit of his attorney, who averred that, during the plenary hearing, the judge handed her a police report, dated March 7, 2013, which the judge appeared to already have with him on the bench. A copy of the police report was also attached to defendant's postjudgment filings. The report stated law students from the University of Illinois were participating in a mock trial before Judge John Kennedy at the Champaign County Courthouse and Judge Kennedy ordered defendant removed from the building by courthouse security.

¶ 19 On February 12, 2014, the trial court granted a motion by defendant's counsel to withdraw. Thereafter, on February 27, 2014, defendant filed a *pro se* petition for substitution of judge for cause, motion to vacate, and motion to reconsider. His motions raised the same arguments and issues as raised in his previous filings.

¶ 20 On March 21, 2014, Judge Difanis conducted a hearing with respect to

defendant's motion to reconsider and motion to vacate. Plaintiff did not appear. The judge stated as follows:

> "All right. This is a motion to dismiss basically because of the errors allegedly committed during the course of the hearing. The only issue was [defendant] saying that he had no prior problems or history and, of course, he had been removed from the Champaign County Courthouse the year before. That was a question that was asked by his attorney and that becomes a question of credibility. I provided her with a copy of the order, which had really nothing to do—a copy of the police report, which had nothing to do with the issue of whether or not he was stalking and or harassing [plaintiff]."

The judge then denied both motions. Later the same day, Judge Difanis made a docket entry, noting he had overlooked defendant's motion for substitution of judge. He vacated his order denying defendant's motions to vacate and reconsider.

¶ 21 On April 11, 2014, defendant again filed *pro se* motions to vacate and reconsider, as well as a *pro se* petition for substitution of judge for cause. He raised the same issues and arguments as in his previous motions.

¶ 22 On April 15, 2014, a hearing was conducted before Judge Jeffrey Ford on defendant's petition for substitution of judge for cause. Judge Ford denied the motion.

¶ 23 On May 16, 2014, defendant filed a *pro se* motion to amend the stalking no-contact order. He alleged plaintiff would graduate from the University of Illinois College of Law

on May 17, 2014, and asked that the plenary stalking no-contact order be modified to end effective May 18, 2014, so that he could reenroll and complete his degree.

¶ 24 On May 28, 2014, Judge Difanis conducted a hearing in the matter and noted neither party appeared. The record indicates he denied all of defendant's pending motions.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Defendant appeals, challenging both the trial court's emergency and plenary stalking no-contact orders. Initially, we note plaintiff has not filed an appellee's brief. Under such circumstances, a reviewing court may exercise three distinct, discretionary options: "(1) it may serve as an advocate for the appellee and decide the case when the court determines justice so requires, (2) it may decide the merits of the case if the record is simple and the issues can be easily decided without the aid of the appellee's brief, or (3) it may reverse the trial court when the appellant's brief demonstrates *prima facie* reversible error that is supported by the record." *Thomas v. Koe*, 395 Ill. App. 3d 570, 577, 924 N.E.2d 1093, 1098-99 (2009) (citing *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976)). Here, we find the record is simple and the issues presented are easily decided without the aid of an appellee's brief.

¶ 28 On appeal, defendant first argues the trial court's emergency stalking no-contact order should be vacated. He contends he did not receive prior notice of the hearing that resulted in the court's emergency order or an opportunity to be heard at that hearing. Defendant maintains, under such circumstances, section 80(b)(3) of the Act (740 ILCS 21/80(b)(3) (West 2012)) barred the court from granting relief which prohibited him from entering his law school.

That section sets forth the remedies that may be contained within a stalking no-contact order and states "the court may order the respondent to stay away from the respondent's own residence, school, or place of employment only if the respondent has been provided actual notice of the opportunity to appear and be heard on the petition." 740 ILCS 21/80(b)(3) (West 2012).

¶ 29 Here, we find issues related to the court's emergency stalking no-contact order are moot. "As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). In this case, the emergency order expired on November 15, 2013, less than two weeks after it was entered. Thereafter, the trial court entered its plenary order, setting forth the same remedies provided for in its emergency order. Any decision by this court regarding the trial court's emergency order would be advisory as that order is no longer in effect and defendant is now subject to only the court's plenary order. Although various exceptions to the mootness doctrine exist, defendant has not argued that any exception applies under the facts presented. Therefore, we decline to address the merits of any issue relating to the emergency order.

¶ 30 On appeal, defendant next challenges the trial court's plenary order on the basis that the trial judge considered facts outside the record when making his decision. Specifically, he contends the judge improperly based his decision to issue the plenary stalking no-contact order on a police report that was not admitted into evidence during the hearing.

¶ 31 "Deliberations of the court must necessarily be limited to the record before it." *People v. Steidl*, 177 Ill. 2d 239, 266, 685 N.E.2d 1335, 1347 (1997). "The rule in Illinois and other jurisdictions is that it is improper for the trier of fact to conduct experiments or private

investigations which have the effect of producing evidence which was not introduced at trial." *People v. Gilbert*, 68 Ill. 2d 252, 259, 369 N.E.2d 849, 852 (1977); see also *Drovers National Bank of Chicago v. Great Southwest Fire Insurance Co.*, 55 Ill. App. 3d 953, 957, 371 N.E.2d 855, 858 (1977) ("It is a well established principle of law that in a trial of a case, the trial judge may consider only that knowledge he has acquired by the introduction of evidence or of which he may take judicial notice."). "However, not every departure from the rule will call for reversal" and "[a] showing of prejudicial effect is required." *Roth v. Roth*, 45 Ill. 2d 19, 25, 256 N.E.2d 838, 841 (1970). Additionally, although it is generally presumed that a trial judge only considers competent evidence, the presumption may be overcome where the record affirmatively shows the contrary. *Gilbert*, 68 Ill. 2d at 258-259, 369 N.E.2d at 852.

¶ 32 Here, the record supports a finding that the trial judge improperly considered incompetent evidence when deciding whether to issue the plenary stalking no-contact order. Specifically, at the March 21, 2014, hearing the judge acknowledged he handed a copy of the police report to defendant's counsel during the November 15, 2013, plenary hearing. The report had not been admitted into evidence. Further, the record indicates the court determined the report reflected negatively on defendant's credibility. The judge determined the credibility of the parties was a central issue in the case, noting at the plenary hearing that the matter presented "a question of credibility" and stating "[plaintiff] has it and [defendant] doesn't." He also presented the report to defendant's counsel immediately after defendant denied having "trouble in the law school." Additionally, when addressing the matter at the March 2014 hearing, the judge stated "[t]he only issue was [defendant] saying that he had no prior problems or history and, of course, he had been removed from the Champaign County Courthouse the year before."

¶ 33 The record reflects the trial court considered the police report when determining whether defendant testified credibly at the plenary hearing. We find the court's consideration of the police report when weighing what the court considered a key issue in the case—the parties' credibility—was prejudicial error.

¶ 34 We note defendant also argues on appeal that the evidence presented was insufficient to support the entry of a plenary stalking no-contact order. The standard of proof in proceedings to obtain a stalking no-contact order is proof by a preponderance of the evidence. 740 ILCS 21/30(a) (West 2012). Further, plenary stalking no-contact orders are subject to a manifest-weight-of-the-evidence standard of review. *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶¶ 22-24, 993 N.E.2d 594; see also, *Best v. Best*, 223 Ill. 2d 342, 348-49, 860 N.E.2d 240, 244-45 (2006) (holding the manifest-weight-of-the-evidence standard was applicable to appellate review of plenary orders of protection). "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." *Nicholson*, 2013 IL App (3d) 110517, ¶ 22, 993 N.E.2d 594. Assuming the veracity of plaintiff's testimony, we find the evidence was minimally sufficient to meet the Act's requirements.

¶ 35 Under the Act, "a stalking no[-]contact order shall issue" when the court finds that the petitioner has been a victim of stalking. 740 ILCS 21/80(a) (West 2012). " 'Stalking' means 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). " 'Course of conduct' means [two] 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." (Emphasis added.) 740 ILCS 21/10 (West 2012). Finally, " '[e]motional distress' means significant mental suffering, anxiety or alarm." 740 ILCS 21/10 (West 2012).

¶ 36 Here, although the evidence was close, assuming plaintiff's credibility, it was minimally sufficient to show two instances when defendant communicated to plaintiff and knew or should have known that his actions would cause a reasonable person to suffer emotional distress. The record shows defendant e-mailed plaintiff for a third time on February 28, 2013, after she failed to respond to his first e-mail and responded to his second e-mail by declining his invitation for a date. The record also shows plaintiff was "scared" by defendant's "bizarre" reference to the devil in his third e-mail, as well as his assertion that he had looked up her contact information online. On October 24, 2013, defendant approached plaintiff in the law school cafeteria and wanted to discuss their previous e-mail exchange. Plaintiff testified, at the conclusion of that conversation, defendant "punched [her] in [her] left arm." Although plaintiff did not experience physical pain, she stated the incident scared her and she felt defendant's conduct was "quite offensive."

¶ 37 The trial court found issuance of a plenary order turned on the parties' credibility. Had the court relied on only competent evidence to find plaintiff more credible than defendant, we could not say its judgment was against the manifest weight of the evidence. However, as discussed above, the court improperly relied on evidence outside the record. Accordingly, we reverse the court's judgment and remand for a new hearing on the petition for a stalking no-

contact order before a different judge who shall consider only competent evidence. If following a new hearing the court grants the petition for a stalking no-contact order, then the duration of such order shall not exceed the two-year limitation set forth in the Act (740 ILCS 21/105(b) (West 2012)), taking into consideration the period of time the original plenary order has been in effect.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we reverse the trial court's judgment and remand for a new hearing.

¶ 40 Reversed and remanded.