2016 IL App (2d) 151179-U
No. 2-15-1179
Order filed September 15, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SAFET IBISEVIC,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 2011 D 942
	)	2015 OP 1652
	)	
DEBRA IBISEVIC,	)	Honorable
	)	Gwyn Gulley,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent's various challenges to the plenary order of protection were either forfeited or lacked merit.

¶ 2 Respondent, Debra Ibisevic, appeals from a plenary order of protection entered against her upon the application of petitioner, Safet Ibisevic. We affirm.

¶ 3 On January 15, 2015, the trial court entered a judgment dissolving the parties' marriage. Respondent was granted sole custody of the parties' four minor children, but the court ordered equal parenting time in alternating weeks. Five days later, on January 20, petitioner filed a verified petition for an emergency order of protection. He alleged that, earlier that day,

respondent threw a bowl of cereal at the parties' oldest son, H. I., and forced him out of the house without his shoes, jacket, glasses, or backpack. Petitioner further alleged that, previously during the week of January 5, 2015, respondent "was violent toward [the children] and was pushing [H.I.] into his chest[.]" Respondent was "mad at them and tol [*sic*] them, 'Go upstairs all of you. I hate you all and this is all because of you.' " "These," according to petitioner, were "examples of continuing emotional harm and now physical harm that [respondent] is doing to the children."

¶ 4 That same day, the trial court issued an emergency order barring respondent from all contact with petitioner or the children. Subsequently, on three days in February, April, and May 2015, the court held an evidentiary hearing on the petition. On February 9, the court modified the order of protection to permit respondent one hour per week of supervised visitation with the children. On April 26, the court modified the order again to permit respondent some unsupervised contact with the younger three children. On May 12, the court found that respondent's actions on January 20 constituted "abuse" under section 103(1) of the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/103(1) (West 2014)). The court issued a plenary order of protection that generally barred respondent from contact with petitioner or the children except for several hours of visitation with the children per week.

¶ 5 Before proceeding to respondent's contentions, we note that her statement of facts is grossly inadequate under our supreme court rules. The reports of proceedings in this case span 830 pages, roughly half of which comprise the evidence received at the three-day hearing on the petition for an order of protection. Respondent's mere two-and-a-half page statement of facts fails to "contain the facts necessary to an understanding of the case." Ill. S. Ct. R. 341(h)(6) (eff. Jan 1, 2016). The statement is focused on respondent's case-in-chief presented on May 12,

2015, and omits all mention of petitioner's case-in-chief presented on April 22, 2015. Thus, respondent has not "stated [the facts] accurately and fairly." *Id.* As a result of her egregiously biased presentation of the evidence received at the hearings, respondent has forfeited her claim that the trial court's finding of abuse was against the manifest weight of the evidence.

¶ 6 Respondent's remaining contentions are either forfeited for lack of development or clearly lack merit. First, she cites section 213(b) of the Act (750 ILCS 60/213(b) (West 2014)), which provides that "[a]ny action for an order of protection is an expedited proceeding," and that "[c]ontinuances should be granted only for good cause shown and kept to the minimum reasonable duration, taking into account the reasons for the continuance." The crux of respondent's argument consists of this sentence: "In non-conformity with [section 213(b)], the Honorable Circuit Court allowed for a number of continuances when good cause did not exist." Respondent neither cites to the record where such continuances were granted nor offers any reason to support the conclusion that good cause was lacking. Conclusory arguments are forfeited on appeal, as are arguments not supported by citations to the record. See Ill. S. Ct. R. 341(h)(7) (eff. Jan 1, 2016) ("[a]rgument *** shall contain the contentions of the appellant and the reasons therefor, with citations of the authorities and the pages of the record relied on.").

¶ 7 Second, respondent asserts that the trial court erred in permitting petitioner to introduce, at the April 22 evidentiary hearing, a photograph from respondent's Facebook profile page. The photograph was apparently of drug paraphernalia. Respondent asserts that this evidence was "objectionable based on a lack of foundation, a lack of relevance, based on the hearsay rule, and based on [petitioner's] failure to make allegations related to said photograph" in his petition for an emergency order of protection. This contention is forfeited for respondent's failure to cite any supporting legal authority. See *id.*

¶ 8 Third, respondent contends that, during proceedings on February 26, 2015, the trial court violated her right against self-incrimination by compelling her to testify regarding a then-pending criminal charge that she violated the January 20 order of protection. Respondent claims that, while the trial court ultimately ruled that she was not required to answer petitioner's questions about the incident leading to her arrest and criminal charge, the court "[i]nitially *** overruled [her] objection **** and required [her to] testify about the topic ***."

¶ 9 We dispute respondent's characterization of the testimony. There certainly was a point at which the trial court informed respondent (who was *pro se*) that she need not testify about her arrest and ongoing prosecution for violating the order of protection. Respondent, however, identifies no prior instance in which, as she claims, the trial court "overruled [an] objection" that she premised on her right against self-incrimination. When respondent was initially asked about her arrest, she objected on relevancy grounds. The court overruled that objection. When petitioner resumed the questioning, respondent commented to the court, "I have not[,] however[,] been found guilty, Your Honor, in case that matters." The court did not respond, and petitioner continued the questioning. The court may well have construed respondent's utterance as a comment, not an objection. Assuming it was an objection, its grounds were ambiguous. Respondent might have been invoking her right against self-incrimination, or she might again have been disputing the relevance of the questioning given that the prosecution was not yet concluded. Respondent's failure to make an objection specifically on self-incrimination grounds resulted in forfeiture of her right to assert those grounds on appeal. See *Jones v. Rallos*, 384 Ill. App. 3d 73, 83 (2008) (an objection must be made on specific grounds, and grounds not specified are waived on appeal). Moreover, when the trial court later ruled that respondent was not required to testify about the arrest and prosecution, the court granted her further motion to

strike all of her testimony on the subject. Thus, even if respondent had indeed made an earlier objection on self-incrimination grounds, and the trial court overruled it, any error was cured by the striking of her testimony. See *People v. Lofthouse*, 58 Ill. App. 3d 754, 761 (1978) (striking of testimony in a bench trial "affirmatively establishes that the trial court did not consider the matter in its deliberations[.]").

¶ 10 Fourth, respondent contends that we should vacate the order of protection because petitioner admitted that he sought the order for the purpose of altering the visitation schedule established in the divorce decree. For support, respondent cites *Radke v. Radke*, 349 Ill. App. 3d 264 (2004), a case from the Third District Appellate Court. Respondent brought this same contention below in a motion to reconsider, which the trial court denied.

¶ 11 In *Radke*, the petitioner applied for an order of protection on behalf of her minor daughter following an incident during the daughter's visitation with the respondent. The court found that the respondent "harassed," and therefore "abused," the daughter during the visit by preventing her from phoning the petitioner. *Id.* at 267; 750 ILCS 60/103(1) (West 2002) (defining "abuse" to include "harassment"). The court issued a plenary order of protection prohibiting the respondent from physically abusing, harassing, intimidating, or interfering with the personal liberty of the daughter. *Id.* at 267.

¶ 12 The appellate court vacated the order of protection. In the first part of its analysis, the appellate court determined that the evidence did not support the trial court's finding that the respondent's actions constituted harassment. *Radke*, 349 Ill. App. 3d at 268-69. In the second part of its analysis, the court noted its agreement with the respondent that the order should be vacated "because any action taken to restrict his visitation with [the daughter] should have been taken under the existing dissolution decree rather than by obtaining an order of protection." *Id.*

at 268. The court noted that the problem was not that the order of protection limited visitation, which it did not. The problem, rather, was the petitioner's motives in seeking the order of protection. She and the daughter both admitted that their intention in seeking the order was to suspend the respondent's visitation. The court cited authorities holding that a petition for an order of protection "is not the proper procedure for resolving child custody or visitation issues." *Id.* at 269 (citing *Wilson v. Jackson*, 312 Ill. App. 3d 1156 (2000)). Based on these authorities, the court determined that the petitioner "misused [the Act] for the purpose of attempting to alter [the respondent's] visitation with [the daughter]." *Id.* at 269. The court concluded: "For that reason, and because we find that no harassment occurred, we reverse the judgment of the circuit court and vacate the order of protection." *Id.*

¶ 13 Relying on *Radke*, respondent points to statements in the record that she believes show that petitioner sought the order of protection in order to alter visitation. Here respondent appears to construe *Radke* to hold that a petitioner's improper motives for seeking an order of protection can undermine an objectively compelling case for such an order. The two published decisions to examine *Radke* in depth have drawn different conclusions about whether the second portion of *Radke*'s discussion, concerning motives, was intended to supply an independent rationale for vacating the order of protection in that case. Compare *Sutherlin v. Sutherlin*, 363 Ill. App. 3d 691, 695 (2006), with *In re Marriage of Gilbert*, 355 Ill. App. 3d 104, 110 (2004). We need not enter this debate. Even if respondent is correct about *Radke*, we would reject her contention as we find no reason to disturb the trial court's express finding—in deciding respondent's motion to reconsider based on *Radke*—that petitioner did *not* have a motive to change visitation. Respondent cites two portions of the record as proving otherwise. First, she cites her own testimony that petitioner had threatened to seek an order of protection against her in order to

"make sure that [she] [didn't] get [her] weeks with the children." The trial court was in a superior position to judge the credibility of respondent's testimony on this point (*In re Marriage of Bates*, 212 Ill. 2d 489, 516 (2004)), and we will not disturb its determination.

¶ 14 Second, respondent cites a portion of petitioner's testimony. The exchange begins with petitioner acknowledging that he applied for an order of protection "within a couple of hours" of the alleged abuse on January 20. The testimony continued:

"Q. And that was part of your plan before you called the police, was it not?

A. No.

Q. So you didn't have that order of protection in mind before you called the police?

A. No. I called the police first.

Q. Before thinking about an order of protection?

A. Um, order of protection, if I may, if you want to hear it, if you want me to continue, was when I asked for all the kids to be waiting for—at school for me to get them and the principal said that it's [respondent's] week and unless there's court paperwork for them to hold the children for me they wouldn't be able to do that. And that's where I was like then I need to approach the Court and explain what happened. That's how it came, that's why I came here and explained to Judge what happened and Judge said and I don't know if your Honor remembers the day, you said how old's your son and you may have that transcript as well and I hope you do. When I filed order of protection what was stated in this courtroom and you asked, and I confirmed that he didn't have shoes. That, yes, I called it barefoot because in my humble opinion he was barefoot and milk was spilled over him and he came in the condition that I could—

> feeling that he was, felt that he was telling the truth so…Um, and my main point of that was just to get the rest of the kids to safety because, obviously, [petitioner] was out of control. That was the main thing that—what I had in mind."

In this meandering passage, petitioner expresses frustration with visitation exchanges, but he also notes concern over the safety of the children. We can glean from these remarks nothing definitive about petitioner's motives in seeking the order of protection. Hence, again, even if respondent's interpretation of *Radke* is correct, her contention fails.

¶ 15 We address last respondent's assertion that petitioner acknowledged in his testimony on May 12, 2015, that his petition for an order of protection did not include any allegations of abuse of the younger three children. Respondent however, fails to discuss the allegations themselves or cite any authority for how the allegations would, if at all, limit the scope of the evidence at the hearing. Consequently, the point is forfeited. See Ill. S. Ct. R. 341(h)(7) (eff. Jan 1, 2016).

¶ 16 For the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 17 Affirmed.