2016 IL App (2d) 160006-U
No. 2-16-0006
Order filed September 7, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

JILL R. FREDERICK,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 13-OP-119
	)	
VALERIE BENSON,	)	Honorable
	)	Richard D. Russo,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's extension of a plenary order of protection was not against the manifest weight of the evidence, as the evidence showed that respondent continued to harass the victim during the term of the order; (2) we declined to sanction respondent under Rule 375(b), as her appeal was not devoid of arguable merit and there was no indication that it was brought for an improper purpose.

¶ 2 Respondent, Valerie Benson, appeals from the judgment of the circuit court of Du Page County extending a previously entered order of protection. Petitioner, Jill R. Frederick, seeks sanctions under Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994). Because the decision to extend the order of protection was not against the manifest weight of the evidence, we affirm.

However, because the appeal was neither frivolous nor brought for an improper purpose, we deny the request for sanctions.

¶ 3 I. BACKGROUND

¶ 4 In early 2013, petitioner filed a petition, for the benefit of her mother, Anita Benson (Benson), seeking an order of protection under the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/220 *et seq*. (West 2012)). The petition sought the order of protection against respondent. After the trial court entered several interim orders of protection, on August 20, 2013, it conducted an evidentiary hearing on the petition.

¶ 5 Petitioner submitted Benson's evidence deposition at the hearing. Benson was 85 years old and lived alone. Although she could take care of herself, petitioner visited her daily and would take her to the doctor, church, and shopping.

¶ 6 Respondent is Benson's oldest daughter. Respondent had pinched her "maybe on occasion" in the past, but she had not done so since. Once, when respondent was in a hurry to leave, she pushed Benson against the closet doors near the front door, causing them to be unhinged. Benson described the doors as "com[ing] off real easy."

¶ 7 According to Benson, although respondent might have raised her voice to her, she never swore at her. One time, when Benson had a fever, Benson wanted to sleep on the cool kitchen floor. She told respondent that she would be okay, asked for her to get a blanket, and told her to go to bed. Respondent never got her the blanket, removed her from the kitchen floor, or requested any assistance for Benson. When Benson's son-in-law, who is a doctor, arrived the next morning, he placed Benson on a sofa.

¶ 8 Another time, Benson became "very angry" after respondent had gone through her personal files and left them scattered on the floor. She believed that respondent had been looking to see if she had any money.

¶ 9 On one occasion, respondent and an attorney arrived unexpectedly and wanted her to sign a document. She refused to do so. Although she could not recall the nature of the document, she had been concerned that respondent was asking her to sign a document that she had not seen before.

¶ 10 Benson did not want respondent staying at her house. According to Benson, respondent "stress[ed] [her] out."

¶ 11 Benson identified a January 11, 2013, note signed by her, in which she stated that she did not want respondent at her home "because she cause[d] trouble." Benson testified that she had to give her deposition because of the trouble caused by respondent.

¶ 12 Benson identified a February 26, 2013, note, in which she stated that she characterized an e-mail from respondent as evil. The note added that what respondent was "doing [was] so wrong" and that Benson had sought an order of protection against respondent "because of her bizarre behavior." Consistent with the note, Benson testified that respondent's behavior could at times be bizarre.

¶ 13 Benson testified that she did not want respondent living with her. However, she was willing to visit with respondent alone. She did not feel threatened by respondent visiting and did not believe that respondent put her at risk. When asked if she believed that it was necessary to have an order of protection, Benson answered, "No, I don't need to be protected from [respondent]." She believed that the order's purpose was to prevent respondent "from coming [to her house] without [her] knowing about it."

¶ 14 On cross-examination, Benson conceded that, when respondent's attorney came to the house, he did not intimidate her. She recalled that he gave her a closed envelope and told her not to open it until after he left. She did not state what was in the envelope.

¶ 15 On August 20, 2013, the trial court issued a plenary order of protection. The order included findings that respondent had abused Benson and that respondent's conduct, unless prohibited, would likely cause irreparable harm or continued abuse. The order prohibited respondent from physically abusing, willfully depriving, neglecting, or exploiting Benson. The order further prohibited respondent from entering, or remaining within, Benson's residence. The order expressly allowed respondent to have prearranged, three-hour visits with Benson at Benson's home, but only with a third party present. The order remained effective until August 12, 2015.

¶ 16 On August 4, 2015, petitioner filed a motion to extend the order of protection. On October 8, 2015, the trial court conducted a hearing on the motion to extend. Although respondent's attorney was present, respondent did not attend the hearing.[1]

¶ 17 Petitioner testified that Benson was 88 years old. She lived on her own and suffered from hypertension, a prolapsed uterus, and pregangrene of her toes. She had some short-term memory loss, but otherwise was "very good on most things." Petitioner described Benson as being able to do more than petitioner.

¶ 18 According to petitioner, respondent upset Benson. Benson yelled and screamed at her and there was never a calm moment.

[1] Because respondent was unable to attend due to her asserted indigency, her counsel moved for a continuance. See 750 ILCS 60/213 (West 2014). The trial court denied the motion and conducted an evidentiary hearing.

¶ 19 On August 11, 2014, respondent told Benson that she was going to give her some artwork for her birthday. But the "gift" was in reality respondent's artwork that she had been required previously to remove from Benson's house. Benson told respondent that she could not bring the artwork to the house, and the situation became a "big to-do." According to petitioner, Benson became upset and respondent "just [kept] yelling at [Benson]."

¶ 20 According to petitioner, respondent "pushe[d] and pinche[d] [Benson]" and "yell[ed] at her." Petitioner described it as "just awful to witness." With respondent out of Benson's house pursuant to the order of protection, Benson "had peace," because she knew that she could hang up the phone and did not have to talk to respondent. Nonetheless, Benson was "still afraid [that respondent] [could] get in the house" and placed chairs against the back door to prevent respondent from getting in at night.

¶ 21 Petitioner described the situation as "very, very difficult because [respondent was] not right." Petitioner opined that allowing respondent unlimited access to Benson's house "would be a danger to [Benson]."

¶ 22 On cross-examination, petitioner admitted that Benson had never called the police. However, she had called petitioner, petitioner's husband, and petitioner's son so that they could "come and settle [respondent] down."

¶ 23 Petitioner described one instance in which respondent came to Benson's house on Christmas Eve and left a candle and a card, which frightened Benson. Petitioner believed that respondent had been at Benson's house in violation of the order of protection.

¶ 24 After hearing petitioner's testimony, the trial court extended the order of protection for two years. However, the court granted respondent leave to file a motion to reconsider supported by a verified pleading "alleging whatever facts [counsel felt were] apparent." When the court

noted that it would be in Benson's best interest to attend any subsequent hearing, petitioner stated that Benson's doctor said that it was not good for her to do so "because of her high blood pressure." The court added that "everybody is going to get what they really should have, which is a full and complete hearing in these matters."

¶ 25 Respondent filed a timely motion to reconsider pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2014)), asserting that petitioner had failed to satisfy her burden of proof under the Act. Alternatively, respondent requested a rehearing under section 213 of the Act (750 ILCS 60/213 (West 2014)).[2]

¶ 26 On December 3, 2015, the trial court conducted a hearing on respondent's motion to reconsider. Although respondent was present, she did not testify. The parties agreed that all exhibits submitted in support of the motion to reconsider and the response thereto would be considered by the court.

¶ 27 Because Benson's doctor advised that she not appear because of her health, petitioner submitted a video of Benson. Respondent agreed to the admission of the video.

¶ 28 In the brief video, Benson stated that she wanted the order of protection to remain in effect and that she did "not want [respondent] to come to [Benson's] home." She added that she did not want respondent to "ever live with [her]," that respondent caused "many problems for the family," and that she thought respondent "should get some help."

¶ 29 In ruling on the motion to reconsider, the trial court noted that the most important person, Benson, had not been interviewed since the motion to extend had been filed. The court observed

[2] Section 213(b) recognizes that an action for an order of protection is intended to be expedited and provides for a continuance of a hearing only for good cause. 750 ILCS 60/213(b) (West 2014).

that it might be helpful to appoint a guardian *ad litem* (GAL) to meet with Benson, or have someone from outside the family offer an assessment. The court stated that it was considering appointing a GAL or having someone from Adult Protective Services meet with Benson and report to the court. The court added that it was going to review "the entire file again," including the video of Benson, before making a final decision. The court asked the parties for an agreed date in January 2016 for it to announce its ruling. The court added that, if it decided to appoint a GAL or other professional, it would do so in its order disposing of the motion to reconsider.

¶ 30 Instead of announcing its ruling in January, the trial court issued a written order the next day. That order provided, in pertinent part, that the court had considered "all of the evidence presented in the parties[']filings, as well as a [video] presented and made part of the record." The order further stated that the order of protection, as extended on October 8, 2015, would remain effective. Thus, the court denied the motion to reconsider. Respondent filed a timely notice of appeal.

¶ 31 II. ANALYSIS

¶ 32 Respondent contends that: (1) the trial court's order extending the order of protection for two years is against the manifest weight of the evidence; and (2) even if an extension of the order was necessary to prevent irreparable harm, the court should have crafted a less-restrictive order. Petitioner responds that: (1) the order was not against the manifest weight of the evidence; and (2) respondent should be sanctioned for filing a frivolous appeal.

¶ 33 A trial court's ruling on a request for an order of protection under the Act will be reversed only if it was against the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 350 (2006). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the

evidence. *Best*, 223 Ill. 2d at 350. Under the manifest-weight standard, we defer to the trial court as the finder of fact, because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *Best*, 223 Ill. 2d at 350. We will not substitute our judgment for that of the trial court regarding the credibility of witnesses, the weight to be given the evidence, or the inferences to be drawn. *Best*, 223 Ill. 2d at 350-51.

¶ 34 The Act enables a person to obtain an order of protection upon proof by a preponderance of the evidence that she has been abused by a family member. 750 ILCS 60/201(a)(1), 205(a), 214(a) (West 2014). Section 103(1) of the Act defines abuse as physical abuse, harassment, interference with personal liberty, or willful deprivation. 750 ILCS 60/103(1) (West 2014). Section 103(7) defines harassment as "knowing contact 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." 750 ILCS 60/103(7) (West 2014). A court, when deciding whether to issue an order of protection, shall not require proof of physical manifestations of abuse on the victim. 750 ILCS 60/214(a) (West 2014). The Act is to be construed and applied liberally to promote its underlying purpose of expanding the remedies for victims of domestic violence. 750 ILCS 60/102 (West 2014).

¶ 35 Section 220(e) of the Act allows for multiple extensions of a plenary order of protection if the requirements under section 219 are satisfied. 750 ILCS 60/220(e) (West 2014). Section 219(2), in turn, provides, in pertinent part, that a plenary order of protection shall be entered if the requirements of section 214 are satisfied. 750 ILCS 60/219(2) (West 2014). Section 214(a) states, in pertinent part, that if a court finds that a person has been abused, or a high-risk adult has been abused, neglected, or exploited, the court shall issue an order of protection. 750 ILCS 60/214(a) (West 2014).

¶ 36 We begin by addressing respondent's suggestion that the trial court did not make a finding of abuse, which if not prohibited would cause irreparable harm.[3] The order, however, shows otherwise.

¶ 37 The form order, in its "findings" section, stated that the trial court found that, among other things, respondent had abused Benson, that such conduct, if not prohibited, would likely cause irreparable harm or continued abuse, and that the relief requested was necessary to protect Benson from continued abuse. Clearly, the court made the findings required by the Act. That leaves the question of whether those findings were against the manifest weight of the evidence.

¶ 38 As to the evidence, at the hearing on the motion to extend, petitioner testified that, when respondent is around Benson, respondent yells, screams, and upsets Benson. Specifically, in August 2014, during the term of the order of protection, respondent caused a "big to-do" regarding respondent's artwork, which upset Benson. On another occasion, respondent left a card and candle on Christmas Eve, which frightened Benson. Benson continued to be afraid of respondent entering her home. Petitioner added that allowing respondent unlimited access to the house would be dangerous to Benson.

¶ 39 Moreover, Benson unequivocally stated in the video that she wanted the order of protection to remain in effect and that she did "not want [respondent] to come to [Benson's] home." She added that she did not want respondent to "ever live with [her]," that respondent caused "many problems for the family," and that she thought respondent "should get some help."

[3] We note that respondent does not argue that Benson was not a "family member" or that she was not a "high-risk adult with disabilities" as defined under the Act. See 750 ILCS 60/103(6), (8) (West 2014).

There was compelling evidence that respondent was abusing Benson, specifically by harassing her.

¶ 40 Not only was there ample evidence that respondent continued to abuse Benson, the record established that absent an order of protection it was likely that Benson would suffer irreparable harm. In that regard, Benson was especially susceptible to being stressed by respondent's conduct. Benson was 88 years old, lived alone, and suffered from serious health issues, including hypertension. Indeed, Benson's doctor considered it unhealthy for her to attend the hearing, because of its effect on her high blood pressure. Undoubtedly, respondent's abusive conduct acutely affected Benson's well-being. Further, according to petitioner, the order of protection had given Benson "peace." Thus, there was ample evidence that the order needed to be extended to protect Benson from harm.

¶ 41 The record amply supports the inference that respondent's conduct was abusive, created a significant risk of irreparable harm, and required an order to protect Benson from continued abuse. Therefore, the court's findings in that regard were not against the manifest weight of the evidence.

¶ 42 Although respondent contends that the order could have been less restrictive and still complied with the Act, the trial court was in the best position to assess the situation and craft the appropriate remedy under the Act. In doing so, the court struck a reasonable balance, by protecting Benson from future abuse, yet allowing respondent reasonable visitation. Respondent has not shown, and the record does not indicate, any reason to alter that balance.

¶ 43 That leaves petitioner's contention that respondent should be sanctioned under Illinois Supreme Court Rule 375(b). We disagree. Rule 375(b) allows us to impose an appropriate sanction if the appeal is frivolous, not taken in good faith, or taken for an improper purpose, such

as to harass or cause unnecessary delay or needless increase in litigation costs. Ill. S. Ct. R. 375 (b) (eff. Feb. 1, 1994). The purpose of Rule 375(b) is to condemn and punish the abusive conduct of litigants and their attorneys. *Gabuka v. Kurtz*, 2015 IL App (2d) 140252, ¶ 26. Imposition of sanctions under Rule 375(b) is discretionary. *Gabuka*, 2015 IL App (2d) 140252, ¶ 26.

¶ 44 Here, although respondent's appeal proved unsuccessful, it is not sanctionable. The issues raised are not devoid of arguable merit. Nor is there any indication that the appeal was brought in bad faith or to harass, cause delay, or unnecessarily run up litigation costs. Therefore, we do not impose any sanctions under Rule 375(b).

¶ 45 III. CONCLUSION

¶ 46 For the reasons stated, we affirm the judgment of the circuit court of Du Page County and deny the request for sanctions.

¶ 47 Affirmed.