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Carla Bender
4th District Appellate
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2016 IL App (4th) 160229-U

NO. 4-16-0229

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

JAMES MATTHEW MacDONALD and ALISSA)	Appeal from
MacDONALD,)	Circuit Court of
Petitioners-Appellants,)	Coles County
v.)	No. 15OP126
DEANNA LYNN HELMS MacDONALD,)	
Respondent-Appellee.)	Honorable
)	James R. Glenn,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in denying a plenary order of protection following an evidentiary hearing and erred in determining petitioner’s new spouse did not qualify as a protected party.

¶ 2 Petitioners, James Matthew (Matt) MacDonald and Alissa MacDonald, appeal from the trial court’s denial of their petition for a plenary order of protection against respondent, Deanna Lynn Helms MacDonald. Petitioners contend (1) the court’s denial was against the manifest weight of the evidence, and (2) the court’s interpretation of the definition of a protected party was error. We reverse.

¶ 3 I. BACKGROUND

¶ 4 Because each party has the same last name and there are two petitioners involved, we will refer to each party by his or her first name for ease and clarity. Matt and Deanna were divorced in February 2014. They have three teenage children together: Ashlyn, Madison, and

Logan. Matt began dating Alissa in September 2013, after Matt and Deanna had separated. Although, according to Matt, Deanna had been abusive throughout the marriage, her abusive and threatening behavior escalated during the divorce proceedings and continued to escalate thereafter.

¶ 5 On July 16, 2015, Matt filed a petition for an order of protection against Deanna pursuant to the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et. seq.* (West 2014)). Matt alleged Deanna, on numerous occasions, (1) sent him threatening and harassing e-mails, (2) acted in a threatening and harassing manner during visitation exchanges of the children, (3) appeared uninvited at his home, (4) yelled and screamed obscenities at him and family members, and (5) made obscene gestures toward him and family members. Matt alleged Deanna was “physically, emotionally, and mentally abusive” during their marriage, and over the past few months, her aggression and threatening manner had escalated, causing Matt to feel unsafe.

¶ 6 On July 27, 2015, the trial court, the Honorable Mitchell K. Shick presiding, conducted a hearing on Matt’s petition. Judge Shick ordered, in open court, in the dissolution case (Coles County case No. 13-D-168), “that neither party shall contact the other (1) at their place of employment, (2) except for emergencies, and (3) only relating to the children. That neither party shall go to the other person’s employment. That neither party shall go to the other person’s residence, unless to pick up the children or drop off the children for visitation purposes and only at the times designated in the Joint Parenting Agreement Order, or by invitation [via e-mail only], due to a change in the pick up/drop off times.”

¶ 7 On September 21, 2015, Matt filed a petition for leave to add Alissa as a protected party in the petition for an order of protection. Matt and Alissa were married on August 9, 2015.

He claimed she was a “necessary party” because she resided in the same household as Matt and was the stepmother to his three children. He also alleged Alissa had received “threats and intimidation” from Deanna.

¶ 8 On October 23, 2015, the trial court, the Honorable James R. Glenn presiding, allowed Matt’s motion to add Alissa as a party without objection from Deanna. Over the course of three hearing dates, between December 22, 2015, and March 2, 2016, the court considered Matt and Alissa’s petition for an order of protection, as well as pending postdissolution matters.

¶ 9 The testimony presented at the hearings relating to the order of protection is summarized as follows. Matt said Deanna was abusive throughout their 17-year relationship. He said he had been “hit, kicked, [and] punched, [had] things thrown at [him], [and had] knives pulled out” by Deanna. She attempted to run him over with her car. He said during the marriage, Deanna told him “she ‘thought everyday of different ways to make [his] life miserable.’ She ‘couldn’t wait for the fire department to show up [to] tell them [he] had been killed in a fire.’ ” He said almost daily, she would get on her hands and knees in front of the children and “pray” for a divorce.

¶ 10 Matt said after the divorce, things got even worse. Deanna verbally threatened him, Alissa, Alissa’s mother, his friend, his father, and his brother on multiple and separate occasions. Matt described one incident in February 2014, when he went to Deanna’s house to retrieve his personal property. He was accompanied by his father, James MacDonald; his friend; and his brother. The items he was picking up had been destroyed. Deanna had cut the wires on a Jet Ski, slashed the seat of a motorcycle, cut his mother’s head off of photographs, and slashed the children’s paintings. She angrily threw a metal license plate at him overhand from a short

distance away. When they arrived at Deanna's house, they were greeted by Deanna; her boyfriend, Tony Mathias; and her brother, Kelly Helms, who all threatened to kill Matt.

¶ 11 Matt said Deanna gave him "extreme anxiety," and he was "fearful" for himself and his family. His boat and truck had since been vandalized. He had to install a security system and he got a trained watch dog for protection. He attends counseling and has been prescribed medication for post-traumatic stress syndrome from "years and years" of physical, mental, and emotional abuse from Deanna. He said when he and Alissa became engaged in March 2015, "things got even worse."

¶ 12 Matt said in April 2015, he went Deanna's to pick up the children. Deanna "came running out and had pieces of paper in her hand. She yelled at [him] and said [he] was going to be charged with a Class X felony because DCFS was called on her for unsafe conditions of the kids." Matt was outside of the car trying to put the children's bags in the car, but he immediately got inside. She threw the papers at him as she "charge[d]" him, like "an animal would charge at something."

¶ 13 In June 2015, Matt went to Deanna's to pick up the children. He tried to hand her a reimbursement check through the window of the car. She was "screaming and hollering," with her jaws clenched, her face red, and her "eyebrows *** up." She "tried to get [Matt] to roll down the window more." Matt handed her the check and "quickly rolled up the window because [he] didn't want to get hit inside the car." On another occasion, when he picked up the children, Deanna ran out of the house "in an aggressive manner," red-faced, with clenched teeth, and with fists clenched, yelling at Matt to "get the F off my property." The children walked out of the house and told Matt "to just get out of there."

¶ 14 Matt said since Judge Shick's order on July 27, 2015, he has received approximately 30 e-mails, telephone calls, and personal contacts from Deanna having nothing to do with visitation of the children. Between August and October 2015, Deanna harassed Matt continuously for reimbursement for expenses related to the children, threatening him, yelling at him, and "flipping him off." He said she constantly threatens Alissa, calling her a whore and "flipping her off." Matt said it has come to a point where he and Alissa have devised a plan where Matt will keep an eye on Deanna when Alissa needs to use the restroom at one of the children's athletic events so as to avoid Deanna following Alissa into the restroom, as she did on one occasion.

¶ 15 Matt testified as follows:

"There's been threats. There's been emails, I mean email threats. It's the way she looks at us. It's the way when we walk by. I mean it's uncomfortable to even be at a sporting event. I mean it's fearful. I mean if—I don't want to go to those events if she's going to be there kind of thing. We sit on the opposite side, so there's an entire basketball court between us, so that I know there's no way she can attack us. We leave before or right as the game is over with, so that we can get to our car before, you know, she has a chance to say something or it's just—and you never know what you're going to find out in the parking lot whether your car is going to be keyed, whether your tires are going to be slashed or whatever."

¶ 16 Matt said at one of the children's games, he and Alissa sat near the top of the bleachers, away from everyone else. Deanna, who was sitting below and off to the side of them, turned around and began taking pictures of them with her telephone. Deanna frequently "flipped

them off” from her car with the children inside as everyone left the parking lot after a sporting event.

¶ 17 Matt was asked what he feared would occur if he was not granted an order of protection. He said:

“I fear for my life. I fear that that will give her free reign to attack, to yell, to hit, to do whatever she can get away with, depending on the situation because there’s also evidence that she is not paying attention to the no-contact order; Deanna is not. She’s going to continue to escalate and revert right back to the behavior that she’s exhibited over the last 17 years.”

¶ 18 Alissa testified she began receiving “vulgar, derogatory, intimidat[ing]” Facebook and text messages from Deanna in September 2013. Alissa blocked Deanna’s phone, but she sent Alissa a text message using Logan’s phone that said, “Get out of my town you whore.” On one occasion, when Matt and Logan were at a movie, Deanna blocked Alissa’s driveway. At one of the children’s sporting events, Alissa went into the restroom. She was the only person in the restroom. As she exited the stall and headed for the sink, Deanna flung open the bathroom door. Deanna initially blocked Alissa’s exit and questioned Alissa about her relationship with Matt. Deanna brushed up against Alissa as Deanna walked by her to exit. Deanna did not use the restroom. Alissa said Deanna always yells at her and calls her names whenever they are in close proximity.

¶ 19 Alissa described an incident in April 2015, when she, her mother, her aunt, and her niece were at home. They heard a car outside, so they went to the door. Alissa found Deanna in the garage, while her boyfriend Tony stood in the driveway. Deanna was yelling profanities, calling Alissa and her mother vulgar names. Alissa said, a few weeks before the hearing, she

picked up Logan from school. Deanna was behind her with Ashlyn in a car. Deanna gestured with her middle finger to Alissa. Logan told Alissa to “just go.” Alissa said Deanna makes her feel unsafe, scared, anxious, and worried.

¶ 20 Amy Yoder, Alissa’s mother, described the incident in June 2015 when they were confronted by Deanna. Deanna yelled at Amy that Alissa was a whore. She advanced toward Amy, who said Deanna’s “voice was so loud.” She had never met Deanna before and felt threatened by her actions.

¶ 21 James MacDonald, Matt’s father, testified about the February and April 2014 incidents when he accompanied Matt to Deanna’s house to pick up Matt’s property. He said Deanna was in an “uncontrollable rage,” screaming and yelling at them. She told them to “[g]et out of my f—ing yard.” James said Deanna’s brother Kelly “got up in” his face and threatened him physically. Matt’s brother told Kelly to back off. James said Deanna “was so out of control, [he] didn’t think she could even stand up.” James heard Deanna’s boyfriend Tony threaten to kill Matt if he would someday be able to get him alone. James said the next time they retrieved property, they called the police. During that exchange, Matt’s mother walked with the children toward the yard and Deanna yelled she “was a f—ing whore, f—ing bitch, f—ing c—t.” Deanna told Matt’s mother she had waited 18 years to tell her that.

¶ 22 James played for the trial court a voicemail from his cellular telephone Deanna had left for him in January 2015. The message said: “Tell Matt to keep his mouth shut or I’m going to shut it for him, and I’m going to shut his mouth and anybody else’s mouth that gets in my way.” James testified as to the damage to Matt’s truck, his truck, Matt’s boat, and the Jet Ski. He said he heard Deanna threaten Matt’s life in a “total absolute rage. Uncontrollable rage.”

¶ 23 After considering the evidence, the trial court determined Alissa was not a family or household member as defined by the Act and denied her relief. The court stated: “And my reading of the *McCoy* case [(*In re Marriage of McCoy*, 253 Ill. App. 3d 958 (1993))] suggests that if [Matt] does get the relief, persons in his household could be protected. So Alissa MacDonald could get protection in that respect.”

¶ 24 The trial court found the “painful history” in general, and the “very troubling incidents” when Matt went to pick up his property at Deanna’s in early 2014, when Deanna was “uncontrollably irate” and threatened to kill Matt, were temporally disconnected. Those incidents occurred more than a year before the petition was filed. The other incidents, such as the voicemail, the visitation exchanges, the name-calling, the obscene gestures, and the picture-taking were “iffy” incidents of harassment. However, the court believed Matt was “fearful” and “some” of the incidents had caused Matt emotional distress. The court continued with the following:

“So the critical question is going to be, would it cause a reasonable person emotional distress. And I would have found it, if we just had those instances of 2014 and the petition was filed right after that. But since things calmed down from there, what this amounts to is, ordering [Matt] off the property in an angry way, yelling and screaming at him, telling him he is going to jail for calling in DCFS, throwing—or yelling through a car window trying to get a check, taking pictures, which could be just of her kids at the—at the basketball game, and then flipping somebody off. Would that cause a reasonable person emotional distress?

It does cause [Matt], who’s suffering post traumatic stress, based on his testimony from prior years. It would cause him emotional distress, but I think a lot

of that conduct would just annoy somebody else, cause somebody else to be amused by the behavior of the perpetrator. I can't say that I'm persuaded that it caused reasonable person under normal circumstances emotional distress.

So it's a close call. I'm also recognizing that we've got some mechanisms now in place where there isn't to be that kind of contact, it's only to involve the kids. So I'm denying the petition for order of protection.”

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 In this appeal, Matt and Alissa contend the trial court erred in two respects: (1) by denying the petition in light of the evidence presented, and (2) by finding Alissa was not a proper protected party. Because we find the manifest weight of the evidence suggests the petition should have been granted, and Alissa satisfies the definition of a protected party under the Act, we reverse.

¶ 28 A. Sufficiency of the Evidence

¶ 29 Matt challenges the trial court's finding of no abuse. Section 214(a) of the Act provides that, where the trial court finds the petitioner has been abused, it shall enter an order of protection prohibiting such abuse. 750 ILCS 60/214(a) (West 2014). The Act defines “abuse” as “physical abuse, harassment, intimidation of a dependent, interference with personal liberty[,] or willful deprivation.” 750 ILCS 60/103(1) (West 2014). “Harassment results from intentional acts which cause someone to be worried, anxious, or uncomfortable.” *People v. Whitfield*, 147 Ill. App. 3d 675, 679 (1986). There need not be any overt acts of violence. *Whitfield*, 147 Ill. App. 3d at 679. “Harassment” is defined in the Act as:

“knowing 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;

(v) improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing an incident or pattern of domestic violence; or

(vi) threatening physical force, confinement or restraint on one or more occasions.” 750 ILCS 60/103(7) (West 2014).

¶ 30 In a proceeding to obtain an order of protection, the petitioner has the burden of proving entitlement to the order by a preponderance of the evidence. 750 ILCS 60/205(a) (West 2014); *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 650 (1992); *Mowen v. Holland*, 336 Ill.

App. 3d 368, 374 (2003). A petition seeking an order of protection is governed by the Act, which provides that “[i]f the court finds that petitioner has been abused by a family or household member ***, an order of protection prohibiting the abuse *** shall issue.” 750 ILCS 60/214 (West 2014). Our supreme court has emphasized the mandatory language of the Act that “once the trial court finds that the petitioner has been abused, ‘an order of protection *** *shall issue.*’ ” (Emphasis in original.) *Best v. Best*, 223 Ill. 2d 342, 348 (2006) (quoting 750 ILCS 60/214(a) (West 2004)).

¶ 31 “[P]roceedings to obtain an order of protection are civil in nature and governed by a preponderance of the evidence standard[.]” *Best*, 223 Ill. 2d at 348; 750 ILCS 60/205(a) (West 2014). Thus, “whether the petitioner has been abused is an issue of fact that must be proven by a preponderance of the evidence.” *Best*, 223 Ill. 2d at 348.

¶ 32 In *Best*, our supreme court established the applicable standard of review is the deferential manifest weight standard. “When a trial court makes a finding by a preponderance of the evidence, this court will reverse that finding only if it is against the manifest weight of the evidence.” *Best*, 223 Ill. 2d at 348-49. Thus, a “circuit court's finding on whether abuse or neglect occurred will not be disturbed on appeal unless contrary to the manifest weight of the evidence.” (Internal quotation marks omitted.) *Best*, 223 Ill. 2d at 349.

¶ 33 “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 presented.” *Best*, 223 Ill. 2d at 350. Under that standard, a reviewing court “give[s] deference 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” and “will not substitute its judgment for that

of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn.” *Best*, 223 Ill. 2d at 350-51.

¶ 34 The manifest weight of the evidence presented at the hearing clearly established Deanna’s conduct subjected Matt to, at the very least, “harassment.” Matt’s testimony included allegations that Deanna had (1) verbally and physically abused him, (2) appeared at his home uninvited after ordered not to do so, (3) made obscene and aggressive gestures toward him and his family in public, and (4) sent him voluminous troubling e-mail and text messages. Notably, Deanna did not dispute any of Matt’s testimony regarding her conduct. In fact, she admitted sending Alissa texts and Facebook messages, and she admitted leaving the voicemail on Matt’s father’s telephone. Further, she did not deny the remainder of the alleged behavior. Along with Matt’s testimony, Alissa, Matt’s father, and Alissa’s mother provided testimony as to the events they had witnessed.

¶ 35 Matt testified that since July 27, 2015, he had received approximately 30 e-mails from Deanna. She appeared at Matt and Alissa’s home uninvited with her boyfriend. She routinely called Alissa obscene names and “flipped them off.” Deanna was found in their garage and on their front porch, at one time advancing toward Alissa’s mother “within striking distance” while yelling and calling Alissa names. According to Matt, the sheriff had advised him his truck had been vandalized and his boat seats slashed with the same knife that had been used to destroy the property he had retrieved from Deanna’s home. Matt installed a security system that has recorded Deanna at his home uninvited. He got a dog trained for home protection. Matt and Alissa had devised a safety plan for the occasions when Alissa would be required to use the restroom while at a child’s sporting event, in order to avoid a repeat altercation with Deanna.

¶ 36 These events of intimidation, harassment, and abuse should have been considered in light of the historical backdrop of the abuse and harassment experienced in the past. Matt recounted numerous incidents of abuse by Deanna during their 17-year relationship and marriage. He said he was kicked, punched, and threatened to a point where he had to lock himself in a room or call a friend for protection from Deanna. At the time when the dissolution was being finalized, Matt said Deanna had destroyed his tools, vehicles, and memorabilia. Paintings from his children were slashed and his mother's head was cut off in family photographs. His Jet Ski had slashed seats, wires cut, and holes poked in the hull. His four-wheeler's tires were slashed, and Logan's motorcycle's wires had been cut. When he went to Deanna's to pick up these items, his life was threatened by Deanna and her boyfriend.

¶ 37 Matt testified these events have caused him fear. He said he feels harassed and intimidated, and he fears further threatening acts by Deanna. Based on the totality of the evidence presented at the hearing, we find the manifest weight of the evidence indicates Matt has experienced abuse and harassment sufficient to warrant protection under the Act. The trial court's finding that Deanna's "deplorable conduct" from February and April 2014 was too far removed from recent events to justify the entry of an order of protection was error. The court should have considered the history of the abuse when analyzing the more recent conduct. The evidence clearly indicated Deanna had engaged in conduct sufficiently harassing, intimidating, and abusive in nature to place a reasonable person, *in Matt's situation*, in fear of the abuse, and to such an extent as to require protection under the Act.

¶ 38 On the record before us, we conclude the trial court's decision denying the petition was against the manifest weight of the evidence. We find Deanna's conduct, as testified to by the witnesses presented, would cause a reasonable person emotional distress and, in fact,

did cause Matt emotional distress. Despite our deferential standard of review, we conclude the opposite conclusion is clearly evident in this case. See *Best*, 223 Ill. 2d at 350 (“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 presented.”). We reverse the trial court’s order denying the petition for an order of protection and remand with directions to enter the same.

¶ 39 B. Protected Party

¶ 40 Matt also contends the trial court erred in finding Alissa was not a proper protected party. Based upon the language of the statute, in light of our conclusion above, we find Alissa does, in fact, qualify as a protected party.

¶ 41 Section 201(a) of the Act provides as follows:

“(a) The following persons are protected by this Act:

(i) any person abused by a family or household member;

(ii) any high-risk adult with disabilities who is abused, neglected, or exploited by a family or household member;

(iii) any minor child or dependent adult in the care of such person;

and

(iv) any person residing or employed at a private home or public shelter which is housing an abused family or household member.” 750 ILCS 60/201(a) (West 2014).

¶ 42 Alissa resides in a private home with Matt. Since Matt was found to be an abused family or household member, Alissa, pursuant to subsection (iv) above, qualifies as a protected person under the Act.

