2018 IL App (1st) 163073-U

FIFTH DIVISION
August 3, 2018

Nos. 1-16-3073 & 17-0620 (cons.)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
BURTON SIEGAL,	)	Circuit Court of
	)	Cook County
Petitioner-Appellee,	)	
	)	
v.	)	No. 16 OP 20356
	)	
HARRY BARNETT,	)	
	)	Honorable
Respondent-Appellant.	)	Callie Lynn Baird,
	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming a plenary order under the Stalking No Contact Order Act where the statutory requirements were satisfied and the respondent's constitutional challenges are unavailing.

¶ 2 The circuit court of Cook County entered a stalking no contact order against Harry Barnett (Barnett) under the Stalking No Contact Order Act (Act) (740 ILCS 21/1, *et seq.* (West 2016)). The protected parties are petitioner Burton Siegal (Burton) and his wife Rita Siegal (Rita). Barnett advances various arguments on appeal, including a constitutional challenge based on a decision of the Illinois Supreme Court regarding the Illinois criminal stalking statute. See

People v. Relerford, 2017 IL 121094. As discussed below, we affirm the judgment.

¶ 3 BACKGROUND

¶ 4 In a petition filed under the Act on August 30, 2016, 84-year-old Burton sought protection for himself and 82-year-old Rita.[1] Burton's supporting affidavit and an attachment thereto provided, in part, as follows. After Burton had downsized the Siegals' engineering company, Budd Engineering, and moved the business to their long-time residence in Skokie (Property), Barnett contacted him for a small engineering project in 2003. Burton attempted to discourage Barnett due to the commercial infeasibility of the project but Barnett persisted on having the work done. Burton performed the design work and while Barnett was allegedly not satisfied with the work proceeded to use it anyway without making full payment. Thereafter, Barnett in 2004, commenced contacting Burton's clients to "bad mouth" him. Barnett also repeatedly contacted the Illinois Department of Financial and Professional Regulation (IDFPR), which led to an investigation of Burton and Budd Engineering. The IDFPR investigation was ultimately terminated without any administrative hearing. According to Burton, Barnett also filed a fraud action based on Burton's use of the title of "engineer," which was later dismissed by the court.

¶ 5 Burton represented that commencing in 2010, Barnett "relentlessly" stalked the Siegals. He stated that Barnett held or displayed signs near the Property, sometimes on weekends and after normal business hours, which contained statements such as "$80,000 Lexus," "Rita & Burton Siegal [*Property address*] defrauded my company," and "IDFPR, Shut Down Budd Engineering Already." Burton requested assistance from the Skokie village attorney, who declined to act due to the fact that Burton operated his business out of his residence. On one occasion, Burton grabbed one of Barnett's signs and was cited for disorderly conduct in October

[1] Although the petition also referenced their adult son, the plenary order did not apply to him.

2010. Burton then filed a personal injury action; the jury ruled in favor of the Siegals. The Siegals filed a defamation action, which was pending at the time of the August 2016 petition.

¶ 6 Burton referenced the use of profane, obnoxious, and disrespectful communications by Barnett. He referred disparagingly to the Siegals' advanced age and inquired as to when they would die. Barnett made sexually suggestive remarks to the Siegals and told their son that they have "sociopathic tendencies." Burton also represented that Barnett had published "tirades on many sites on the Internet" and had created a website called "Siegal Expose."[2]

¶ 7 Burton represented that his stress level was "extreme" and that Rita's autoimmune disease was aggravated by the stress allegedly caused by Barnett. According to Burton, they "radically" changed their living habits due to Barnett's conduct, *e.g.*, they were reluctant to entertain guests or to park their vehicles on the street "for fear he might vandalize them." Burton averred that he and Rita were extremely fearful for their safety and health.

¶ 8 An *ex parte* emergency no stalking order was entered based on the petition, and the matter was set for a hearing on a plenary stalking no contact order. Burton testified during the plenary hearing that Barnett had picketed their premises on more than 80 separate occasions, by either holding a sign on the sidewalk or displaying an A-frame sign in his truck while parked by the Property. One sign said "Consult the website Siegal Expose." He usually stayed between 30 and 45 minutes and sometimes conversed with passing motorists and pedestrians. After certain offensive comments which were directed at Rita by Barnett, Burton felt "outraged" that he was "helpless" and could not protect Rita. Due to Barnett's conduct, the Siegals installed a security system.

¶ 9 Rita testified that the Siegals filed a police report after she overheard Barnett make a "vulgar" comment to Burton about her. She further testified that in August 2016, when the

[2] The website is sometimes referenced as "Siegal Exposé."

Siegals returned home to the Property after 10 p.m., they discovered Barnett holding a picketing sign in the "pitch dark," which was "unnerving" and "[s]pooky." Although she acknowledged Barnett had never engaged in vandalism, she testified that Barnett trespassed on their Property by walking up their driveway on one occasion. She considered Barnett "unpredictable," and his conduct caused her to be "on guard."

¶ 10 Barnett testified that he had been "mostly unemployed" for three or four years and had minimal income. He owned a company that developed and marketed products but he had no employees. According to Barnett, Burton had failed to perform certain agreed-upon services despite Barnett being charged $150 per hour. Barnett testified that from the moment he commenced picketing the Siegals, he never initiated a conversation with them and had always held or displayed a picketing sign protesting their "unethical business practices." He was never cited by the Skokie police for any illegal conduct. Barnett denied trespassing on the Property or making certain statements referenced by the Siegals. He testified that while the Siegals claimed to fear for their safety, it was Burton who actually challenged him to fights. He further testified that neighbors were aware that the Siegals' residence was their place of business because a sign on the Property listed their business hours as Monday through Friday, 2 p.m. to 5 p.m. According to Barnett, his website "siegalexpose.info" included communications from the IDFPR informing Burton that his listings as a professional engineer in the Yellow Pages telephone directory were illegal. Barnett testified that his website "was in response" to Burton's "iamanengineer.org" website, wherein Burton allegedly solicited donations from the public.

¶ 11 The circuit court found the testimony of the Siegals to be credible. It noted that "[m]erely because Mr. Siegal conducts business within his home or has a home office does not deprive him of any protection of his home." In a plenary stalking no contact order entered on

September 21, 2016, and effective for two years, the circuit court prohibited Barnett from any contact with the Siegals and from coming within 1,000 feet of the Property. The order also provided for "no electronic communication regarding [the Siegals,] Budd Engineering."[3]

¶ 12 On September 26, 2016, Barnett filed a *pro se* motion to reconsider and vacate the plenary order, wherein he raised various arguments attacking the plenary hearing and order. He did not, however, specifically challenge the portion of the plenary order regarding "no electronic communication" regarding the Siegals and Budd Engineering.

¶ 13 During an October 19, 2016, hearing on Barnett's motion to reconsider, Barnett's newly-retained counsel argued certain points raised in the motion to reconsider. Burton submitted a print-out from the "Siegal Expose" website, wherein Barnett communicated about the Siegals and Budd Engineering. Although Burton acknowledged the difficulty in removing statements regarding the Siegals which Barnett allegedly made on "countless sites" and "blogs," Burton asserted that Barnett himself owned the "Siegal Expose" website and could readily have the website taken down. The circuit court directed Burton to report any purported violation of the plenary order to the police department.

¶ 14 At the conclusion of the hearing on October 19, 2016 – after the court denied Barnett's motion to reconsider – Barnett's counsel inquired regarding the scope of the prohibition on electronic communications. The circuit court indicated that the prohibition covered electronic communications regarding the Siegals and Budd Engineering – including the website – and Barnett's counsel thanked the court for the "clarification."

¶ 15 On November 16, 2016, Burton filed a motion for clarification of the plenary order. Following the circuit court's denial of Barnett's motion to reconsider, Burton had filed a police report in Skokie, asserting that Barnett's continued maintenance of the "Siegal Expose" website

[3] In its oral rulings, the circuit court stated that Siegal was not required to take down his website.

violated the plenary order. Burton represented that the police would not proceed with enforcement of the order "without the Court's order specifying that the web site [*sic*] be taken down." Burton requested that the circuit court issue a clarification of the plenary order, stating that the website be immediately "taken down" and "kept down."

¶ 16 During a hearing on Burton's motion for clarification on December 14, 2016, Barnett's counsel indicated that Barnett had contacted the web domain hosting company and requested that it take down the website. The circuit court noted the lack of written verification regarding the requested removal. Although Barnett's counsel advanced legal arguments challenging the "no electronic communication" portion of the plenary order, counsel stated that Barnett "has represented that he intends to take the website down if that's what this Court wishes him to do now." While the circuit court indicated than an "addendum" specifically referencing the website could be added to the plenary order, the record on appeal does not include any such addendum or modified order. The circuit court provided Barnett until February 2, 2017 to remove the website.

¶ 17 During a hearing on February 2, 2017, Barnett's counsel represented that he had (i) an electronic communication from the website provider evidencing that it had taken down the website, and (ii) a printed internet search demonstrating that the website was no longer published. Burton responded that Barnett had taken down "siegalexpose.info" but had created another website, "siegalexpose.com." The circuit court indicated that the Skokie police department would need to complete its investigation of any violation of the plenary order, and the case was taken off call.

¶ 18 Barnett filed two appeals, which have been consolidated by order of this Court. In a notice of appeal filed on November 17, 2016 (case number 1-16-3073), Barnett requested that this Court vacate the plenary stalking no contact order entered on September 21, 2016. In a

notice of appeal filed on March 3, 2017 (case number 1-17-0620), Barnett again challenged the plenary order and further stated that the circuit court "dispos[ed] of the last timely-filed post-trial motion on February 2, 2017." We consider the consolidated appeals herein.

¶ 19 ANALYSIS

¶ 20 Barnett initially contends that the Act is facially unconstitutional. "Statutes are presumed constitutional, and the burden of rebutting that presumption is always on the party challenging the statute." *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶ 13. We review the constitutionality of a statute *de novo*. *Piester v. Escobar*, 2015 IL App (3d) 140457, ¶ 18.

¶ 21 Barnett's facial challenge to the Act is based on the decision of the Illinois Supreme Court in *People v. Relerford*, 2017 IL 121094.[4] The Illinois Supreme Court found that the stalking and cyberstalking statutes were overbroad given that a substantial number of their applications were unconstitutional when judged in relation to their legitimate sweeps. *Id.* ¶¶ 63, 78. Specifically, our supreme court held that the statutory language of the stalking and cyberstalking statutes – making it criminal to negligently "*communicate[] to or about*" a person, where the speaker knows or should know the communication would cause a reasonable person to suffer emotional distress – was facially unconstitutional. (Emphasis added). *Id.* ¶ 63.

¶ 22 Noting the similarity between the language of the criminal statutes at issue in *Relerford* and the language of the civil Act, Barnett contends that this Court should hold that the Act's definition of stalking is unconstitutional on its face and the plenary order is void *ab initio*. While they acknowledge that the Act may "suffer[] from the same constitutional infirmity" as the criminal statutes at issue in *Relerford*, the Siegals contend that Barnett's conduct nevertheless constitutes stalking and thus the circuit court's judgment should be affirmed.

¶ 23 After striking the "communicates to or about" language, the Illinois Supreme Court in

[4] We allowed the parties to submit supplemental briefs addressing *Relerford*.

Relerford addressed whether the defendant's convictions should be sustained based on other conduct prohibited by the statutes. *Id.* ¶¶ 65-69. Our supreme court vacated the defendant's convictions only after concluding that his actions and communications did not otherwise constitute stalking or cyberstalking. *Id.* ¶ 69. For the reasons discussed below, we conclude that – even if the "communicates to or about" language was stricken from the civil Act – we would nevertheless affirm the entry of the plenary order in accordance with other language in the Act. Because the plenary order is amply supported by the record on bases *other than* communications to or about the Siegals, we need not decide whether the Act is unconstitutional. *Piester*, 2015 IL App (3d) 140457, ¶ 18 (stating that a "case should be decided on nonconstitutional grounds where possible").

¶ 24 The Illinois legislature passed the Act in 2010 "to provide a remedy for victims who have safety fears or emotional distress as a result of stalking." *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 10. See 740 ILCS 21/5 (West 2016); *Piester*, 2015 IL App (3d) 140457, ¶ 11 (noting that the Act provides victims of stalking with a civil remedy). Under the Act, "stalking" is defined as "engaging in a course of conduct directed at a specific person" which the respondent knows or should know "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 2016). A "course of conduct" means two or more acts, including acts in which a respondent directly or indirectly "follows, monitors, observes, surveils, threatens, or communicates to or about" a person, or engages in other contact. *Id.* "Contact" is defined in the Act to include any contact with the victim that is initiated or continued without the victim's consent or in disregard of the victim's expressed desire that the contact be avoided or discontinued, including being in the victim's physical presence, or appearing within the victim's sight or at the victim's residence or

workplace. *Id.*

¶ 25 A petitioner is required to prove stalking by a preponderance of the evidence. 740 ILCS 21/30 (West 2016). "A trial court's determination that a preponderance of the evidence shows a violation of the Act will not be overturned unless such a determination is against the manifest weight of the evidence." *McNally*, 2015 IL App (1st) 134048, ¶ 12. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if the finding is arbitrary, unreasonable, or not based on the evidence presented. *Id.*; *Nicholson*, 2013 IL App (3d) 110517, ¶ 22.

¶ 26 Irrespective of any "communications to or about" the Siegals – *e.g.*, the content of Barnett's signs or his conversations with the Siegals or pedestrians and motorists – the record indicates that he engaged in a "course of conduct" for purposes of the Act. Barnett continued to stand, walk, or sit outside of the Property more than a decade after his initial meeting with Burton. While his stated intent was to inform "customers" of the Siegals' business practices, Barnett was occasionally present at the Property on weekends and in the evening, when it is presumably unlikely that current or prospective customers would readily view his signs. Such conduct at the Property was in disregard of the Siegals' expressed desire that the contact be discontinued. His unwanted physical presence at their residence and workplace on more than 80 occasions constitutes "contact" for purposes of the Act. 740 ILCS 21/10 (West 2016) (including within the definition of "contact" any contact with the victim that is continued in disregard of the victim's expressed desire that the contact be discontinued, including being in the victim's physical presence or appearing within the victim's sight or at his or her residence or workplace).

¶ 27 We further observe that the circuit court expressly found that Barnett had surveilled and monitored the Siegals – activities which also fall within the statutory definition of "course of

conduct." *Id.* Such findings are sufficiently supported by the record, *e.g.*, Burton's testimony that Barnett typically stood in front of the Siegals' picture window and a front door on a side street, even though the Property was adjacent to a busier main street.

¶ 28 Arguing that his "picketing posed no intrusion on Mr. Siegal's life," Barnett notes that he never knocked on the door, rang the doorbell, or made noise outside of the Property. The fact that his conduct was not as blatantly intrusive as in other cases (*e.g.*, *Nicholson*, 2013 IL App (3d) 110517, ¶¶ 5, 7 (respondent used video surveillance and a GPS tracking device)) is not dispositive. The fact that Barnett *could have* engaged in additional conduct does not mean that his actual conduct did not constitute a "course of conduct" for purposes of the Act.

¶ 29 Barnett further contends that the evidence presented by the Siegals was insufficient to establish that they suffered emotional distress. The focus of the Act is whether the respondent's behavior would cause a reasonable person to be fearful for his or her safety or to suffer emotional distress. *Piester*, 2015 IL App (3d) 140457, ¶ 12. A "reasonable person" is defined as a "person in the petitioner's circumstances with the petitioner's knowledge of the respondent and the respondent's prior acts." 740 ILCS 21/10 (West 2016). "Emotional distress" is defined in the Act as "significant mental suffering, anxiety or alarm." *Id.*

¶ 30 The record adequately supports the circuit court's finding that a "reasonable person would find Mr. Barnett's continued presence and action over six years to cause emotional distress." A person in Burton's circumstances – *i.e.*, an elderly individual with health concerns – with Burton's knowledge of Barnett and his prior acts – *e.g.*, Barnett's history of litigation with the Siegals and others, and his repeated physical presence at the Property, including at night and on weekends – would experience significant mental suffering, anxiety and alarm due to Barnett's conduct. The Siegals testified regarding the impact of Barnett's presence on their daily routines,

including their reluctance to invite guests to the Property and their concern while driving that they might inadvertently make contact with Barnett, leading to additional legal complications.

¶ 31 Barnett claims that the "only evidence that even touched on emotional distress" was Rita's testimony regarding his presence at the Property on one occasion after 10 p.m. This contention is inaccurate, as both Burton and Rita testified in detail regarding the emotional toll of Barnett's conduct. We also reject Barnett's argument regarding the alleged lack of testimony regarding any physical manifestations of Burton's emotional distress or that Burton consulted a "psychologist, psychiatrist, or even a social worker." The Act does not require such testimony for a petitioner to establish "significant mental suffering, anxiety or alarm."

¶ 32 For the foregoing reasons, the record demonstrates that Barnett engaged in a course of conduct which, from an objective standpoint, would cause a reasonable person to suffer emotional distress. See *McNally*, 2015 IL App (1st) 134048, ¶ 16; *Nicholson*, 2013 IL App (3d) 110517, ¶ 15. The record also plainly demonstrates that the Siegals did, in fact, suffer emotional distress. Even if we treat the "communicates to or about" language as stricken from the Act based on *Relerford* principles, we nevertheless conclude that the trial court's ruling was not against the manifest weight of the evidence.

¶ 33 In addition to his *Relerford*-based arguments, Barnett contends that the plenary order violates his rights under the Illinois and United States Constitutions and the Act. Under the Illinois Constitution, "[a]ll persons may speak, write and publish freely." Ill. Const. 1970, art. 1, § 4. The United States Constitution states that "Congress shall make no law *** abridging the freedom of speech." U.S. Const. amend. I. See also U.S. Const., amend. XIV (making the first amendment applicable to states). Consistent with those principles, the Act provides, in part, that "[s]talking does not include an exercise of the right to free speech or assembly that is otherwise

lawful." 740 ILCS 21/10 (West 2016). See also *Piester*, 2015 IL App (3d) 140457, ¶ 18 (noting that a "party's exercise of free speech is expressly excluded from the stalking statute and may provide a defense"). The crux of Barnett's argument appears to be that (a) he was permitted to picket at the Property because the Siegals operated a business in their residence, and (b) because Barnett never appeared at the Property without one or more protest signs, he cannot have "stalked" the Siegals.

¶ 34 We recognize a party's right to peacefully protest regarding allegedly unfair business practices. See, *e.g.*, *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 420 (1971) (reversing an injunction prohibiting a community organization from distributing leaflets "anywhere in the City of Westchester, Illinois" describing a Westchester resident's alleged business practices in the Austin neighborhood of Chicago). As discussed above, however, the record in the instant case demonstrates that Barnett's actions went beyond the mere picketing of Budd Engineering's business practices. We reject the implicit principle at the core of many of Barnett's contentions, *i.e.*, that holding or displaying a protest sign insulates conduct which otherwise violates the Act.

¶ 35 Barnett also challenges the injunctive relief included in the plenary order which prohibits him from any "electronic communication regarding [the Siegals,] Budd Engineering." He argues that the relief is overbroad. After rendering a finding that a petitioner was a victim of a course of conduct, the trial court is obligated to enter a stalking no contact order. 740 ILCS 21/80(a) (West 2016). The trial court has authority to include a variety of prohibitions and restrictions in the order. 740 ILCS 21/80(b) (West 2016). Specifically, the court is authorized to "order other injunctive relief the court determines to be necessary to protect the petitioner or a third party specifically named by the court." 740 ILCS 21/80(b)(5) (West 2016). Based on our review of

the record, we conclude that the circuit court's restriction on Barnett's electronic communication was based on the evidence presented in Burton's petition and supporting documents and at the hearings on the emergency and plenary orders.

¶ 36 We further observe that Barnett did not challenge this relief in his motion to reconsider the plenary order or during the hearing thereon. Although we recognize that the failure to raise an issue in a posttrial motion does not preclude a party from raising that issue on appeal in a nonjury civil case (Ill. S. Ct. R. 366(b)(3)(ii) (eff. Feb. 1, 1994); *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 12), Barnett is not excused from his failure to raise the issue before the trial court. See *Elsener v. Brown*, 2013 IL App (2d) 120209, ¶ 53. Through his counsel, Barnett first advanced arguments regarding the "no electronic communication" language during the December 14, 2016 hearing on Burton's motion to clarify – almost one month *after* he had filed his notice of appeal. At that point, the circuit court no longer retained jurisdiction over the matter. See *State ex rel. Beeler, Schad & Diamond, P.C. v. Target Corp.*, 367 Ill. App. 3d 860, 863 (2006) (providing that when a notice of appeal is properly filed, the appellate court's jurisdiction attaches *instanter* and the cause is beyond the trial court's jurisdiction). Despite raising arguments regarding the restriction on Barnett's electronic communication, his counsel consistently represented that Barnett did – or would – take down his "Siegal Expose" website. *Bridges v. Neighbors*, 32 Ill. App. 3d 704, 707 (1975) (stating that "[d]efendant, having made no attack against the correctness of plaintiffs' action in the trial court at any stage of the proceedings, cannot first raise that issue on appeal").

¶ 37 Although Barnett filed a second notice of appeal in March 2017 which referenced the "dispos[al] of the last timely-filed post-trial motion on February 2, 2017," Burton's motion to clarify the plenary order was not a timely post-trial motion directed against the judgment which

would toll the time for filing a notice of appeal. A postjudgment motion extends the time for filing a notice of appeal under Illinois Supreme Court Rule 303(a)(1) only when it seeks rehearing, retrial, modification, or vacation of the judgment, or other similar relief. *Heiden v. DNA Diagnostics Center, Inc.*, 396 Ill. App. 3d 135, 138 (2009). See also 735 ILCS 5/2-1203 (West 2016). Burton's motion to clarify did not attack the plenary order (*D'Agostino v. Lynch*, 382 Ill. App. 3d 639, 643 (2008)), but was "more akin to a supplementary or enforcement proceeding" (see *Miller v. Penrod*, 326 Ill. App. 3d 594, 597 (2001)). As such, Barnett's second notice of appeal was improper.

¶ 38 For the reasons discussed above, we reject Barnett's challenge to the portion of the plenary order prohibiting his electronic communications regarding the Siegals and Budd Engineering.

¶ 39 CONCLUSION

¶ 40 The judgment of the circuit court is affirmed in its entirety.

¶ 41 Affirmed.