2018 IL App (2d) 180165-U
No. 2-18-0165
Order filed November 14, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ROBERT Q. TUCKER, Jr.,	)	Appeal from the Circuit Court
	)	of McHenry County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 11-FA-251
	)	
MEAGHAN K. KERTON,[1]	)	Honorable
	)	Mary H. Nader,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Hudson and Justice Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Respondent was not improperly denied a substitution of judge, as she moved not for a "substitution of judge" but for what the trial court reasonably interpreted as a consolidation of the present case with two other cases, which were before a different judge; (2) the trial court's grant of a plenary order of protection against respondent was not against the manifest weight of the evidence, as the court was entitled to find that respondent had allowed her husband to be in the presence of the parties' son, in violation of an order of protection against the husband.

[1] On her notice of appeal, respondent givers her last name as Stott. Per our custom, we use her name as listed on the petition in the trial court.

¶ 2 Respondent, Meaghan K. Kerton, appeals *pro se* from the judgment of the circuit court of McHenry County entering a two-year plenary order of protection against her. Because the order of protection was not against the manifest weight of the evidence or otherwise improper, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner, Robert Q. Tucker, Jr., filed a petition for an order of protection against respondent. The petition sought protection for petitioner's and respondent's minor son, Isaiah.

¶ 5 On November 22, 2017, respondent filed a *pro se* motion to have this case "moved to Room 360 before Judge Coppedge," because there were "two other cases related to this one" before Judge Coppedge. The trial court entered an order that denied respondent's "motion to consolidate."

¶ 6 The following facts were established at the hearing on the petition. Petitioner is respondent's ex-husband. Pursuant to the marriage dissolution, respondent had custody of Isaiah. Respondent was remarried to David Stott. They have two children together.

¶ 7 According to petitioner, Isaiah told him about an incident in which David had dropped respondent off at work and drove Isaiah and the other children to a family event in Wisconsin. Isaiah told petitioner that David and other adults were drinking and forced Isaiah to physically fight with another child. Isaiah received multiple bruises from the fight. According to petitioner, Isaiah was petrified because of the incident and was afraid to be around David. When petitioner confronted respondent about the incident, she did not deny that it occurred.

¶ 8 Based on the incident, petitioner had obtained a two-year order of protection against David, barring David from any contact with Isaiah. David was required to leave the house he shared with respondent.

¶ 9 According to petitioner, Isaiah told him that, because respondent had to work the day before Christmas, she had David come to the house to watch Isaiah and the other children. The order of protection against David was in effect when that occurred.

¶ 10 Petitioner testified that he was concerned for Isaiah's welfare, because respondent could not stop David from coming to the house. Thus, petitioner asked the court to enter an order of protection that would require Isaiah to live with him, while providing respondent visitation.

¶ 11 Respondent admitted that Isaiah had been in a fight with another child while in Wisconsin with David but she did not know the exact details. Because the incident had been reported to the police, the Department of Children and Family Services (DCFS) investigated. Although respondent, pursuant to the recommendation of DCFS, had sought an order of protection against David, she withdrew it. She explained that she did not believe that in the big picture David was a threat to Isaiah. She did not think that the one incident outweighed "all the good things that [had] happened in Isaiah's life since David [had] become part of [it]."

¶ 12 According to respondent, because of the order of protection, David lived about a block away from her house. She denied that he had been at the house in violation of the order of protection.

¶ 13 In ruling, the trial court noted that, although it believed that respondent was a good mother, she exercised poor judgment in allowing David to be around Isaiah after the fighting incident. The court further commented that Isaiah could not protect himself and expected respondent to protect him. The court found that Isaiah was not safe around David. Although the court denied petitioner's request to order Isaiah to live with him, it entered a two-year plenary order of protection that prohibited respondent from allowing David to have "any contact" with

Isaiah at respondent's home or while he is in the care and custody of respondent. Respondent then filed this timely *pro se* appeal.

¶ 14 II. ANALYSIS

¶ 15 On appeal, respondent contends that (1) her motion for substitution of judge was improperly denied and (2) the order of protection was improperly entered.

¶ 16 We begin by noting the absence of an appellee's brief. Because the record is simple and the claimed errors can be easily decided, we will address the merits. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 17 We first address respondent's contention that she was improperly denied a substitution of judge. She was not.

¶ 18 Respondent did not move for a "substitution of judge," either for cause or as of right. See 735 ILCS 5/2-1001(a)(2), (a)(3) (West 2016). Although she points to her November 22, 2017, motion, that motion merely asked the court to transfer this case to Judge Coppedge, because he was presiding over two related cases. Although we agree that the November 22 motion did not expressly ask for this case to be "consolidated" with the related cases before Judge Coppedge, the court reasonably interpreted it that way, and respondent did not assert that the court had misinterpreted it. Because respondent did not seek a substitution of judge in the trial court, she cannot raise such a claim now. See *Johnson v. Fuller Family Holdings, LLC*, 2017 IL App (1st) 162130, ¶ 27 (party that fails to raise an issue in the trial court forfeits the issue and may not raise it for the first time on appeal).

¶ 19 We next address whether the trial court properly entered the order of protection. It did.

¶ 20 The purpose of the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West 2016)) is to aid the victims of domestic violence by preventing future violence.

Radke v. Radke, 349 Ill. App. 3d 264, 268 (2004). The Act reflects a comprehensive statutory scheme for reform of the legal system's historically inadequate response to domestic violence. *Moore v. Green*, 219 Ill. 2d 470, 488-89 (2006). Accordingly, the Act protects any person abused by a family or household member. *Moore*, 219 Ill. 2d at 481. To that end, the Act details broad remedies that an order of protection may contain. *Moore*, 219 Ill. 2d at 481. When entering an order of protection, the trial court is afforded discretion to tailor the order to address individual circumstances and needs, improve victim safety, and hold the perpetrator accountable for his or her acts. *Sanchez v. Torres*, 2016 IL App (1st) 151189, ¶ 22; see also 750 ILCS 60/214(b) (West 2016) (delineating various remedies available). Indeed, the Act expressly contemplates the expansion of criminal and civil remedies for protected persons. *Sanchez*, 2016 IL App (1st) 151189, ¶ 20.

¶ 21 On any petition for an order of protection, the central inquiry is whether a protected person has been abused. *Best v. Best*, 223 Ill. 2d 342, 348 (2006). Physical abuse includes knowing or reckless conduct that creates an immediate risk of physical harm. 750 ILCS 60/103(14) (West 2016).

¶ 22 Whether there has been abuse is a question of fact that must be proved by a preponderance of the evidence. 750 ILCS 60/205(a) (West 2016); *Best*, 223 Ill. 2d at 348. A trial court's finding regarding abuse will not be disturbed unless it is against the manifest weight of the evidence. *Best*, 223 Ill. 2d at 350. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if it is unreasonable, arbitrary, or not based on the evidence. *Best*, 223 Ill. 2d at 350. Under that standard, the reviewing court affords discretion to the fact finder, because it is in the best position to observe the conduct and demeanor of the parties and witnesses. *Best*, 223 Ill. 2d at 350. Accordingly, a reviewing court

will not substitute its judgment for that of the trier of fact with respect to determinations of witness credibility, the weight afforded to the evidence, and the inferences to be drawn from the evidence. *Best*, 223 Ill. 2d at 350-51.

¶ 23 In this case, the evidence of abuse consisted of respondent's allowing David to be in her home with Isaiah, despite knowing that David had been determined to be a threat to Isaiah and that an order of protection had been entered against David. Although respondent denied allowing David to be near Isaiah, petitioner testified that Isaiah told him that she had done so. The trial court accepted petitioner's version, and we will not substitute our judgment in that regard. In light of the order of protection against David, allowing David to be near Isaiah created an immediate risk of physical harm. Thus, there was adequate evidence of abuse to support the order of protection.

¶ 24 Respondent contends, however, that she cannot be held responsible for David's conduct regarding the order of protection against him. Although that might be true, the order of protection here does not make respondent responsible for David's actions. Rather, it places an independent obligation on respondent to keep Isaiah away from David and the risk of harm that he presents. That is an appropriate remedy under the circumstances.

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of McHenry County.

¶ 27 Affirmed.