

2019 IL App (1st) 180966-U  
No. 1-18-0966  
June 17, 2019

FIRST DIVISION

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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LUISA GOODNIGHT,	)	Appeal from the Circuit Court
	)	Of Cook County.
Petitioner-Appellant,	)	
	)	No. 18 OP 20108
v.	)	
	)	The Honorable
JEREMY GOODNIGHT,	)	Marcia B. Orr,
	)	Judge Presiding.
Respondent-Appellee.	)	

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JUSTICE WALKER delivered the judgment of the court.  
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

**ORDER**

- ¶ 1       *Held:* The Illinois Domestic Violence Act prohibits mutual orders of protection.
- ¶ 2       Luisa Goodnight filed a petition under the Illinois Domestic Violence Act (Act) (750 ILCS 60/101 *et seq.* (West 2018)) for an order protecting her from Jeremy Goodnight. The trial court entered a "Mutual Restraining Order." On appeal, Luisa argues that the order violates the Act. We agree that the order constitutes a mutual order of protection which the

Act prohibits. We vacate the trial court's order and remand for further proceedings in accord with the Act.

¶ 3

### I. BACKGROUND

¶ 4

Luisa and Jeremy married in 2011 and had a son, J.G., in 2012. Luisa and Jeremy separated in April 2017. Luisa moved with J.G. into her parents' home, and on February 27, 2018, Luisa filed a petition for an order protecting her and J.G. from Jeremy's abuse and harassment. The trial court granted Luisa an emergency order of protection.

¶ 5

The trial court heard testimony concerning Luisa's request for a plenary order of protection on April 9, 2018. See 750 ILCS 60/219 (West 2018). Luisa testified that she had "a domestic abusive relationship with [Jeremy] for many years," with "constant fights" in which Jeremy hit her in front of their son. She described two incidents in detail.

¶ 6

In March 2017, Luisa told Jeremy she needed him to help her take care of their dog. Luisa testified:

"He gets upset and he kicks me in the stomach and he had me like cornered by a dog cage and he was kicking and punching on me and that's when he scratched my eye.

And my son was there \*\*\*. My son still talks about the situation till this day."

¶ 7

Luisa showed the court photographs of her injuries. She moved out shortly after the incident.

¶ 8

After the separation, Luisa and Jeremy arranged for J.G. to visit Jeremy every other weekend. Luisa testified that when she picked up J.G. from a visit in February 2018, she

brought her boyfriend along and they met Jeremy at a gas station. Jeremy fought with Luisa's boyfriend and grabbed Luisa when she tried to break up the fight. J.G. started screaming, telling Jeremy to stop. Someone at the gas station saw the fight and called the police. Luisa, with her boyfriend and J.G., drove away from the gas station, with Jeremy in pursuit. Police found them nearby and filed a report concerning the altercation.

¶ 9 Jeremy admitted that he brought J.G. to the gas station in February 2018, and he saw Luisa's boyfriend in Luisa's car. Jeremy testified:

"this is not the first time this has happened. She's pulled up to my job to drop my son off with her boyfriend, even though at my place work, but I couldn't do anything. \*\*\* It's not fair that you would be pulling up with somebody.

And I tell the guy, I try to get his attention because he's not even paying attention as the doors opened. He hasn't even looked this way. \*\*\* So I said we need to have a conversation. It's been over 6 months. \*\*\* [W]ho's my son with, is he safe with them.

He proceeds to say I don't have to listen to anything you have to tell me. And at that point, yes, I got angry because what do you mean. I have every right to know who you are. I have every right to have a conversation with you about being around my son[.] \*\*\* I would ask her when is me and your boyfriend going to have a conversation. Oh, it will happen when it happens. That's not right."

¶ 10 Jeremy did not deny that he struck Luisa's boyfriend and grabbed Luisa when she tried to break up the fight. Jeremy did not deny that he struck Luisa repeatedly during the incident in March 2017 and caused the injuries shown in the photographs.

¶ 11 The court asked Luisa whether she objected to the court scheduling visits between J.G. and Jeremy. Luisa said:

"[M]y child is traumatized. He talks about situations constantly. He always comes to people and tells them, my dad is mean to my mom. \*\*\* He gets scared

\*\*\*.

\*\*\*

The only way I'd feel comfortable for Jeremy to have visits with his son is supervised at his grandmother's house."

¶ 12 Luisa admitted that Jeremy had not physically hurt J.G..

¶ 13 At the conclusion of the hearing the court entered the following written order:

"Mutual Restraining Order

The Court having heard sworn testimony from the parties and witnesses in this matter, an order restraining both parties from physical abuse, harassment, interference of personal liberty against each other, is entered. Parties are to reside in separate residences and have no contact with each other except by text message or e-mail in the event an emergency arises regarding the minor child J.G. Goodnight. Respondent shall have visitation with J.G. every other weekend \*\*\*. Pick up & drop off will be supervised by the child's grandmother at each location. Respondent shall pay Petitioner \$100.00 on the first of each month \*\*\* for child support. \*\*\*

The [emergency order of protection] currently in effect is terminated.

Neither party shall arrive for pickup in the company of any significant other."

¶ 14 Luisa now appeals.

¶ 15 II. ANALYSIS

¶ 16 On appeal, Luisa argues that the trial court's "Mutual Restraining Order" violates section 215 of the Act (750 ILCS 60/215 (West 2018)); the trial court failed to make a finding required by section 214(c) of the Act (750 ILCS 60/214(c) (West 2018)); and the court violated section 214(b)(7) of the Act (750 ILCS 60/214(b)(7) (West 2018)) by requiring J.G.'s grandmothers to supervise exchanges of custody. Jeremy has not filed a brief on appeal. We decide the merits of the appeal because we can resolve the reasonably straightforward issues without the aid of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 17 Section 215 of the Act provides that "Mutual orders of protection are prohibited." 750 ILCS 60/215 (West 2018). The Act does not define the term, but a commentator explained, "Basically, a mutual protective order restrains both parties and requires that each person stay away from the other." Elizabeth Topliffe, *Why Civil Protection Orders are Effective Remedies for Domestic Violence but Mutual Protective Orders Are Not*, 67 Ind. L.J. 1039, 1054 (1992). The court in *In re Marriage of Kiferbaum*, 2014 IL App (1st) 130736, found:

"Mutual orders of protection typically occur within the same document, arising from a singular pleading and proceeding, despite the fact that one party may not have even desired an order of protection. [Citation.] The problems with mutual orders of protection are plentiful and have been well documented to include

everything from violating due process, to the court's treatment of these orders, to implementation by the parties and the police, to actually exacerbating the violence and abuse against the abused party. [Citation]; see also Elizabeth Topliffe, *Why Civil Protection Orders are Effective Remedies for Domestic Violence but Mutual Protective Orders Are Not*, 67 Ind. L.J. 1039, 1065 (1992) ("The woman feels that she is to blame for the violence or that the justice system is not holding the batterer accountable for his behavior. The court verifies the batterer's belief that he is not to blame for the violence because it is caused by external factors. A mutual order is also less effective for enforcement purposes and can be used in future proceedings against the victim to the advantage of the batterer.')." *Id.* ¶ 32.

Here, only Luisa filed a petition for an order of protection. The court entered an order barring Luisa from abusing or harassing Jeremy even though he never sought such an order, and even though no evidence shows that she harassed or abused Jeremy. The court's order qualifies as a mutual order of protection. See *Kiferbaum*, 2014 IL App (1st) 130736, ¶¶ 31-34. Because the Act bans mutual orders of protection, we vacate the order dated April 9, 2018. We reinstate the emergency order of protection entered on February 27, 2018, and remand for proceedings in accord with the Act. In light of our resolution of Luisa's first issue, we find that Luisa's other issues cannot affect the result of the appeal, and therefore we do not address them. See *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009).

¶ 18

#### CONCLUSION

¶ 19

We agree that the order constitutes a mutual order of protection which the Act prohibits. We vacate the trial court's order and remand for further proceedings in accord with the Act.

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¶ 20 Reversed and remanded.