2019 IL App (5th) 180198-U

NO. 5-18-0198

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JASON HANKINS,	)	Appeal from the
	)	Circuit Court of
Petittioner-Appellee,	)	Williamson County.
	)	
v.	)	No. 18-OP-43
	)	
JACOB R. THOMPSON,	)	Honorable
	)	Jeffrey A. Goffinet,
Respondent-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE OVERSTREET delivered the judgment of the court.
Justices Welch and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly entered a two-year stalking no contact order in favor of minor against mother's live-in paramour because paramour engaged in a course of conduct directed at minor, and he knew or should have known that this conduct would cause a reasonable person to fear for his safety or suffer emotional distress.

¶ 2 The petitioner, Jason Hankins, filed in the circuit court of Williamson County a petition pursuant to the Stalking No Contact Order Act (Act) (740 ILCS 21/1 *et seq.* (West 2016)) on behalf of his son, C.H., against the respondent, Jacob R. Thompson, the live-in boyfriend of C.H.'s mother, Rachel Davis. After hearing evidence, the circuit court granted the petitioner's petition and entered a two-year stalking no contact order. For the following reasons, we affirm the circuit court's order.

¶ 3 BACKGROUND

¶ 4 On February 9, 2018, the petitioner, on C.H.'s behalf, filed *pro se* a verified petition and an amended petition for a stalking no contact order against the respondent. In the petition, the petitioner alleged that in August 2017, the respondent threatened to take C.H.'s younger brother L.H.'s " 'fucking phone' and throw it out in the field"; in January 2018, the respondent "threatenen[ed] [C.H. and L.H.] with vulgar language and throwing things"; and on February 8, 2018, the respondent "hit [C.H.] in the face with an object thrown very hard *** bruising him under his eye." The petitioner alleged that the respondent called C.H. and L.H. "mother fuckers," threatened them, and threw things at them. On the same date the petition was filed, the circuit court entered an emergency stalking no contact order and set the matter for a hearing on a plenary stalking no contact order on February 28, 2018.

¶ 5 At the plenary order hearing, the petitioner testified that he was the father of C.H. and L.H. and that he and Davis shared equal parenting time. The petitioner testified that when he engaged in conversations with the respondent, the respondent seemed angry and argumentative. The petitioner testified that the boys acted afraid of the respondent, that they had trouble sleeping, and that they cried about the respondent living with them and being afraid for their mother. The petitioner testified that when he confronted the respondent about calling the boys "lazy mother fuckers and throw[ing] something at them," the respondent replied "that he talks that way to them all the time."

¶ 6 The respondent testified that he had lived with Davis for two years. The respondent testified that on February 8, 2018, he had told C.H. and L.H. to pick up their stuff, had grabbed their coats from the floor, and had thrown them inside the boys' bedroom, saying, "I'm tired of you kids being lazy mother fuckers." The respondent testified that he heard C.H. respond, "What's your problem, mother fucker," and the respondent threw a piece of deer jerky at the wall, unintentionally hitting

C.H. in the face. The respondent testified that he did not intend to cause C.H. any harm. The respondent testified that he loved C.H. and L.H. and that he would never intentionally harm them.

¶ 7 The respondent testified that later, at the petitioner's house, after Davis had talked to the children and was returning to the respondent's vehicle, the petitioner followed her, approached the respondent's truck, and "proceeded to tell [him] about the cuss words [so] [the respondent] proceeded to apologize about the cuss words, and it escalated from there." The respondent testified that the petitioner tried to open his truck door and that he felt threatened.

¶ 8 Davis testified that the respondent had "never whipped [C.H. or L.H.], slapped them, hit them, [or] kick[ed] them." Davis testified that the February 8 incident was the only incident wherein the respondent called the boys foul names. Davis testified that during the incident at the truck outside of the petitioner's house, the petitioner had stated that he would take the children away from her and that he controlled her world. Davis testified that the children were listening, so she told him to stop.

¶ 9 Olivia Webb, the respondent's niece, testified that she had never witnessed the respondent use foul language in front of the children or call them foul names.

¶ 10 *In camera*, the circuit court interviewed C.H., who was 10 years old and in the fifth grade. C.H. referenced that his younger brother, L.H., was seven years old. C.H. stated that on the drive to the plenary order hearing, his mother had helped him to remember the incident, had told him that the respondent had not meant to hit him, and had told him to try to remember the good things the respondent did for him. C.H. stated that the respondent had apologized many times for the February 8 incident. C.H. stated that on that day, he had returned home from a dentist appointment and had forgotten to put away his coat. C.H. stated that the respondent came "running in real hard, and he [threw] it on the ground real hard and [said,] 'I'm tired of picking up—picking up your effing crap.' " C.H. stated that the respondent yelled at him and L.H. and that he felt "[v]ery upset." C.H.

testified that the respondent also threw a "beef jerky about 1.5 inches long" that hit C.H. in the face. C.H. testified that the respondent called him a "little m-effer" and told him not to talk back. C.H. stated that the respondent had cursed at him and L.H. "many, many times" and had called him and L.H. the "mf word" lots of times. C.H. stated that the respondent scared him. C.H. stated that when he told his mother that the respondent scared him, she replied, "Just don't be afraid[.] I'm gonna talk to him[.] I'm gonna tell him to quit[.] [H]e's gonna quit, I promise."

¶ 11 During the plenary order hearing, the circuit court took judicial notice of the respondent's Williamson County criminal convictions, including his felony conviction for aggravated driving under the influence (625 ILCS 5/11-501(d) (West 2012)). Upon conclusion of the hearing, the circuit court entered a two-year plenary stalking no contact order on behalf of C.H. against the respondent. On March 27, 2018, the respondent filed his notice of appeal.

¶ 12 ANALYSIS

¶ 13 The legislature passed the Act in 2010 to provide a remedy for victims who have safety fears or emotional distress as a result of stalking and harassment. 740 ILCS 21/5 (West 2016). Pursuant to the Act, "a stalking no contact order shall issue" when the court finds the petitioner has been a victim of stalking. *Id.* § 80(a). For the purposes of the Act, " '[s]talking' means engaging in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress." *Id.* § 10. " 'Course of conduct' means 2 or more acts, including but not limited to acts in which a respondent directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other contact, or interferes with or damages a person's property or pet." *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.*

¶ 14 The Act's focus involves whether the stalker "knows or should know that [the] course of conduct 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); *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 14. 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' means significant mental suffering, anxiety[,] or alarm." *Id.* Whether a party has suffered emotional distress is generally a question of fact. See *Corgan v. Muehling*, 143 Ill. 2d 296, 312 (1991).

¶ 15 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 v. Wilson*, 2013 IL App (3d) 110517, ¶ 22.

¶ 16 The respondent ostensibly argues that consideration of the *in camera* interview of C.H. was improper because the petitioner failed to file a written motion for an *in camera* interview and that absent the interview's introduction into evidence, the petitioner failed to present a *prima facie* case for stalking. However, because the respondent has failed to cite relevant authority for this argument, he has forfeited it for purposes of appeal. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (appellant's brief

"shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"); *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, ¶ 19 (failure to cite supporting authority violates Rule 341 and causes a party to forfeit consideration of the issue on appeal).

¶ 17 The respondent also argues that the circuit court erred in denying his motion for directed finding. As noted by the petitioner, however, it is well settled that a respondent who chooses to present evidence after the denial of his motion for a directed finding at the close of the petitioner's case waives any error in the trial court's ruling on the motion unless he renews the motion at the close of all the evidence. See *People v. Kelley*, 338 Ill. App. 3d 273, 277 (2003); see also 735 ILCS 5/2-1110 (West 2016) ("If the ruling on the motion is adverse to the defendant, the defendant may proceed to adduce evidence in support of his or her defense, in which event the motion is waived."). In this instance, because the respondent presented evidence in his defense after his motion for a directed finding at the end of the petitioner's case was denied and he did not renew the motion at the close of all the evidence, he has waived any error in the circuit court's ruling on the motion. *Pancoe v. Singh*, 376 Ill. App. 3d 900, 909 (2007).

¶ 18 Notwithstanding waiver, the respondent argues that the petitioner failed to establish a course of conduct in his case in chief. The respondent also argues that the incident where the respondent ran "real hard" to follow C.H. to his room, threw the coat on the floor "real hard," threw jerky into C.H.'s face, and yelled obscenities at him was not an incident where the respondent followed or threatened C.H. The respondent argues it was "nothing more than a verbal conversation with obscenities from a person acting in loco parentis to a minor child." We disagree.

¶ 19 The respondent admitted to calling C.H. and his brother "lazy mother fuckers" and throwing an object that hit C.H. in the face. In addition to this February 8 incident, C.H. stated that the

respondent cursed at him and L.H. "many, many times" and called them "mother fuckers" "lots of times," and the petitioner testified that the respondent had acknowledged that he talked "that way to [the boys] all the time." Accordingly, this evidence sufficiently established that the respondent engaged in a course of conduct directed at C.H. and that the respondent knew or should have known that this course of conduct would cause a reasonable person to fear for his safety or the safety of a third person or suffer emotional distress. 740 ILCS 21/10 (West 2016). Although the respondent also argues that the petitioner failed to establish that C.H. was fearful for his safety or that he suffered emotional distress, the petitioner testified that C.H. acted afraid of the respondent, had trouble sleeping, and cried about the respondent's living with them and being afraid for their mother. Moreover, when interviewed regarding the February 8 incident, C.H. described the respondent as "running in real hard," "throw[ing] [his coat] on the ground real hard," and yelling obscenities at him. C.H. stated that he was "very upset." When asked whether the respondent scared C.H., C.H. answered, "yes, he does." C.H. further stated that he had told his mother that he was scared of the respondent and that she had assured him that she would "tell him to quit."

¶ 20 Thus, the record adequately supports the circuit court's finding that the respondent engaged in a course of conduct that included cursing, yelling, and name-calling directed at C.H. and the respondent knew or should have known that this course of conduct would cause a reasonable person, a person in C.H.'s circumstances with C.H.'s knowledge of the respondent and the respondent's prior acts, to fear for his safety or the safety of a third person or suffer emotional distress. See 740 ILCS 21/10 (West 2016). A person in C.H.'s circumstances, *i.e.*, a 10-year-old boy, with C.H.'s knowledge of the respondent, would reasonably experience significant mental suffering, anxiety, and alarm due to the respondent's conduct, and the record demonstrates that C.H. did, in fact, suffer emotional distress. The circuit court properly entered the plenary stalking no contact order.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 23 Affirmed.