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2014 IL App (5th) 140058-U

NOTICE
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NO. 5-14-0058

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WILLIAM DRIBBEN and WENDY DRIBBEN,)	Appeal from the
)	Circuit Court of
Plaintiffs-Appellants,)	St. Clair County.
)	
v.)	No. 11-CH-581
)	
LURBO LAND TRUST, GERALDINE A.)	
DAVIDSON, and GARY L. DAVIDSON,)	Honorable
)	Stephen P. McGlynn,
Defendants-Appellees.)	Judge, presiding.

PRESIDING JUSTICE WELCH delivered the judgment of the court.
Justice Goldenhersh and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court had discretion to enter a six-month stalking no-contact order prohibiting the defendant from engaging in any acts of stalking directed at the plaintiffs. The court did not violate the plaintiffs' due process rights by making factual findings of changed circumstances, and the factual findings were not against the manifest weight of the evidence. The court failed to comply with 740 ILCS 21/110(c) (West 2012) when it did not include the necessary statutory notice language in the stalking no-contact order, and we therefore modify the no-contact order to include this language. Therefore, the court's entry of the six-month stalking no-contact order is affirmed as modified.

¶ 2 This is an appeal from an order entered by the circuit court of St. Clair County pursuant to the Stalking No Contact Order Act (the Stalking Act) (740 ILCS 21/1 *et seq.*

(West 2012)), prohibiting the defendant, Geraldine Davidson, from engaging in any acts of stalking directed at the plaintiffs, William and Wendy Dribben, for a period of six months. For the reasons which follow, we affirm the decision of the circuit court as modified.

¶ 3 The parties are neighbors who reside in a subdivision and are involved in a long-standing dispute that has resulted in several lawsuits. In this appeal, the plaintiffs are challenging the circuit court's entry of a six-month stalking no-contact order as opposed to a two-year order. The plaintiffs also request that this court award them reasonable attorney fees and costs incurred as a result of their efforts to obtain a stalking no-contact order. We will set forth only those facts necessary to an understanding of our disposition.

¶ 4 In December 2011, the plaintiffs sought an order pursuant to the Stalking Act, prohibiting the defendant from engaging in any further acts of stalking. The plaintiffs' petition alleged that the defendant had committed acts of stalking against them by, among other things, killing the grass near their disputed property lines, which was a "malicious act of vandalism intended to harass and further stalk" the plaintiffs, repeatedly "watching" from her own property the actions of the plaintiffs on their own property, and through the actions of her attorney, who sent a letter to the plaintiffs' attorney threatening criminal prosecution of the plaintiffs' attorney in an attempt to prevent the plaintiffs' attorney from adequately representing them and "scaring him off the case." The petition alleged that these acts of stalking occurred less than two months after the expiration of the June 30, 2011, order, which prohibited the defendant from having any contact with the plaintiffs for 90 days. The petition requested that the circuit court enter an order

prohibiting the defendant from engaging in any further acts of stalking for a period of two years.

¶ 5 Following a protracted evidentiary hearing on the plaintiffs' petition, the circuit court declined to enter an order under the Stalking Act, finding that the defendant's alleged conduct was neither "nefarious" nor "menacing" and did not constitute stalking within the meaning of the Stalking Act. The court acknowledged that the continuous litigation has induced the plaintiff Wendy Dribben to "assign the most nefarious and menacing of motives to everything" the defendant does and that "[l]aboring under such fears," the court could understand how "things have become *** upsetting and disquieting for her." However, the court noted that the test for stalking was how would a reasonable person react to the alleged offensive conduct and concluded that no "reasonable person" would suffer emotional distress from the defendant's conduct.

¶ 6 The plaintiffs appealed, and this court reversed the circuit court's denial of the plaintiffs' motion for a stalking no-contact order. *Dribben v. Lurbo Land Trust*, No. 5-12-0579 (June 7, 2013) (unpublished order pursuant to Supreme Court Rule 23). This court concluded that the circuit court erred as a matter of law in applying the wrong "reasonable person" standard. Specifically, this court concluded that the circuit court erred by applying an objective reasonable person standard to the case as opposed to the definition of "reasonable person" set forth in the Stalking Act, which defined "reasonable person" 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 2010). This court concluded that the circuit court erred as a matter of fact in denying the plaintiffs' petition

for a stalking no-contact order because the manifest weight of the evidence supported the conclusion that a "reasonable person" as defined in the Stalking Act would suffer emotional distress as a result of the defendant's actions and that the plaintiffs did in fact suffer emotional distress as a result of the defendant's actions. This court thereafter remanded the case to the circuit court "for entry of a stalking no-contact order against the defendant and for a determination on the plaintiffs' request for attorney fees and costs." The mandate was issued on November 12, 2013.

¶ 7 On July 8, 2013, the plaintiffs filed a motion for entry of a stalking no-contact order pursuant to this court's June 2013 order. The plaintiffs requested that the circuit court enter a stalking no-contact order against the defendant for a period of two years or until the plaintiffs "sell the real property located at 4680 Heartland Oaks, Smithton, Illinois." The plaintiffs submitted a proposed stalking no-contact order with their motion. In response, the defendant filed an objection to the plaintiffs' proposed order, arguing that the terms were "vastly overbroad and likely unconstitutional."

¶ 8 On December 20, 2013, a hearing was held on the plaintiffs' motion for entry of the stalking no-contact order. At the hearing, the plaintiffs' attorney argued that this court's June 2013 order and November 2013 mandate required that a two-year stalking no-contact order be entered against the defendant. In contrast, the defendant's attorney argued that this court provided "no real guidance on what [the circuit court] was to do other than to enter an order." The defendant's counsel then requested that the terms of the current stalking no-contact order be similar to the terms of the no-contact order entered in June 2011. Counsel further argued that a lengthy no-contact order was unnecessary

because there have been no complaints of alleged improper conduct on the part of the defendant since 2011 and that the defendant had been "conditioned" to not respond to any provocative acts at Heartland Oaks, even when "reasonable people" would do so. After hearing counsels' arguments, the circuit court questioned the plaintiffs' counsel as to whether the plaintiffs occupied the home at Heartland Oaks and whether the residence was still listed for sale. Counsel informed the court that the plaintiffs' daughter was living in the home, that the plaintiffs were only at the house for maintenance purposes, and that the home was currently listed for sale.

¶ 9 Thereafter, the circuit court entered a stalking no-contact order pursuant to the Stalking Act (740 ILCS 21/1 *et seq.* (West 2012)) for a period of six months. In the order, the court stated that the following "important circumstances" had changed since the circuit court's June 2011 order and the appellate court's June 2013 decision: that the Heartland Oaks residence was no longer the principal residence of either plaintiff; that the Heartland Oaks residence was listed for sale; and that there had been "no evidence offered in the last year to support a plenary stalking, no-contact order" against the defendant. The plaintiffs appeal.

¶ 10 Initially, we have ordered taken with the case the defendant's motion to "dismiss and/or strike plaintiffs' appeal." In the motion, the defendant argues that the plaintiffs' appeal should be dismissed because the plaintiffs prevailed in obtaining a stalking no-contact order, and therefore they do not have a right to appeal under Illinois Supreme Court Rule 307 (eff. Feb. 26, 2010) as there was not a decision that was adverse to them.

The defendant argues that the fact that the stalking no-contact order was for only six months as opposed to the two years requested by the plaintiffs is not a basis for appeal.

¶ 11 In response, the plaintiffs filed a motion in opposition to the defendant's motion to "dismiss and/or strike" and a cross-motion to enter an order in their favor under Illinois Supreme Court Rule 361(h) (eff. Dec. 29, 2009). They argue that the purpose of this appeal is to obtain a two-year stalking no-contact order and that the circuit court's entry of the stalking no-contact order for six months is void for noncompliance with this court's June 2013 decision and November 2013 mandate. They argue that they are entitled to receive the full relief granted by this court and that the circuit court did not follow this court's prior order and mandate by refusing to enter a two-year stalking no-contact order.

¶ 12 The plaintiffs are appealing the circuit court's entry of the stalking no-contact order on the basis that the court erred in limiting the duration of the order to six months. A party who has obtained by judgment *all* that has been asked for in the circuit court cannot appeal from the judgment. *Argonaut-Midwest Insurance Co. v. E.W. Corrigan Construction Co.*, 338 Ill. App. 3d 423, 427 (2003). Because the plaintiffs did not receive the full relief sought in the circuit court, a stalking no-contact order for a two-year period, we deny the defendant's motion to dismiss the appeal.

¶ 13 The defendant also moves this court to strike the plaintiffs' request for reasonable attorney fees and costs incurred as a result of obtaining the stalking no-contact order on the ground that the issue is not properly before this court as the plaintiffs' petition for attorney fees and costs, which was filed in the circuit court on December 16, 2013, is still pending in that court. In support of its motion, the defendant cites *Raintree Homes, Inc.*

v. Village of Kildeer, 302 Ill. App. 3d 304, 306 (1999), which states that an appellant must first obtain either a ruling on the issue or the refusal to rule on the issue from the circuit court in order to preserve an issue for review. In the absence of any ruling or decision by the trial court, the issue is generally not subject to the consideration of the reviewing court. *Id.* In response, the plaintiffs argue that they are not requesting that this court make a determination as to the appropriate amount of attorney fees that should be awarded to them, but are instead requesting that this court instruct the circuit court that the defendant should be ordered to pay reasonable attorney fees and costs and that a hearing should be held for a determination of the amount. They further argue that they have requested such relief because they are attempting to "expedite this litigation and avoid a potential appeal" should the defendant "succeed in her effort to convince the circuit court to deny any award [of] fees." We agree with the defendant that the plaintiffs' request for attorney fees and cost is not properly before this court as the circuit court has not yet ruled on the plaintiffs' petition, and thus we strike from the plaintiffs' brief the arguments concerning this issue.

¶ 14 Furthermore, as a cross-motion, the plaintiffs argue that this is a "simple and straight forward" appeal where the circuit court has failed to follow this court's prior decision. Therefore, the plaintiffs request that this appeal be handled in a summary proceeding and that this court not force the parties to pay for a record on appeal and further briefing of the issues. In the alternative, the plaintiffs request that the appeal be accelerated under Illinois Supreme Court Rule 311(b) (eff. Jan. 17, 2013). Because the

record on appeal has already been filed and the issues have been fully briefed, we deny the plaintiffs' cross-motion for the appeal to be handled in a summary proceeding.

¶ 15 We now address the merits of the plaintiffs' appeal. The plaintiffs first argue that the circuit court's entry of the stalking no-contact order for a period of six months failed to comply with this court's June 2013 decision and November 2013 mandate. The plaintiffs cite *People ex rel. Daley v. Schreier*, 92 Ill. 2d 271, 276 (1982), *PSL Realty Co. v. Granite Investment Co.*, 86 Ill. 2d 291, 308-09 (1981), and *In re Marriage of Ludwinski*, 329 Ill. App. 3d 1149, 1152 (2002), for the proposition that the circuit court has no authority to act beyond the scope of the reviewing court's mandate and must follow the specific directions of the mandate to insure that its order is in accord with the reviewing court's decision. They argue that an entry of a stalking no-contact order for a period of two years was *implied* by this court's mandate and previous order and therefore the circuit court only has authority to enter a two-year stalking no-contact order on remand. In support of their position, they cite *PSL Realty Co.*, 86 Ill. 2d at 308, which states that matters which are implied may be considered embraced by the reviewing court's mandate.

¶ 16 In our June 2013 order, we reversed the order of the circuit court denying the plaintiffs' motion for a stalking no-contact order. We then remanded the cause to the circuit court "for entry of a stalking no contact order against the defendant and for a determination on the plaintiffs' request for attorney fees and costs." *Dribben*, No. 5-12-0579, order at 5. The mandate stated "that the judgment on appeal be Reversed and Remanded to the Circuit Court of St. Clair County for such other proceedings as required

by the order of this Court." Nowhere in the order or mandate did we require the entry of a two-year stalking no-contact order. The only place a two-year stalking no-contact order was mentioned was in the opening paragraph of our decision where we explained that the plaintiffs had sought an order pursuant to the Stalking Act, prohibiting the defendant from "engaging in further acts of stalking for two years." Instead, that decision directed the circuit court to enter a stalking no-contact order, but left the terms of the order, which included its duration, to the discretion of the circuit court. Therefore, the circuit court exercised its discretion when it entered a stalking no-contact order against the defendant for a period of six months. Accordingly, we conclude that the circuit court complied with this court's June 2013 decision and November 2013 mandate.

¶ 17 The plaintiffs next argue that the circuit court erred by making factual findings of changed circumstances "without an evidentiary hearing and in contradiction of this court's mandate." They argue that "[n]othing in this court's mandate gave the circuit court authority to make findings of fact regarding alleged changed circumstances that warrant deviating from the mandate." They further argue that the December 2013 hearing on the plaintiffs' motion for entry of a stalking no-contact order was limited to entering the proposed no-contact order submitted by the plaintiffs, with some stipulated modifications, and that they were therefore "unprepared to put on evidence of further acts of stalking."

¶ 18 Therefore, they argue that their due process rights were violated. Furthermore, they argue that the court's factual findings were against the manifest weight of the evidence.

¶ 19 In response, the defendant argues that the plaintiffs' due process rights were not violated as the plaintiffs noticed for hearing their motion for entry of the no-contact order and the hearing proceeded as scheduled, with all parties represented. The defendant argues that the plaintiffs "had ample opportunity to address the circuit court and respond to the defendant's arguments and in fact did so." She further argues that the court's factual findings were not against the manifest weight of the evidence because the facts were amply supported by the record before the court. We agree with the defendant and conclude that the circuit court's entry of factual findings did not violate the plaintiffs' due process rights and that the factual findings were not against the manifest weight of the evidence.

¶ 20 The circuit court stated as follows in its order with regard to its factual findings of changed circumstances:

"Several important circumstances have changed since the date of [the circuit court's June 30, 2011, no-contact order] and the Appellate Court decision. Most significantly, 4680 Heartland Oaks, Smithton, Illinois is no longer the principal residence of either William Dribben or Wendy Dribben. The only one living there is a daughter of the Dribbens who has not been the target of any improper conduct by Ms. Davidson. Second, the property at 4680 Heartland Oaks is listed for sale. Third, there has been no evidence offered in the last year to support a plenary stalking, no-contact order against Davidson."

"Due process of law requires that a party be accorded procedural fairness, *i.e.*, given notice and an opportunity to be heard." *Gredell v. Wyeth Laboratories, Inc.*, 346 Ill. App. 3d 51, 62 (2004). In this case, the plaintiffs filed a motion for entry of a stalking no-contact order, and notice for the hearing on the motion was filed. The hearing proceeded as scheduled and all parties were represented. Therefore, the plaintiffs' counsel had an opportunity to address the circuit court and respond to the defendants' arguments. Further, from our review of the record, we conclude that the plaintiffs' counsel did in fact respond to the defendant's arguments.

¶ 21 Additionally, contrary to the plaintiffs' argument, the factual findings made by the circuit court were supported by the record. The plaintiffs argue that had they been given an opportunity to have an evidentiary hearing on these issues, they would have "pointed to the record to show the Circuit Court that the first two factual findings [were] incorrect." First, the plaintiffs argue that "nothing has changed" with respect to the Heartland Oaks residence and the amount of time spent there by the plaintiffs. Although the plaintiffs acknowledged that the Heartland Oaks home is not their primary residence and their daughter is currently living there, they maintain that they "come and go frequently in the spring, summer, and fall to care for the property." Second, they argue that the residence was listed for sale in June 2011, "long before" this court's mandate was issued. Third, they acknowledge that the circuit court's conclusion that there has been no additional evidence of further stalking activity filed with the court in the last year "may be technically correct from a review of the file," but argue that the finding is "legally irrelevant and improper to consider because the mandate issued only a month before the

hearing." They further argue that they were "unprepared to put on evidence of further acts of stalking" by the defendant because this court had "already found that the [plaintiffs] had satisfied their burden of proof" and that a stalking no-contact order was proper when the November 2013 mandate was issued.

¶ 22 As previously explained, pursuant to our June 2013 order, the circuit court had discretion to determine the terms of the stalking no-contact order. Therefore, the purpose of the hearing on the motion for entry of the stalking no-contact order was to determine the nature and duration of the order. In an effort to fashion an appropriate stalking no-contact order, the trial court inquired as to whether the plaintiffs were living in the Heartland Oaks home and whether it was listed for sale. Counsel indicated that the plaintiffs were not living in the home and only went there for maintenance purposes, that their daughter was living in the home, and that the home was currently listed for sale. The circuit court found that these changed circumstances justified the imposition of a six-month order as opposed to a two-year order. Further, with regard to the circuit court's factual finding that no evidence of further acts of stalking offered in the last year to support a plenary stalking, no-contact order against the defendant, we find that the record supports this finding. Therefore, we find that the record supports the factual findings made by the circuit court and therefore the court's factual findings were not against the manifest weight of the evidence.

¶ 23 Furthermore, the plaintiffs argue that the circuit court also failed to comply with our mandate when it "removed" from the plaintiffs' proposed order the necessary statutory notice language required by section 110(c) of the Stalking Act (740 ILCS

21/110(c) (West 2012)). Section 110(c) of the Stalking Act requires that a "stalking no contact order *shall* include the following notice, printed in conspicuous type: 'An initial knowing violation of a stalking no contact order is a Class A misdemeanor. Any second or subsequent knowing violation is a Class 4 feony.' " (Emphasis added.) 740 ILCS 21/110(c) (West 2012). The statutory notice language was not included in the stalking no-contact order entered by the circuit court pursuant to the Stalking Act. Therefore, we modify the circuit court's January 24, 2014, no-contact order pursuant to our authority under Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994) to include the above statutory notice language.

¶ 24 For the foregoing reasons, we affirm the judgment of the circuit court of St. Clair County entering a six-month stalking no-contact order against the defendant. Pursuant to our authority under Supreme Court Rule 366(a)(5), we modify the court's January 24, 2014, stalking no-contact order to include the statutory notice language required by section 110(c) of the Stalking Act (740 ILCS 21/110(c) (West 2012)).

¶ 25 Affirmed as modified.