2017 IL App (1st) 162027-U

No. 1-16-2027

Order filed August, 24, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

M. SHANNON RYAN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
v.	)	No. 13 D 80265
	)	
JASON SCOTT BOYD,	)	Honorable
	)	Melissa A. Durkin,
Respondent-Appellee.	)	Judge presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court was not manifestly erroneous in finding that there was insufficient evidence to warrant a plenary order of protection against respondent. The court further did not err in barring petitioner from introducing certain statements and police reports into evidence.

¶ 2 I. BACKGROUND

¶ 3 On June 3, 2016, petitioner, M. Shannon Ryan, sought an emergency petition for an order of protection against respondent, Jason Scott Boyd, the father of her child, A.R. The trial court

granted the emergency order of protection without Boyd being present, and the matter was set for a hearing to determine whether it should be converted into a plenary (two-year) order of protection.[1]

¶ 4 On June 24, 2016, the trial court held the hearing and heard testimony from both Boyd and Ryan. Boyd testified that he was the father of three-year-old A.R. and entered into a custody agreement with Ryan in June 2015, which gave him specific parenting time with A.R. Despite the written agreement, Boyd testified that he did not know he was obligated to communicate with Ryan about their son through www.talkingparents.com and instead communicated with her through text messages.

¶ 5 Ryan testified that, on June 1, 2016, she went to Boyd's home to drop off A.R. for a scheduled visitation. While Ryan and A.R. stood outside of her car, Boyd pulled up in front of her car and backed into it. Boyd denied this, and Ryan acknowledged that there was no damage to her car. Ryan stated that Boyd then refused to leave his car to get A.R. and eventually pulled their son into his car through the car window. While Boyd believed that this was a playful act between him and his son, Ryan believed this was evidence of malfeasance.

¶ 6 Ryan also testified to multiple incidents of Boyd being late or early for drop-offs and pick-ups, as well as multiple incidents of Boyd saying unkind things about her in front of A.R. There was additional testimony regarding Boyd calling or texting Ryan multiple times in a day concerning their visitation schedule.

[1] From July 2013 until July 30, 2015, the parties agreed to an injunction prohibiting them from coming within 500 feet of each other. The trial court entered an agreed custody judgment, which incorporated a parenting agreement, in June 2015, that granted Ryan sole custody of A.R. but allowed Boyd to have visitation on a specified schedule. The agreement further obligated the parents to communicate with each other about their son through the website www.talkingparents.com.

¶ 7 Ryan testified that, on May 27, 2016, Boyd called her nine times from 9:48 a.m. to 11:05 a.m. According to Boyd, he had called her regarding his visitation, and Ryan would routinely not answer his calls and text messages. The next day, Ryan testified that Boyd was supposed to have A.R. from 10:00 a.m. to 6:00 p.m., but at the drop-off, he told her that he was going to end the visit at noon or 1:00 p.m. When Ryan returned at noon, Boyd came outside and said goodbye to A.R. Ryan put A.R. in her car "without incidence [*sic*]" and drove off. Boyd, however, drove after her honking and trying to get in front of her. Simultaneously, Boyd repeatedly called and texted Ryan to bring A.R. back. Because Boyd was following her, Ryan drove to the police station, prompting officers to come outside. She additionally testified that she had made out three police reports in the past month related to him.

¶ 8 In Boyd's testimony, he explained that, in May 2016 though he did not recall the exact date, he had a scheduling issue and sought to have extra time with A.R. on another day. Ryan refused his request, and before he was able to ask for "the time back," she shut her car door and drove off. According to Boyd, following her was his only recourse to get A.R. back, and he, in fact, had called the police. Boyd acknowledged that he followed her to the police station.

¶ 9 Ryan also testified to an incident on May 29, 2016, where she brought A.R. to Boyd's house for a visit, but Boyd did not answer his phone. She waited 20 minutes and left. When she reached the end of the block, Boyd's car appeared, and he began following her while honking and swerving on the road. She went back to Boyd's house with A.R. for the visit, where Boyd made statements to A.R. such as "your mom is going to call the police again on me and your mom wants to get me in trouble and your mom is evil and you have a bad mom." Boyd also asked A.R. if he was "upset mom kidnapped you?" When Ryan returned to pick up A.R. at 6 p.m., A.R. and Boyd were not there. After contacting Boyd, he told her that they were at the

beach waiting for an Uber with a car seat. They eventually returned 45 minutes late for her designated pick-up time. When Ryan tried to put A.R. in her car, Boyd blocked her car door with his body and told her that she was keeping him from his son and "kidnapping his son."

¶ 10 Finally, she detailed an incident where Boyd tried to put a ride-on toy car into her car. Ryan told Boyd that the toy car was too big for her small car. In response, Boyd told A.R. that Ryan did not want him to have the toy car. During the incident, Boyd blocked Ryan from putting A.R. in her car.

¶ 11 Numerous times during Ryan's testimony, the trial court was required to admonish her and her counsel to confine the testimony to the issue of whether abuse occurred as defined by the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West 2016)), and not whether Boyd had violated their parenting agreement.

¶ 12 Following the testimony, the trial court denied Ryan's request for a plenary order of protection and terminated the emergency order of protection. The court observed that, under the Act, abuse included "physical abuse, harassment" or "intimidation," and recalled there had been evidence of Boyd calling Ryan nine times within a short period of time and an allegation that Boyd "bumped" Ryan's car. Despite this, the court determined that there was no competent evidence that abuse, as defined by the Act, had occurred. The court further ordered the parties to have no contact with each other and to communicate their issues through www.talkingparents.com. Lastly, the court ordered all future exchanges of A.R. to occur through the Safe Exchange Program at Apna Ghar.

¶ 13 Ryan now appeals, alleging that the trial court's denial of a plenary order of protection based upon insufficient evidence of abuse was manifestly erroneous. She further argues that the

court erred in barring the admission of hearsay statements of A.R., barring the admission of police reports and call logs, and ordering no contact between her and Boyd.

¶ 14 II. ANALYSIS

¶ 15 A. Insufficient Evidence of Abuse

¶ 16 Ryan's first contention is that the trial court erred in finding that Boyd had not abused her where it ignored his numerous admissions that he had "harassed" her within the meaning of the Act.[2] For support, Ryan cites Boyd's acknowledgment that he called her nine times on May 27, 2016, within an 80-minute span. Ryan additionally highlights that, during a drop-off the following day, Boyd informed her that he had to end his visitation early. But after Ryan picked up A.R. and drove away, Boyd followed them in his car, prompting her to drive to the police station, a fact that Boyd conceded. Ryan further points to Boyd's action of pulling A.R. through his car window, which he also admitted, rather than allowing him to enter through an open door. Ryan believes that Boyd's "admissions" were evidence of harassment and thus were a sufficient basis to award a plenary order of protection against him.

¶ 17 The Act enables a person to obtain an order of protection upon proof by a preponderance of the evidence that she has been abused by a family or household member. 750 ILCS 60/201(a)(i), 205(a), 214(a) (West 2016). People who "have a child in common" are considered family or household members. 750 ILCS 60/103(6) (West 2016). Abuse includes "physical abuse, harassment, *** interference with personal liberty or willful deprivation." 750 ILCS 60/103(1) (West 2016). In turn, harassment is defined as "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a

[2] Boyd has not filed an appellee's brief, but because the issues presented on appeal are straightforward and the record is uncomplicated, we may address the merits of Ryan's claims. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

reasonable person emotional distress; and does cause emotional distress to the [person]." 750 ILCS 60/103(7) (West 2016). There is a rebuttal presumption that "repeatedly telephoning [a person's] place of employment, home or residence" and "repeatedly following [a person] about in a public place or places" causes emotional distress. 750 ILCS 60/103(7)(ii), (iii) (West 2016). To prove harassment, there must be evidence in the record that the alleged harasser's conduct "was knowing, or that it was not necessary to accomplish a purpose which was reasonable under the circumstances." *In re Marriage of Healy*, 263 Ill. App. 3d 596, 600 (1994). Whether a person has been abused is a question of fact. *Best v. Best*, 223 Ill. 2d 342, 348 (2006).

¶ 18 The trial court's determination of whether a person has shown by a preponderance of the evidence that she was entitled to an order of protection will be reversed only if it was against the manifest weight of the evidence. *Id.* at 350; *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 12. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best*, 223 Ill. 2d at 350. Under this standard, "we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses." *Id.* "A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Id.* at 350-51.

¶ 19 In this case, we cannot say that the trial court's finding that Ryan had not suffered abuse was unreasonable, arbitrary or not based on the evidence. Ryan highlights multiple instances where Boyd admitted to allegedly harassing conduct, but at the hearing, he explained these instances away as innocuous or with an express purpose, *i.e.*, just playing with A.R. or attempting to get in contact with Ryan concerning visitation issues. Although the court did not

explain specifically why it found that no abuse had occurred, other than finding that the calls from Boyd to Ryan and his bumping of her car did not rise to the level of abuse required by the Act, based on the evidence, the court likely believed Boyd's testimony that he did not intend to harass Ryan during these instances. As the trial court is the trier of fact, we must defer to its credibility findings. See *Best*, 223 Ill. 2d at 350-51. And if Boyd is to be believed, the record lacked evidence that his conduct was not necessary to accomplish a purpose that was reasonable under the circumstances. See *In re Marriage of Healy*, 263 Ill. App. 3d at 600. Consequently, on this record, we cannot say the trial court's ruling was against the manifest weight of the evidence.

¶ 20 Nevertheless, Ryan argues that, in finding no abuse occurred, the trial court was "swayed" by Boyd's repeated assertions that he had not physically harmed her. Contrary to Ryan's assertion, we do not believe that the court only looked at whether she had been physically harmed in determining whether harassment occurred. On review, we must presume the court knew and followed the law absent evidence to the contrary. *In re N.B.*, 191 Ill. 2d 338, 345 (2000). Here, not only is there no evidence to the contrary, but in the court's findings of fact, it expressly stated that abuse, as defined by the Act, included harassment *or* physical abuse. Thus, the court's statement demonstrated its explicit knowledge of what constituted abuse under the Act and we must further presume it applied the law properly.

¶ 21 Ryan additionally, without any analysis, recites entire portions of the Act in an attempt to somehow construe the hearing testimony as fitting into the broad definitions encompassed in the Act. She also presents a litany of cases which present scenarios where a trial court determined that the behavior of the litigants was harassment, presumably to shoehorn her circumstances into the definition of harassment. Ryan seemingly melds the elements of a violation of an order of

protection with the standard required to establish the necessity of an order of protection in the first place.

¶ 22 Ryan has also cited the case of *J.M. v. Briseno*, 2011 IL App (1st) 091073, to support her position that the trial court erred in denying the order of protection. However, *J.M* involved a law student's request for an order of protection under the Civil No Contact Order Act (740 ILCS 22/101 *et seq.* (West 2008)), after she was allegedly sexually assaulted by a classmate. *J.M.*, 2011 IL App (1st) 091073, ¶¶ 1, 3, 12. The critical inquiry for the trial court in *J.M.* was whether the petitioner had shown that she was the victim of nonconsensual sexual penetration as defined by the Civil No Contact Order Act. *Id.* ¶ 40. On the contrary, the issue in the present case was whether Boyd's conduct constituted harassment, and thus abuse, of Ryan as defined by the Illinois Domestic Violence Act of 1986. This case is therefore factually and legally inapposite to *J.M.*, a reality Ryan even acknowledges in her brief by noting that her facts are "quite different" from those in *J.M.* Consequently, we find *J.M.* too dissimilar to draw any meaningful parallels.

¶ 23 B. Hearsay Statements

¶ 24 Ryan next argues that the trial court erred in barring the admission of hearsay statements made by A.R. During the hearing, Ryan testified to an incident which occurred while A.R. and Boyd were video chatting wherein Boyd stated that he should be allowed to hit Ryan and "might hit [her] the next time he sees [her]." In response, according to Ryan, A.R. stated that "hitting is bad and we shouldn't hit." The trial court, however, *sua sponte* struck those statements from the record as inadmissible hearsay.

¶ 25 Ryan contends that A.R.'s statements should have been admitted as "present state of mind statements by the child or excited utterances of the child that was experiencing a volatile and abusive situation brought about by Boyd's behavior." Under either proffered avenue to

admissibility, the trial court correctly prohibited the statements of A.R. from being admitted into evidence.

¶ 26 Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. *Holland v. Schwan's Home Services, Inc.*, 2013 IL App (5th) 110560, ¶ 183. Hearsay evidence is generally inadmissible unless it falls within an exception to this prohibition. Ill. R. Evid. 802 (eff. Jan. 1, 2011). Two such exceptions are an excited utterance and a statement of the declarant's present state of mind. Ill. R. Evid. 803(2), (3) (eff. Apr. 26, 2012). An excited utterance is "[a] statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." Ill. R. Evid. 803(2) (eff. Apr. 26, 2012). A statement of a declarant's present state of mind is a statement indicating the declarant's, and only the declarant's, state of mind at the time the statement was made. Ill. R. Evid. 803(3) (Apr. 26, 2012); *Dohrmann v. Swaney*, 2014 IL App (1st) 131524, ¶ 43. The admission of evidence is within the trial court's discretion, and "the court's ruling will not be reversed absent an abuse of discretion." *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 377 (2003).

¶ 27 Beyond merely citing the language of Illinois Rules of Evidence 803(2) and (3) (eff. Apr. 26, 2012), Ryan cites no case law holding that the admission of a three-year-old's vague statement should be admitted under either the excited utterance or present state of mind hearsay exceptions. This is likely because there is no case law that would support a finding that the trial court abused its discretion in barring the admission of such statements made by a three-year-old. Furthermore, the statements in no way establish or provide any indication that A.R. was experiencing a volatile and abusive situation. Accordingly, the trial court did not abuse its discretion in excluding these statements from the hearing.

¶ 28 C. Police Reports

¶ 29 Ryan next argues that the trial court erred in prohibiting the introduction of "police report short sheets showing repeated call outs," which she argues would have shown her existing state of mind and her intent to report Boyd's behavior as abuse. During the hearing, Ryan's counsel attempted to show her police reports that she had made in connection with Boyd's conduct. The court, however, prevented counsel from doing so, finding that police reports were inadmissible hearsay. Counsel attempted to make a "short offer of proof" with respect to them, but the court denied counsel's request. Ryan asserts that the trial court's ruling violated Illinois Rule of Evidence 803(6) (eff. Apr. 26, 2012), a hearsay exception involving business records.

¶ 30 Police reports are generally inadmissible hearsay. *Kociscak v. Kelly*, 2011 IL App (1st) 102811, ¶ 25; see also Ill. S. Ct. R. 236(b) (eff. Aug. 1, 1992) (stating that police reports are not admissible "as a record or memorandum made in the regular course of business"). They can be used, however, for purposes of impeachment, as a past recollection recorded or to refresh a witness' recollection so long as a proper foundation has been laid. *Kociscak*, 2011 IL App (1st) 102811, ¶ 25; *Horace Mann Insurance Co. v. Brown*, 236 Ill. App. 3d 456, 462 (1992). None of these situations occurred here. Therefore, the trial court cannot be said to have abused its discretion.

¶ 31 D. No-Contact Order

¶ 32 Ryan lastly argues that, because the trial court entered a no-contact order between her and Boyd, the order was a tacit recognition that she was being harassed by him. As such, Ryan alleges that the court should have granted the plenary order of protection rather than order no contact between them. The court's no-contact order is merely an acknowledgement that the

testimony during the hearing established a breakdown in communications between both parties, which resulted in an untenable situation that could only be rectified by the no-contact order.

¶ 33 III. CONCLUSION

¶ 34 For foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.