2014 IL App (2d) 130359-U
Nos. 2-13-0359 & 2-13-0705, cons.
Order filed June 5, 2014
Modified upon denial of rehearing **September 4, 2014**

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re GREGORY W. MUNOZ,	)	Appeal from the Circuit Court
	)	of Du Page County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 11-OP-1727
	)	11-OP-2713
GARY FRITSCHE,	)	
	)	Honorable
Respondent-Appellee,	)	Elizabeth W. Sexton
	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Burke and Justice Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in denying the petitioner's petition for a stalking no contact order; (2) the petitioner was not entitled to his attorney fees; and (3) the trial court's finding that the respondent was not in indirect criminal contempt constituted an acquittal of that charge and therefore double jeopardy principles prohibited the respondent from being subject to punishment for that same conduct again.

¶ 2 This case involves a dispute between two neighbors. Tensions between the neighbors rose to the level that the petitioner, Gregory Munoz, filed a petition to obtain a stalking no contact order on behalf of himself and his family against the respondent, Gary Fritsche. The trial

court found that although the parties had acted as bad neighbors towards each other, the respondent's conduct did not rise to the level of stalking. The petitioner appeals from that order, arguing that (1) the trial court's interpretation of "stalking" was too narrow; (2) he should have been awarded his attorney fees; and (3) the trial court erred in not holding the respondent in indirect criminal contempt. We affirm.

¶ 3 BACKGROUND

¶ 4 The petitioner and his wife have resided in their home in an unincorporated area of Du Page County near Medinah for over 17 years. They have one minor son, Greg, Jr. The respondent has lived in the house directly across the street from the petitioner's home for approximately the last six years. In March 2009, the petitioner and the respondent began feuding. According to the petitioner, the respondent would continually insult him and his family and also try to intimidate them. Due to the respondent's actions, on December 6, 2011, the petitioner filed a petition for a stalking no contact order pursuant to the Stalking No Contact Order Act (740 ILCS 21/1 *et seq.* (West 2010)) (the Act).

¶ 5 On May 22, 2012, the trial court entered a "mutual no-contact order" to last for three months and compelled the parties to participate in a private mediation session at their own expense.

¶ 6 Between October 11, 2012, and January 15, 2013, the trial court conducted a trial on the petition. The petitioner presented the following evidence as to various instances of intimidation or insults. The respondent also responded to some of the specific allegations and testified as to the parties' interactions.

¶ 7 Sometime in Early 2009: The First Altercation

¶ 8 The petitioner paid to have a survey of his property. As a result, property stakes were put on the edge of the property. The petitioner subsequently discovered that the property stakes had been removed. The petitioner testified that the respondent approached him sometime in 2009 and admitted to removing the stakes from the petitioner's property because he was concerned that children would be hurt. Prior to this incident, the petitioner had no problems with the respondent. At trial, the respondent denied removing any stakes or telling the petitioner that he had removed those items.

¶ 9 The respondent testified that the first altercation between the parties was in the spring of 2009 and centered around 13 serrated metal stakes that the petitioner had placed in his yard near a pathway that the respondent and his children routinely used to access a high school softball field behind the petitioner's home. The petitioner had erected 13 metal serrated stakes in the area the day after the respondent had informed him that the pathway was used by his children. As a result, the respondent told the petitioner that he was concerned someone might get hurt. The respondent also offered to assist the petitioner in building a fence in place of the stakes. He also offered to assist the petitioner with fixing his mailbox that constantly fell. The petitioner did not accept either offer of assistance.

¶ 10 May 25, 2009, and August 2009

¶ 11 The petitioner testified that he had just pulled into his own driveway and was getting out of his car when the respondent approached calling his name. The respondent said, "A**hole, go f*** yourself. Get ready, it's coming." The petitioner was shocked by the respondent's behavior and testified that he just wanted to get away from him because he did not know what the respondent was capable of doing. The petitioner called the police because he felt threatened by the respondent's comments.

¶ 12 The respondent acknowledged that he had called the petitioner an "a**hole" and had recommended that the petitioner "go f*** himself," but denied saying "get ready, it's coming." The respondent explained that he had told the petitioner that he had been successful in having their neighbors, the Murphys, remove a camera that had been affixed on their home and pointed towards the petitioner's home. The petitioner responded by repeatedly stating, "f****** a**hole neighbors." The respondent then said, "if you're going to be an a***hole, I'll be an a**hole too. Go f*** yourself." The petitioner responded by calling the police and the respondent was subsequently charged with public nuisance.

¶ 13 In August 2009, the respondent was convicted of public nuisance. Upon returning home from the trial, the respondent posted a sign in his front lawn facing the petitioner's residence stating: "your [*sic*] still a loser."

¶ 14 June 18, 2009

¶ 15 The petitioner testified that he was outside when the respondent yelled, "Do you want to have it out right now? Do you want the whole neighborhood to know you're a pr*ck."

¶ 16 The respondent testified that he was attempting to reconcile with the petitioner that day by asking whether he wished to "talk about [their]differences—settle their differences." The petitioner replied, "What for?"

¶ 17 September 4, 2009

¶ 18 The petitioner's wife, Christine, testified that she found yard waste—grass clippings—dumped on her property near a "No Trespassing" sign. The respondent admitted that he dumped grass clippings on the petitioner's property. He did that because he believed that the petitioner had thrown some asphalt in his yard.

¶ 19 December 9, 2009

¶ 20 Christine testified that the respondent yelled across the street to tell her that her husband "is a wacko for parking his snowmobile trailer on the front lawn." That same day, Christine and the petitioner found all the tires slashed on the trailer. The respondent admitted to loudly telling Christine that her husband was "a wacko." The respondent denied slashing the tires on the petitioner's snowmobile trailer.

¶ 21 May 2010

¶ 22 The petitioner described two instances where both he and the respondent were at their mailboxes and the respondent would spit on the petitioner's mailbox or at the petitioner himself. He observed the respondent spit on his mailbox dozens of times. The petitioner began carrying a hand-held video camera with him if he believed there would be any type of confrontation with the respondent. He did this to document the respondent's conduct so he could prove it if the respondent denied it later. On one occasion, he recorded the respondent spitting on his mailbox and saying, "Happy? How do you like that? When are you going to grow some balls, you coward? When are you going to become a man?"

¶ 23 The respondent testified that he met the petitioner numerous times at their mailboxes while the petitioner was holding his video camera. He stated that the petitioner would hurry from his home to the mailbox, camera in hand, and attempt to intimidate him or cause a conflict. After this happened several times, the respondent became angry, swore and spit at the ground towards the petitioner's mailbox. This incident was captured on the petitioner's video camera.

¶ 24 July 20, 2010

¶ 25 The petitioner testified that the respondent was walking the perimeter of his property, taking photographs and saying "[w]hat a nice property, you should be proud of yourself." The respondent acknowledged doing this because he wanted to document the poor condition of the

petitioner's yard, which included dead bushes and animal bones hanging from trees. He made sarcastic comments towards the petitioner because the petitioner was videotaping him. On re-direct examination, the petitioner acknowledged that the respondent did not make any comments until he approached him with the video camera.

¶ 26 October 5, 2010

¶ 27 Christine went to her mailbox and found a folded up newspaper article referring to "mental illness" with several phrases underlined in the article. A portion of the article was underlined which indicated that "people who do not receive treatment end up in hospitals, in shelters, in jail or dead." Christine explained that the parties' mailboxes were located a couple of feet away from each other. She observed the respondent place the article in the mailbox from a monitor in her kitchen which displays a live video feed.

¶ 28 The respondent acknowledged that he placed a newspaper article on the flag outside of the petitioner's mailbox. He explained that he did so because he believed the petitioner might have a mental problem that required professional help. He also admitted that he underlined certain sentences in the article. However, he did so not as a threat but to point out relevant information. He was compelled to attach the article to the petitioner's mailbox flag after discovering debris in his mailbox that he had previously seen in the petitioner's yard. He "assum[ed] that it wasn't a stranger walking by cleaning up [the petitioner's] yard and putting it in my mailbox, it was [the petitioner] setting me up with his cameras to catch me doing something wrong."

¶ 29 January 2011

¶ 30 Christine observed the respondent come out of his garage and walk across the street to his mailbox. The respondent shoveled snow away from the front of his mailbox and threw it onto

the petitioner's driveway, which was about 15-20 feet away from the mailbox. Christine came out of her home and stood behind a large bush. The respondent said, "I can see you there, loser." After finishing shoveling, the respondent walked back to his driveway and yelled "neighborhood loser."

¶ 31 February 2011

¶ 32 After a large snow storm, Christine was blowing snow from her driveway. The respondent came out and yelled "loser" at her from across the street.

¶ 33 April 21, 2011

¶ 34 While looking out her kitchen window toward the respondent's property, Christine saw the respondent making obscene gestures with his middle finger at her from his driveway/garage.

¶ 35 June 9, 2011

¶ 36 The respondent called Christine a loser. Christine estimates that she has been verbally insulted by the respondent over 100 times.

¶ 37 December 1, 2011

¶ 38 Christine testified that as she was driving home from work, the respondent was getting ready to cross the street to go to his mailbox. As she drove by him with her driver's side window slightly opened, he yelled out to her, "it's the loser."

¶ 39 May 2012

¶ 40 Christine was hosing off her driveway after a landscape crew left. The respondent screamed "turn the f****** water off, f****** turn the water off." The respondent was not looking in her direction when he said that.

¶ 41 July 16, 2012

¶ 42 As Christine was exiting her driveway and pulling on to the street, the respondent was walking across the street to retrieve his mail. As she passed the respondent with her window open, the respondent turned away from the mailbox toward her vehicle and called her a "f****** whore." Christine felt very disturbed, particularly because her son was with her. The respondent denied that he called Christine a "f****** whore."

¶ 43 July 17, 2012

¶ 44 The respondent mouthed the word "bitch" to Christine.

¶ 45 July 22, 2012

¶ 46 The respondent heckled the petitioner, Christine, and their son as they drove past him.

¶ 47 Surveillance of Respondent's House and Relationship with Other Neighbors

¶ 48 In addition to the above incidents, Christine acknowledged on cross-examination that there are two video cameras attached to her home and pointed in the direction of the respondent's home, including his front picture window and driveway. These cameras record 24 hours a day, 7 days a week. There is a third video camera not connected to their home that was mounted to a piece of wood. These cameras were installed in 2009 and 2010.

¶ 49 Christine acknowledged that there have been issues between her and other neighbors—the Murphys and the Dunns—as well. The Murphys have video cameras directed at her home. The Murphys have "come after her." The Dunns also had a problem with her. In April 2011, Mr. Dunn directed toward her husband the "loser or L sign on his forehead" and that "[h]e constantly keeps coming after us" even though they have done nothing to provoke his behavior.

¶ 50 Effect of Respondent's Conduct on the Petitioner's Family

¶ 51 The petitioner testified that the respondent's conduct has caused him and his family to alter the way they use their property. They do not go into the front yard as often as they used to.

The petitioner tries to enter his house quickly when he comes home to avoid the respondent. Greg Jr. is afraid of the respondent and will come immediately into the house when he returns home. The petitioner testified that he and his family simply do not want any contact from the respondent.

¶ 52 Petitioner's Conduct Towards the Respondent

¶ 53 The respondent testified that he did not like that the petitioner had cameras directed at his home all the time. The cameras would record whatever he was doing, such as cutting grass. He stated that during times that he had guests, the petitioner would come out and move his cameras so as to follow the respondent's guests.

¶ 54 Since 2009, on more than a dozen occasions, the petitioner has parked his vehicle at an angle in the driveway with the headlights on and pointed at the respondent's house. The petitioner would leave his lights on for 20 to 30 minutes, sometimes between 12 and 1 am. The lights would completely light up the inside of the respondent's house.

¶ 55 When he was in his yard, including the six months preceding trial, the petitioner or his wife or his son would come into their yard 5 to 10 minutes after he had gone into his yard.

¶ 56 From June 2009 until trial, the petitioner directed obscenities toward him, gave him "the middle finger," and made obscene gestures at the respondent's daughter.

¶ 57 The respondent also described several incidents where the petitioner harassed him while driving his car. The respondent explained:

> "While driving down my street, [the petitioner] wants to play chicken with the cars, which I mean is he's driving head on towards me as I'm driving toward my house. I have to take evasive action and actually pull completely off the street. And as [the petitioner] passes me, he has a nice big smile on his face."

The respondent additionally explained:

> "As I'm approaching my driveway to pull in, apparently he sees me. As he's pulling out of his driveway, he would accelerate and try to take the space on the street before my driveway, so I have to take evasive action otherwise we would have an accident. Either I would hit him or he would hit me, depending on where the cars are at the time."

The respondent stated that he did not call the police because he "wasn't going to harass the police because my neighbor is harassing me."

¶ 58 The respondent denied directing any statement's to the petitioner's son, Greg, Jr. The respondent testified that he has "never uttered anything to Greg, Jr., or ever put anything to his attention."

¶ 59 Trial Court's Decision

¶ 60 On February 14, 2013, at the close of the hearing, the trial court entered its ruling, stating:

> "We have been here a lot for hearing. We have done extensive pretrials, extensive motions. In my mind, and I think I have expressed it numerous times, this is a neighbor dispute. I have only seen one case in my over a year here that clearly fell within the stalking statute. This is not that case.
>
> I don't think either neighbor has clean hands here. Mr. Fritsche, I will admonish you, and I apologize, you can't stop stupid. You have to stop doing these things. I don't think they are stalking[.] *** [T]he essence of this is a neighbor dispute. There are just some things he can say that you can't stop him from saying. I mean, flipping the bird is rude, it's obscene. Loser; rude, bad behavior. But I don't view it in the context of stalking.

There are at least, and we haven't really brought it up here, but there are some First Amendment rights. You can say things to people. When you are right across the street from somebody, it's pretty hard to avoid contact. That's one of the reasons I wanted the mutual restraining order. I felt both sides were at fault, at least in June. The facts of the case came out just pretty much the way we said they would in a pretrial conference. And I expressed my opinion at that time that I didn't feel that this fell within the stalking no contact provisions of the act and that we needed to work on being better neighbors. That's why I ordered and looked at it, both parties were ordered to mediation. It was not an option, and it did not happen. That's not part of my basis for my ruling.

* * *

The frustration in this courtroom is neighbor cases. There isn't anything that really statutorily addresses these types of cases. Stalking, I have had one case. It was a neighbor who came over who insisted that he was in love with the wife of his neighbor, insisted on coming in the home, insisted on staying and refused to leave, even after I entered the order because he said he was in love with her and wouldn't leave her alone.

That's the kind of thing I am looking for in a stalking case. Here there are bad words. But, Mr. Munoz, you are coming down the driveway when he is there. If you were afraid of him, if he harassed you so much, why did you go the mailbox. I know you are trying to get evidence but you have 24-hour surveillance on him, and I would [have] considered, if Mr. Fritsche had filed *** his own petition that the facts would have weighed, you know, pretty evenly.

These guys don't get along. But I can't fix that with this case. So I will deny the stalking no contact. I think the Munozes have done certain things that have caused a

response from Mr. Fritsche. When you act in concert with the person you are trying to get rid of, it's just not going to work in a stalking case.

* * *

What I am finding is both parties participated in this bad exchange. It is not one-sided. Maybe the [petitioner and his family] said we don't want anything to do with you but, you know, he is out there filming him talking. He could have just ignored it. Sometimes you just have to ignore bad words."

¶ 61 Post-Trial Proceedings

¶ 62 Following the trial court's ruling, the petitioner filed a motion for reconsideration and a petition for attorney fees pursuant to section 21/80 of the Act (740 ILCS 21/80 (West 2012)). On March 13, 2013, the trial court denied the motion for reconsideration and made a finding pursuant to Supreme Court Rule 304 (Ill. S.Ct. R. 304 (eff. Feb. 26, 2010). In denying the motion to reconsider, the trial court explained:

"[T]he things that [the respondent does are] rude, they're kind of stupid[,] but they're not frightening things to call something [*sic*] a loser or to flip them the bird or spit near their mailbox. That's bad behavior, but I don't think the stalking no-contact order statute addresses rude, bad behavior. I know they don't like him. I know the little boy might be scared of him, but I don't think it's enough for a stalking no-contact order, so I'll deny the motion to reconsider."

The petitioner timely appealed from that order. That appeal was docketed in this court as case number 2-13-0359.

¶ 63 On June 19, 2013, the trial court denied the petitioner's petition for attorney fees and also his petition for a rule to show cause in which he sought to have the respondent held in indirect

criminal contempt for violating the trial court's May 22, 2012, no contact order. The petitioner timely appealed from that order. That appeal was docketed in this court as case number 2-13-0705. On July 22, 2013, we granted the petitioner's motion to consolidate both appeals for review.

¶ 64 ANALYSIS

¶ 65 The petitioner's first argument on appeal is that he is entitled to the issuance of a stalking no contact order as a matter of law because he met every requirement of the Act. He argues that the trial court erred in applying an overly narrow definition to the term "stalking." He also contends that the trial court erred in allowing the respondent to raise a defense that was not specifically authorized by the statute.

¶ 66 The purpose of the Act is to provide stalking victims with a civil remedy requiring the offender to stay away from them and protected third parties. 740 ILCS 21/5 (West 2012). "Stalking" is defined as "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." 740 ILCS 21/10 (West 2012). Under the Act, stalking generally refers to a course of conduct and not just a single act. 740 ILCS 21/5 (West 2012). "Course of conduct" is defined as "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." 740 ILCS 21/10 (West 2012).

¶ 67 The statutory definition of stalking is broader than the general definition of stalking. See www.meriam-webster.com/dictionary/stalk (accessed May 19, 2014) (defining to "stalk" as "to

follow, watch, and bother (someone) constantly in a way that is frightening, dangerous, etc."). Despite the petitioner's argument, we do not believe that the trial court erred in applying the general definition of stalking rather than the statutory definition. Indeed, when the petitioner raised this exact argument at trial, the trial court explained that it understood the difference between the general definition for stalking and the statutory definition. That was not the basis of its ruling. Rather, it denied the petitioner's petition because it found that "both parties participated in this bad exchange." We thus turn to a consideration of whether the petitioner's own bad conduct was a proper reason for the trial court to deny his petition.

¶ 68 In arguing that "bad conduct" or "provocation" is not a proper defense under Act, the petitioner points to sections 21-10 and 21-85. Section 21-10 provides that "[s]talking does not include an exercise of the right to free speech or assembly that is otherwise lawful or picketing occurring at the workplace that is otherwise lawful and arises out of a bona fide labor dispute." 740 ILCS 21/10 (West 2012). As this is the only exception to conduct that would otherwise constitute stalking that the Act enumerates, the petitioner argues that this is the only possible defense to a charge of stalking. In support of this argument, the petitioner points to section 21-85 which provides that "[m]utual stalking no contact orders are prohibited [because] [c]orrelative separate order undermine the purposes of this Act." 740 ILCS 21/85 (West 2012). The petitioner argues that section 21/85 means that only the respondent's conduct and not the petitioner's actions may be considered during a stalking proceeding. The petitioner further asserts that since the respondent is essentially raising a claim of unclean hands, such a defense is not applicable to his claim for statutory relief. See *Zahl v. Krupa*, 365 Ill. App. 3d 653, 658 (2006) (the unclean hands doctrine bars only equitable remedies and does not affect legal rights).

¶ 69 Turning to the merits of the petitioner's case, it was the petitioner's burden to establish by a preponderance of the evidence that he was entitled to a stalking no contact order. 740 ILCS 21/30, 80(a) (West 2012). One of the elements that the petitioner had to establish was that the respondent knew or should have known that his course of conduct would have caused the petitioner or a family to fear for their safety or suffer emotional distress. In this context, it was proper for the trial court to consider whether the petitioner's and his family's conduct and reactions in response to the respondent's course of conduct demonstrated that they were suffering emotional distress or were in fear due to the respondent's conduct. The record supports a finding that they were not. The respondent's leaving lawn clippings on the petitioner's lawn or a newspaper article regarding mental illness by his mailbox is not the type of conduct that would cause a reasonable person to be in fear of his or her safety or suffer emotional distress. That the petitioner himself did not suffer a fear of his safety or emotional distress is evident from his initiating numerous confrontations with the respondent since 2009. Accordingly, as there is ample evidence that the petitioner was neither suffering emotional distress nor in fear of his safety due to the respondent's course of conduct, the trial court's decision to deny a stalking no contact order was not against the manifest weight of the evidence. See *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001).

¶ 70 The petitioner argues that even if the trial court did not err in not entering an order on his behalf, the trial court should have still entered an order on behalf of his wife and son. We disagree. The respondent testified that when he entered his front yard, the petitioner's wife and son would frequently enter their own front yard. Such conduct does not suggest that the petitioner's wife or son were in fear of their safety or suffering emotional distress due to being in the respondent's presence. Further, the respondent testified that he never directed any comments

towards the respondent's son. Based on the respondent's testimony, which was within the purview of the trial court to find credible (*In re April C.*, 326 Ill. App. 3d 245, 257 (2001)), we cannot say that the trial court's refusal to enter a stalking no contact order on behalf of the respondent's wife and son was against the manifest weight of the evidence. See *Webster*, 195 Ill. 2d at 432.

¶ 71 The petitioner's second contention on appeal is that the trial court erred in denying his request for attorney fees pursuant to section 21/80 of the Act. The petitioner contends that he is entitled to such relief because the respondent filed a knowingly false verified pleading when he filed an answer with a blanket denial as to the petitioner's allegations against him. The respondent's answer was clearly false because the respondent later acknowledged at trial that many of the petitioner's allegations against him at trial were true. The petitioner asserts that the respondent's false pleading caused the trial to be prolonged and for his attorney to have to introduce additional evidence. The petitioner requests that he be awarded the additional attorney fees he incurred as a result of the respondent's false pleading.

¶ 72 Section 21/80(c) of the Act provides that "[t]he court may award the petitioner costs and attorney fees if a stalking no contact order is granted." 740 ILCS 21/80 (West 2012). Here, the trial court did not grant the petitioner's petition for a stalking no contact order. Further, as explained above, the trial court's denial of the entry of such an order was not against the manifest weight of the evidence. Thus, the petitioner was not entitled to his attorney fees and costs pursuant to section 21/80(c) of the Act.

¶ 73 We note that the petitioner could also have sought such sanctions pursuant to Supreme Court Rules 137 (Ill. S.Ct. R. 137 (eff. July 1, 2013)) and 219(c) (Ill. S.Ct. R. 219(c) (eff. July 1, 2002)). Indeed, the petitioner did seek such sanctions pursuant to Rule 219 before the trial court.

However, since the petitioner does not raise the applicability of Rule 219 on appeal, we cannot consider it now. See *People v. English*, 2013 IL 112890, ¶ 19 (issues that could have been raised on direct appeal but were not are forfeited). Further, although the petitioner briefly discussed the applicability of Rule 137 in response to questioning by this court at oral arguments, his failure to raise the applicability of Rule 137 in his appellate brief forfeits that issue for our consideration as well. See Ill. S. Ct. R. 341(i) (eff. July 1, 2008); *Pedersen v. Village of Hoffman Estates*, 2014 IL App (1st) 123402, ¶ 13.

¶ 74 The petitioner's third contention on appeal is that the trial court erred in not finding the respondent in indirect criminal contempt for violating the trial court's May 22, 2012, order. The petitioner notes that the trial court refused to find the respondent in contempt based on its own procedural error—its failure to admonish the respondent of his right against self-incrimination. Rather than summarily denying the motion for contempt, the petitioner insists that the trial court should have attempted to correct its acknowledged error. The petitioner therefore argues that the trial court's decision should be reversed and remanded for it to consider the evidence at trial, other than the defendant's own testimony, that established the respondent had violated the trial court's May 22, 2012, order. In response, the respondent contends that to remand this matter to the trial court would be improper because it would violate his right not to be subject to double jeopardy.

¶ 75 On May 22, 2012, the trial court entered a "no-contact" order, ordering that both parties not have any interaction with the other. On December 11, 2012, during the trial, the petitioner orally moved for a rule to show cause based on the respondent's admissions that the respondent had violated the trial court's May 22, 2012, order. The trial court directed the petitioner to file his petition for a rule to show cause in writing, which he did on February 13, 2013. In his

petition, the petitioner requested that the respondent be found in indirect criminal contempt for his violations of the May 22, 2012, order. In arguing that the respondent had violated that order, the petitioner pointed to both the respondent's own testimony as well as that of the petitioner, his wife Christine, and his son Greg, Jr. On March 28, 2013, the respondent filed a response, arguing that the petition should be dismissed because the trial court had never conducted a hearing on that petition.

¶ 76 On June 19, 2013, the trial court denied the petitioner's rule to show cause, explaining:

> "I was writing out the order for indirect criminal contempt because I do find that [the respondent] violated the agreed order last summer of not talking to each other. He admitted on the stand that—that he did that. But then I was going through my other portions of that and I never admonished him that he had the right—had Fifth Amendment rights. And the basis for my finding of the indirect criminal contempt was his admission on the stand that he did that. I think it's reversible error if I enter the finding of indirect criminal contempt when I did not give him his constitutional admonishment. And I checked back to make sure that I did not do that and I didn't. I only have done one of these in the last seven years. It's not something that's common in here and I—I blew it."

¶ 77 Contempt is conduct calculated to embarrass, hinder or obstruct a court in its administration of justice, to derogate from its authority or dignity or bring administration of law into disrepute. *Weglarz v. Bruck*, 128 Ill. App. 3d 1, 7 (1984). Criminal contempt sanctions are imposed for punishing past misconduct. *In re Marriage of Betts*, 200 Ill. App. 3d 26, 58 (1990). Contumacious conduct constitutes indirect contempt if it is committed out of presence of the judge and is, therefore dependent for its proof upon extrinsic evidence of some kind or upon establishment of facts of which the court has no personal knowledge. *Sunset Travel, Inc. v.*

Lovecchio, 113 Ill. App. 3d 669, 675 (1983). Indirect criminal contempt proceedings must generally conform to the same constitutionally mandated procedural requirements as other criminal proceedings. *Betts*, 200 Ill. App. 3d at 58 (1990). One charged with indirect criminal contempt is entitled to know the nature of the charge against him, to have it definitely and specifically set forth by citation or rule to show cause, and have an opportunity to answer. *Id.* Also, applicable to a respondent in an indirect criminal contempt proceeding are the privilege against self-incrimination, the presumption of innocence, and the right to be proved guilty beyond a reasonable doubt. *Id.*

¶ 78 The fifth amendment to the United States Constitution and article I, section 10, of the Illinois Constitution provides that no person shall be twice placed in jeopardy for the same offense. U.S. Const., amend. V; Ill. Const. 1970, art I, § 10. Indirect criminal contempt is the type of offense that cannot be prosecuted twice because of the proscription against double jeopardy. See *In re Marriage of D'Attomo*, 211 Ill. App. 3d 914, 917 (1991). The constitutional bar against double jeopardy provides three basic protections: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects against multiple punishments for the same offense. *People v. Milka*, 211 Ill. 2d 150, 170 (2004).

¶ 79 The first protection is at issue in our case as we must determine whether the trial court's refusal to find the respondent in indirect criminal contempt due to its failure to properly admonish him constituted an acquittal. An acquittal encompasses any ruling that the prosecution's proof is insufficient to establish criminal liability for an offense. *People v. Cervantes*, 2013 IL App(2d) 110191, ¶ 29, citing *Evans v. Michigan*, 568 U.S. ---, 133 S.Ct 1069 (2013). An acquittal includes a ruling that the evidence is insufficient to convict; a factual

finding that necessarily establishes the defendant's lack of criminal culpability; and any other ruling that relates to the ultimate question of guilt or innocence. *Id.*, citing *Evans*, 568 U.S. at --, 133 S.Ct. at 1074-75. These sorts of substantive rulings stand apart from procedural rulings that may also terminate a case midtrial, which are generally referred to as dismissals or mistrials. *Evans*, 568 U.S. at ---, 133 S.Ct. at 1075. Procedural dismissals include rulings on questions that are unrelated to factual guilt or innocence, but which serve other purposes, such as a legal judgment that a defendant, although criminally culpable, may not be punished because of some problem like an error with the indictment. *Id.* Thus, substantive rulings implicate double jeopardy concerns; procedural dismissals do not. *Id.*

¶ 80 Here, the trial court's ruling did not terminate the case midtrial. At oral argument, the petitioner's counsel acknowledged that the trial court had before it all of the evidence necessary—both the respondent's trial testimony and the testimony of the petitioner and his family—to find the respondent in indirect criminal contempt. However, at the close of the trial, the trial court indicated that it was not going to find the respondent in contempt. In so ruling, the trial court did not suggest that it was dismissing the contempt petition or declaring a mistrial. Thus, the trial court's finding constituted an acquittal. See *Cervantes*, 2013 IL App(2d) 110191, ¶ 29. Although the respondent insists that there was other evidence that would have supported a contempt finding, we cannot remand for the trial court to consider the evidence again because to do so would improperly subject the respondent to double jeopardy. See *id.*

¶ 81 CONCLUSION

¶ 82 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County.

¶ 83 Affirmed.