2014 IL App (2d) 140056-U
No. 2-14-0056
Order filed December 24, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ASHLEY LOVESTRAND,	)	Appeal from the Circuit Court
	)	of Winnebago County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 12-OP-2240
	)	
NICHOLAS LEVOY,	)	Honorable
	)	Steven L. Nordquist,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Schostok and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's denial of a plenary order of protection was not against the manifest weight of the evidence: the court was entitled to find that respondent did not conceal the parties' child, and in any event he certainly was not doing so presently, and the court was entitled to find that respondent's threat concerning a gun was an isolated incident.

¶ 2 Petitioner, Ashley Lovestrand, appeals the trial court's order denying a plenary order of protection under the Illinois Domestic Violence Act of 1986 (the Act) (750 ILCS 60/101 *et seq*. (West 2012)) against respondent, Nicholas Levoy. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 26, 2012, Lovestrand filed a petition seeking an order of protection against Levoy. She also listed their daughter as a person to be included in the order and requested physical care and possession of the child. The petition contained typed allegations along with handwritten allegations in two different colors and what appeared to be two different handwritings. Lovestrand alleged that Levoy had been preventing her from seeing their daughter. She alleged that Levoy took the child in 2007 without legal custody and hid the child from her. She further alleged that, in 2010, he came to her workplace with a gun and told her that she should stay away from the child. On September 25, 2012, she went to the home of Levoy's sister to establish visitation with the child. Levoy then sent her a text message stating that if she showed up on his property he would put a "44" [*sic*] handgun to her face. She alleged that Levoy always carried guns and that she was afraid of him. That same day, she also filed a family law case seeking custody of the child, whom she had not seen in approximately five years.

¶ 5 An emergency order-of-protection was entered in favor of Lovestrand, but it did not include the child. The family law and order of protection cases were consolidated, and the matter was set for a hearing on whether to grant a plenary order of protection. The hearing date was then extended on multiple occasions. During the process, supervised visitation between Lovestrand and her daughter was granted. On December 16, 2013, the trial court conducted a hearing.

¶ 6 Before the hearing on the order of protection, issues concerning visitation were discussed. The child's guardian *ad litem*, Lucinda Bugden, stated that the child had been the subject of a neglect finding from the Department of Children and Family Services (DCFS), which led to Levoy obtaining legal custody as part of proceedings in juvenile court. The record is not clear

about the dates, but it indicates that DCFS was involved in the case from roughly 2005 to 2007 and that Levoy obtained legal custody in October 2006. The record also indicates that Lovestrand had other children who had been the subject of a DCFS case. Bugden was concerned that Lovestrand had failed to undergo an ordered psychological examination and instead did a mental health assessment, in which she used her maiden name instead of her married name that was used in all of the court files. Bugden was concerned that Lovestrand might have done so purposely to try to make it difficult for her to get the report. When Bugden got the report, she found that Lovestrand had not been honest in that she told the evaluator that her children had never been abused or neglected.

¶ 7 After visitation was discussed, the trial court noted that the emergency order of protection had been in place for a long time and inquired whether an order could be entered to deal with communication between the parties in place of any order of protection. Levoy expressed agreement with that. However, Lovestrand's attorney asked that the hearing still be held on the order of protection. Before the hearing began, the trial court took judicial notice of the previous custody order in favor of Levoy. It then stated that only matters of visitation would be addressed in the family law case as no one had filed anything seeking to modify the custody order.

¶ 8 Levoy testified that he had the same phone number for the past 10 years and that he did not know Lovestrand's phone number. He thought that he had blocked her number years before. Lovestrand then sent a call from her phone to his and it rang. Levoy suggested that the number he previously blocked might have been a number for Lovestrand's then-boyfriend.

¶ 9 Levoy said that he had not heard from Lovestrand in years until the day she showed up at his sister's house. He said that Lovestrand then contacted him via a text message, and he responded that, if she came to his property without the police she was going to get a .45 to her

face. He testified that he did not say he would shoot her and that he was under the impression that, if he allowed Lovestrand to see the child, he would be in trouble with either the criminal court or DCFS. He said that, if Lovestrand showed up at his home, he would probably call the police or not answer the door. Levoy did not currently own a gun, but admitted that he owned guns in the past.

¶ 10 Levoy was asked if he ever spoke with Lovestrand at her place of employment, and he said that he once saw her there but did not speak to her. He also said that Lovestrand once called him many years ago and asked him to bail her out of jail. He told her at that time that he would not allow her to see the child.

¶ 11 Lovestrand testified that, when DCFS was involved in the case, Levoy would clean his guns when she showed up for visitation. She said that, in approximately 2010, Levoy came to her place of employment, showed her a picture of their daughter, said that Lovestrand was not the child's mother anymore, and said that he had a gun in his car. She said that she also used to text Levoy from her ex-boyfriend's phone, and that Levoy would indicate that she would never see their daughter. In regard to the September 25, 2012, text, Lovestrand said that she was afraid, so she sought an order of protection. There was no police report about the incident.

¶ 12 The trial court stated that, after hearing the testimony from Levoy, it did not believe that Lovestrand met her burden of proof. Accordingly, the petition for a plenary order of protection was denied, and Lovestrand appeals.[1]

[1] The parties do not discuss appellate jurisdiction. Here, the family law and order of protection cases were not consolidated into one action where they lost their separate identities and were disposed of as one suit. The order of protection case was tried independently and resulted in a verdict that was separate from the disposition of the family law case. Therefore, the

¶ 13 II. ANALYSIS

¶ 14 Lovestrand argues that the trial court erred in finding that she failed to meet her burden of proof. She contends that Levoy concealed and threatened to conceal the child and threatened her with a gun. Levoy counters that he was acting under the belief that he was not supposed to allow visitation and that Lovestrand was using the order-of-protection process to bypass the proper methods of obtaining visitation. Although the parties discuss the visitation aspect of the matter at length, ultimately the issue is whether the trial court's decision was against the manifest weight of the evidence. See *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 15 Section 214(a) of the Act provides that, where the trial court finds that the petitioner has been abused, it shall enter an order of protection prohibiting such abuse. 750 ILCS 60/214(a) (West 2012). "Abuse" as defined under the Act means "physical abuse, harassment, intimidation of a dependent, interference with personal liberty[,] or willful deprivation but does not include reasonable direction of a minor child by a parent or person *in loco parentis*." 750 ILCS 60/103(1) (West 2012). "Harassment" is defined as "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner." 750 ILCS 60/103(7) (West 2012). Harassment includes "improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor

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order denying a plenary order of protection was immediately appealable. See *Adoption of S.G. v. S.G.*, 401 Ill. App. 3d 775, 781 (2010). Additionally, to the extent the order was not final, it was appealable as the denial of an injunction. See *In re Marriage of Fischer*, 228 Ill. App. 3d 482, 486-87 (1992) (citing Ill. S. Ct. R. 307(a)(1) (eff. Aug. 1, 1989)).

child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment ***." 750 ILCS 60/103(7)(v) (West 2012).

¶ 16 The petitioner must prove abuse by a preponderance of the evidence. *Minteer v. Kozin*, 297 Ill. App. 3d 1038, 1042 (1998). The trial court's order will be reversed only if it was against the manifest weight of the evidence. *Best*, 223 Ill. 2d at 350.

¶ 17 "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." *Id*. "Under the manifest weight 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.

¶ 18 Here the trial court's determination was not against the manifest weight of the evidence. In regard to concealment of the child, while the evidence was in dispute regarding statements Levoy made to Lovestrand, Levoy testified that he had been using the same phone number for 10 years, had legal custody of the child, and believed that he was not supposed to allow visitation from Lovestrand. The trial court was entitled to find Levoy's testimony to be more credible, especially in light of the evidence that Lovestrand had not been honest in other aspects of the proceedings. Further, at the time of the hearing, visitation was taking place as a result of the family law case and there were no allegations that Levoy was currently concealing the child. Thus, a plenary order of protection on that point was unnecessary. "[T]he primary purpose of the Domestic Violence Act is to aid victims of domestic violence and prevent further abuse, not resolve issues of visitation and custody." *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 1166 (2000).

¶ 19 As to the text message regarding a gun, Levoy admitted that he sent the message but stated that he would not have actually used a gun and did not currently own a gun. He disputed the other allegations concerning guns. Again, the trial court was entitled to find Levoy's testimony to be more credible. Thus, the court was entitled to view the message as an isolated incident. See *Best*, 223 Ill. 2d at 350-51. Ultimately, the trial court's determination that Lovestrand failed to show abuse was not against the manifest weight of the evidence.

¶ 20 III. CONCLUSION

¶ 21 The trial court's denial of a plenary order of protection was not against the manifest weight of the evidence. Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

¶ 22 Affirmed.