2017 IL App (4th) 160680-U

NO. 4-16-0680

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 27, 2017
Carla Bender
4th District Appellate
Court, IL

AMANDA L. BEASLEY,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Logan County
JOHANNES STOLVOORT,	)	No. 16OP153
Respondent-Appellant.	)	
	)	Honorable
	)	Thomas W. Funk,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence supports the granting of an order of protection and the trial court's judgment is affirmed.

¶ 2 Petitioner, Amanda L. Beasley, obtained an order of protection against respondent, Johannes Stolvoort. On appeal, respondent contends the trial court erred in granting the order of protection and denying his various motions. For the reasons stated below, we affirm the judgment of the trial court.

¶ 3 I. BACKGROUND

¶ 4 On June 22, 2016, petitioner filed a verified petition for an order of protection against respondent, her live-in boyfriend, pursuant to section 202 of the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/202 (West 2014)). Petitioner alleged that, during an altercation, respondent hit and scratched her, threw her to the floor, lifted her up by her pants,

and took her vehicle without her permission. In the petition, petitioner referred to respondent as "a sadistic paraphilia, highly confrontational, aggressive, [and a] slick talker." The same day the petition was filed, the trial court entered an emergency order of protection, which was to remain in effect until July 8, 2016. On June 28, 2016, respondent filed an answer, claiming petitioner had filed the action "to take everything away from" him.

¶ 5 At a July 8, 2016, hearing, the trial court extended the order of protection by entering an interim order effective until August 5, 2016. On July 25, 2016, respondent filed a motion to vacate the order of protection, claiming the extension violated the time frame set forth in "section 217" of the statute.

¶ 6 At an August 5, 2016, hearing, the trial court again extended the order of protection until August 23, 2016. On August 10, 2016, respondent filed a "motion *in limine* to exclude improper evidence." Respondent asked that petitioner be prohibited from presenting inadmissible evidence which would "impeach [respondent's] character." Respondent also filed an order for a rule to show cause, asking why petitioner should not be held in contempt of court for not allowing him to retrieve his personal property from the residence. On August 16, 2016, the Land of Lincoln Legal Assistance Foundation filed an entry of appearance on behalf of petitioner.

¶ 7 On August 23, 2016, the trial court conducted an evidentiary hearing. Petitioner, represented by counsel, testified on her own behalf and explained she and respondent broke off their relationship on June 21, 2016, because he "beat [her] up." She admitted she was currently on parole. She was seeking a two-year plenary order of protection based on the altercation. She said respondent was facing criminal charges stemming from the incident. Petitioner described the altercation as follows. She said she was scheduled to attend drug treatment counseling in

Bloomington. Respondent wanted to go with her, but petitioner said no. Respondent hid her car keys and told her if he was not going, then she was not going either. Petitioner found the keys in the bedroom hidden between the bed and the wall. As petitioner walked down the hall toward the living room, respondent hit her in the head with a skillet. She stumbled a bit and respondent "came at [her]." She fell to the floor. Petitioner said respondent "frantically was trying to grab at [her] to get the keys." They struggled as respondent continued to grab at petitioner's arms and hands, trying to get the keys. Respondent got up and called 9-1-1 and told the dispatcher petitioner had hit him with a skillet. He hung up on the dispatcher and told petitioner she was going to prison.

¶ 8 Petitioner said she was on the floor when respondent grabbed her pants and underwear and tried to pull her up from the floor. Her underwear ripped from his hands. He pulled her pants off and threw them out the front door. He went outside, threw her pants inside, and then left in the car "with a key that [she] had no idea that he had made." She said he did not have permission to take her car or to have possession of an extra key.

¶ 9 Petitioner testified the police arrived, made a report, and took photographs of her "torn clothing and [her] marks and bruises and scratches." While the police were there, respondent came back. An officer placed respondent in handcuffs, retrieved the key from him, handed it to petitioner, and told her respondent was going to jail.

¶ 10 Petitioner said the day respondent was released from jail, he came to the residence with a police officer and retrieved his clothing and other personal items. The following day, he arrived with two officers and retrieved more items. Petitioner said respondent had no other items at the residence. Petitioner said she continues to be fearful that respondent "may come and harm [her]. Many times he has threatened to harm [her] and to put [her] back in prison. He knows the

skill of martial arts, so he's dangerous. He's very manipulative, and he can pretty much sweet talk his way into doing anything."

¶ 11 Jason Lucas, a Lincoln police officer, testified he responded to the domestic violence call on June 21, 2016. He observed the injuries to petitioner and then spoke with respondent. Respondent would not give Lucas a full statement, so he arrested respondent for domestic battery. The trial court, without objection, admitted into evidence the photographs taken by Lucas. Lucas testified the photographs were accurate depictions of how petitioner's face, body, and clothing appeared on that night.

¶ 12 At the close of petitioner's case, respondent moved for a directed finding, arguing petitioner had failed to demonstrate she was in need of protection from "future damage." The trial court denied respondent's motion.

¶ 13 Respondent presented the testimony of his friend Eric Jenkins and petitioner, but the trial court ruled their testimony was irrelevant upon counsel's objection. After considering the evidence and the parties' closing arguments, the court stated:

> "The evidence in the case has provided, by a preponderance of the evidence, that the allegations of abuse occurred. The petition will be granted. The [respondent] will be ordered not to abuse the respondent—that is, will be ordered not to abuse or harass the petitioner for a period of two years.
>
> [Respondent], you will be ordered not to contact her or be within 500 feet of her, not to call her on the phone, write her a letter, send her an email, or a text message or any kind of Internet communication, or have a third party to try to talk to her on your behalf. You are not to be at her address."

¶ 14 On September 14, 2016, the trial court conducted a hearing on respondent's pending motions, which included a (1) motion to quash improper service, (2) motion to strike entry of appearance, and (3) motion to disqualify the judge. According to respondent, he sought to "have the whole case heard again." The court told respondent that, in order to disqualify a judge, respondent would need to demonstrate the judge's prejudice against him. The court noted respondent's allegations did not allege actual prejudice, but instead, indicated the court had (1) applied an incorrect legal standard to respondent's oral motion to obtain his personal property from the residence and (2) failed to "follow administerial duties." The court denied respondent's motion to disqualify.

¶ 15 The trial court then addressed respondent's motion to quash entry of appearance, wherein respondent alleged petitioner's counsel failed to comply with "Rule 11" in that counsel failed to mail respondent a copy of the appearance notice, and that the appearance was entered without counsel first obtaining leave of court. Respondent again claimed "the case should start all over." The court noted respondent had failed to object to counsel's appearance when counsel entered the courtroom on August 23, 2016, for the evidentiary hearing, and therefore, respondent had forfeited his argument.

¶ 16 The trial court next addressed respondent's motion to quash improper service. Respondent claimed he had not been properly served with a summons in the case. In particular, he claimed the summons he received did not have "the stamp and the seal and a signature." On cross-examination, respondent added a claim that he had not received the plenary order of protection with "the required elements on it." After clarification of the issues by the court, respondent retook the witness stand and testified that Mike Bruce (head of court security for the Logan County sheriff's department) "threw the papers in [his] direction, and he said, 'You have

been served[.]' " Respondent claimed this was improper service of summons. On cross-examination, respondent acknowledged the document that Bruce attempted to give him was the plenary order of protection, not the summons. Respondent said he picked up the document and took it with him. After considering the evidence, the court found service upon respondent was sufficient and denied his motion.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 Respondent filed this *pro se* appeal, claiming (1) the trial court erred in granting the two-year plenary order of protection, (2) the duration of the emergency order of protection exceeded the 21-day limit set forth in the statute, (3) the court erred in denying the motion to quash counsel's entry of appearance, (4) the court erred in denying respondent's motion for a directed finding, (5) the court erred in denying respondent's motion to modify the order of protection to allow respondent to retrieve his personal property, and (6) the court erred in denying respondent's motion to disqualify the judge.

¶ 20 Initially, we address petitioner's claim that respondent's brief should be stricken and the appeal dismissed for respondent's failure to comply with Illinois Supreme Court Rule 341 (eff. Jan. 1, 2016) regarding the content of his brief. We agree respondent's brief does not comply with the supreme court's rules. However, because the issues are straightforward, the record is slim, and petitioner's brief is cogent, we decline to impose the sanction of dismissal of respondent's appeal. See *In re Detention of Powell*, 217 Ill. 2d 123, 132 (2005) (a reviewing court may strike an appellate brief but, since it is a harsh sanction, it is appropriate only when the violations of the procedural rules interfere with or preclude appellate review).

¶ 21 A. The Propriety of the Plenary Order of Protection

¶ 22 Respondent contends the trial court erred in entering the plenary order of protection. The standard of review of an order granting a plenary order of protection is a manifest-weight-of-the-evidence standard. That is, this court will reverse the trial court's finding of abuse only if it is against the manifest weight of the evidence. See *Best v. Best*, 223 Ill. 2d 342, 350 (2006). "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.

¶ 23 Petitioner testified respondent hit her on the head with a skillet, struggled with her in an attempt to get car keys from her, and ripped her clothing after trying to pull her up by her pants. She testified respondent grabbed and scratched her, causing marks and bruises on her body. The police officer's testimony and the photographs introduced as evidence corroborated her testimony. Based on this evidence, the trial court concluded petitioner had been abused by respondent. This conclusion was neither unreasonable nor arbitrary. As such, we hold the opposite conclusion was not clearly evident and the court's finding was not against the manifest weight of the evidence.

¶ 24 B. Duration of the Emergency Order

¶ 25 Respondent also claims the duration of the emergency order exceeded the 21-day limit set forth in the statute. Section 220 of the Act provides as follows:

> "(a) Duration of emergency and interim orders. Unless re-opened or extended or voided by entry of an order of greater duration:

(1) Emergency orders issued under Section 217 shall be effective for not less than 14 nor more than 21 days;

(2) Interim orders shall be effective for up to 30 days." 750 ILCS 60/220 (West 2014).

In this case, the trial court extended the initial emergency order of protection twice. Both times, the court established an effective date and entered the order on or before that date. The record does not include transcripts of any hearings conducted on the court's entry of an interim order or the extension of the emergency order. From the common law record, it appears the court's orders complied with the above statutory directives, and we find no reason to disturb those orders.

¶ 26 C. Counsel's Entry of Appearance

¶ 27 Respondent next contends the trial court erred by failing to strike petitioner's counsel's entry of appearance for failure to notify respondent. Counsel's entry of appearance, filed August 16, 2016, was not accompanied by a certificate of service indicating the same was mailed to respondent. However, counsel appeared with petitioner on the date set for the evidentiary hearing, August 23, 2016, and announced he was ready to proceed. Without objection, respondent indicated he was ready to proceed as well.

¶ 28 Because respondent did not object at the time petitioner's counsel appeared in court, he did not properly preserve the issue for this court's review. "It has long been the law of the State of Illinois that a party who fails to make an argument in the trial court forfeits the opportunity to do so on appeal." *Vantage Hospitality Group, Inc. v. Q Ill Development, LLC*, 2016 IL App (4th) 160271, ¶ 49. We find respondent's argument regarding his lack of notice of counsel's entry of appearance was forfeited.

¶ 29 D. Denial of Respondent's Motion for a Directed Finding

¶ 30 Respondent also claims the trial court erred in denying his motion for a directed finding. As part of his argument, respondent concentrates on what he believes was an inaccurate characterization of his motion. He says he moved for a directed finding, yet the record indicates he moved for a directed verdict. He believes his motion was denied because the court thought he had moved for a directed verdict, which, respondent says, was impossible since there was no jury, and therefore, no verdict. Respondent misinterprets the court's basis for its denial.

¶ 31 During a bench trial, a motion for a directed finding is governed by section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2014)). At the close of the petitioner's case, a respondent may move the trial court for a judgment in his favor. "In ruling on the motion[,] the court shall weigh the evidence, considering the credibility of the witnesses and the weight and quality of the evidence." 735 ILCS 5/2-1110 (West 2014). Our supreme court has formulated a two-part analysis for trial courts when ruling on a section 2-1110 motion. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 275 (2003).

> "First, the court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case. A plaintiff establishes a *prima facie* case by proffering at least 'some evidence on every element essential to [the plaintiff's underlying] cause of action.' [Citation.] If the plaintiff has failed to meet this burden, the court should grant the motion and enter judgment in the defendant's favor. [Citation.] Because a determination that a plaintiff has failed to present a *prima facie* case is a question of law, the circuit court's ruling is reviewed *de novo* on appeal. [Citations.]" *Sherman*, 203 Ill. 2d at 275.

¶ 32 If the trial court finds the plaintiff has established a *prima facie* case, "the court must weigh all the evidence, determine the credibility of the witnesses, and draw reasonable inferences therefrom." *Sherman*, 203 Ill. 2d at 276. If, after weighing the evidence, the court finds the plaintiff presented sufficient evidence to establish a *prima facie* case, the court should deny the defendant's motion and proceed with the trial. *Sherman*, 203 Ill. 2d at 276.

¶ 33 In this case, the trial court determined petitioner had presented sufficient evidence of abuse and had met her burden of proof. As a result, the court denied respondent's motion for a directed finding. The terminology used and/or referenced in the record was not a factor. Instead, we find it clear the court considered the nature and weight of the evidence. Petitioner presented sufficient testimony for the court to determine that, after the presentation of her case, she had established a *prima facie* case that she had "been abused by a family or household member" to justify the entry of a section 219 plenary order of protection. See 750 ILCS 60/214 (West 2014); 750 ILCS 60/219 (West 2014). We find no error in the court's denial of respondent's motion for a directed finding.

¶ 34 E. Respondent's Personal Property

¶ 35 Respondent claims the trial court erred in refusing to modify the plenary order of protection for the purpose of allowing him to gain access to the property to retrieve his personal property. We find this claim to be without merit. The record indicates respondent had more than one opportunity to retrieve his belongings from the residence. In fact, he appeared at the residence escorted by police officers on at least two occasions for this purpose. We find the court was not required to modify the order in any way to accommodate respondent for this purpose.

¶ 36 F. Motion To Disqualify the Trial Judge

¶ 37 Finally, respondent argues the trial court erred in denying his motion to disqualify the trial judge. On September 14, 2016, respondent filed a motion to disqualify the judge, claiming the judge (1) applied the wrong standard when considering respondent's motion for a directed finding, and (2) refused to perform his "ministerial duties" by failing to consider several of respondent's pleadings. In his brief, respondent suggests the court was biased against him based upon respondent's gender, claiming the judge "routinely rules against men and has the woman win in order of protection cases." Respondent's motion was filed approximately three weeks after the entry of the plenary order of protection.

¶ 38 "Each party shall be entitled to a substitution or substitutions of judge for cause." 735 ILCS 5/2-1001(a)(3)(i) (West 2014). To prevail on a motion for substitution of judge for cause, the moving party must establish, by a preponderance of the evidence, actual prejudice. *In re Marriage of O'Brien*, 393 Ill. App. 3d 364, 373 (2009). " 'Proving prejudice so as to justify a substitution for cause is a heavy burden and the conclusion of prejudice will not be made lightly.' " *O'Brien*, 393 Ill. App. 3d at 373 (quoting *In re Petersen*, 319 Ill. App. 3d 325, 340 (2001)).

¶ 39 " 'A trial judge is presumed to be impartial[,] and the burden of overcoming this presumption rests with the party asserting bias, who must present evidence of personal bias stemming from an extrajudicial source and evidence of prejudicial trial conduct.' " *O'Brien*, 393 Ill. App. 3d at 373 (quoting *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 248 (2006)). "By themselves, judicial rulings rarely constitute a valid basis for a motion for substitution due to bias or partiality." *Williams v. Estate of Cole*, 393 Ill. App. 3d 771, 777 (2009). A motion judge's determination regarding allegations of judicial prejudice in a motion for substitution of judge for

cause will not be reversed unless it is against the manifest weight of the evidence. *O'Brien*, 393 Ill. App. 3d at 373.

¶ 40 First, we conclude the trial court properly determined respondent's motion to disqualify the judge from the proceedings was insufficient at law, in that respondent's motion failed to allege *any* actual prejudice. Second, we note respondent raises a claim of gender bias for the first time on appeal. Because respondent did not state this claim in his motion to disqualify, we find the issue forfeited. Finally, we reject respondent's challenge to the court's denial of his motion because respondent's claim seems to be based merely upon his dissatisfaction with the court's rulings. And, as stated above, dissatisfaction with a judge's ruling is insufficient to support a motion to disqualify. See *Williams*, 393 Ill. App. 3d at 777.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we affirm the trial court's judgment.

¶ 43 Affirmed.