2024 IL App (4th) 230279-U

NO. 4-23-0279

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 29, 2024
Carla Bender
4th District Appellate
Court, IL

JOHN LUGO,	)	Appeal from the
Petitioner-Appellant,	)	Circuit Court of
v.	)	Woodford County
SCOTT M. STURM,	)	No. 22OP117
Respondent-Appellee.	)	
	)	Honorable
	)	Charles M. Feeney III,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Cavanagh and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court's denial of the petition for a stalking no contact order was not against the manifest weight of the evidence.

¶ 2 Petitioner, John Lugo, filed a petition for a stalking no contact order, alleging a course of conduct from respondent, Scott M. Sturm, of threats of physical abuse, harassment, intimidation, and an interference with his personal liberty. After a hearing, the trial court denied the petition.

¶ 3 Petitioner appeals, contending the trial court's decision was against the manifest weight of the evidence. We disagree and affirm the court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In January 2023, petitioner filed an amended verified petition for stalking no contact order against his neighbor, respondent. In the petition, petitioner alleged threats of

physical abuse, harassment, and intimidation which had escalated. The petition alluded to a prior property dispute between petitioner and respondent's wife, Alvena Sturm. The trial court held a hearing on the petition in March 2023.

¶ 6 A. Petitioner's Testimony

¶ 7 Petitioner testified he has lived at 218 East Walnut Street in Washburn, Illinois, for 20 years. Respondent was his neighbor at 214 East Walnut. The Sturms and petitioner have disagreed on the property line since petitioner moved in. Petitioner believed the Sturms had adversely possessed property from their other neighbor at 210 East Walnut by maintaining the property.

¶ 8 Petitioner testified to several incidents. On June 11, 2021, petitioner was "weedeating." Alvena was in his yard filming him and trying to stop him from doing yard work. Petitioner told Alvena she was being "stupid." Alvena ran inside and respondent came out. Respondent watched petitioner and petitioner felt something wet hit the back of his neck. He believed it was spit. Respondent started yelling at petitioner, called him a racial slur, and "flipped the middle finger two times." Petitioner felt "uncomfortable."

¶ 9 On June 28, 2022, petitioner testified he was physically battered by respondent. Petitioner was preparing to mow his lawn at 8 or 9 p.m. Respondent began screaming at petitioner from his porch to get off his property. Respondent ran down to petitioner, and petitioner testified it "[l]ooked like he had something in his hand." The pair ended up in the street, and respondent struck at petitioner multiple times before petitioner was able to return to his property and call the police. The police responded to the incident, but no charges were filed against either party. On cross-examination, petitioner stated he went to the doctor "three to four weeks" after the incident for neck and head injuries.

¶ 10 Petitioner testified he had 10 to 12 security cameras on his property but noted that some of them did not work. On October 31, 2021, petitioner observed through his cameras that respondent had moved railroad ties on the property line. Petitioner moved the railroad ties back, and respondent confronted him a few hours later. Alvena held respondent back. Petitioner testified he felt "[v]ery unsafe and fear for my life." According to petitioner, respondent called the police nine days later to make a "false report" about the incident, claiming petitioner had actually been the aggressor.

¶ 11 About a month later, petitioner saw on his cameras respondent spraying something on his property. Petitioner believed respondent was trying kill his grass. Petitioner described similar incidents in which respondent was spraying an unknown substance and petitioner told him to stay off his property. Petitioner also stated respondent had been throwing nails on his gravel driveway.

¶ 12 On cross-examination, petitioner claimed he did not independently recall the June spitting incident when he filed his petition. He only recalled it after reviewing the videos. Petitioner testified the railroad ties were nailed to the ground with rebar and were very heavy, but also stated that respondent had moved them with a shovel. Petitioner did not have any photographs of brown grass or nails on his driveway.

¶ 13 B. Video Evidence

¶ 14 Petitioner introduced video recordings depicting certain incidents he complained of. Eleven videos were entered into evidence without objection. The trial court allowed petitioner to describe the contents of each video while they were playing. We discuss these videos by their exhibit names.

¶ 15 1. *"Adverse Possession 04 04 2019"*

¶ 16 Petitioner described this video as depicting respondent working on the east side of the property line. Petitioner described respondent as "maintaining my part of the property." Petitioner acknowledged respondent was not trespassing in this video.

¶ 17 The video is three minutes long and shows a male working with an unknown gardening implement at the end of the far-side driveway. There appears to be flags in the grass which the man interacts with. The flags remain standing at the end of the video.

¶ 18 2. *"Adverse Possession A 06 04 2018"*

¶ 19 Petitioner explained this video showed respondent planting grass and pulling out utility line flags in the public right-of-way between the driveways.

¶ 20 The video shows a male mowing the grass between the driveways. The man interacts several times with something on the ground. A voice, presumably petitioner, states "he's pulling the—" and "there is no grass."

¶ 21 3. *"Adverse Possession B 06 04 2018"*

¶ 22 Petitioner described this video as depicting respondent mowing grass on petitioner's property. Petitioner stated respondent's mowing made him "very uncomfortable."

¶ 23 The video is two seconds long and shows the male figure mowing grass along the edge of the far-side driveway.

¶ 24 4. *"Assault on June 18 2022 part2 ch1"*

¶ 25 Petitioner acknowledged it was "really hard to see" the contents of this video but explained, "If you look at the very top, it's gone now, but you will see [respondent] run down and punch me." Petitioner explained respondent fell down, and he was able to "get away."

¶ 26 The video is of poor quality. A person walks across the screen on petitioner's driveway. Two figures move quickly across the very top of the screen, and all three figures move

out of sight of the camera. The three figures return to view and appear to be having a conversation in the driveways. Two figures then walk back to petitioner's house.

¶ 27 5. *"Assault on June 18 2022 part 1"*

¶ 28 Petitioner explained this video was a different angle of the prior video. Respondent was on his porch "screaming and yelling," then ran off the porch and "kick[ed] and puche[d]" petitioner a few times. Petitioner acknowledged respondent was never on his property.

¶ 29 The video shows a male figure standing on the porch at the far house. A woman walks up petitioner's driveway, and the man then steps off the porch and walks toward the street. A tree blocks the view of any further activity.

¶ 30 6. *"June 10 2021"*

¶ 31 Petitioner described this video as showing respondent's wife videotaping him. Petitioner explained, "[A] similar incident happened a week later, and that's when he spit on me."

¶ 32 The video shows a woman filming a man using a weed eater at the fence for a few seconds. The woman then leaves, and the man continues doing yard work.

¶ 33 7. *"Ch 1 Disagreement over property line Scott threatened to punch me in the face on 10-31-22 New video"*

¶ 34 According to petitioner, in this video, respondent approaches him and asked him why he moved a railroad tie. Respondent started coming towards petitioner, but respondent's wife held him back. Petitioner had a hammer in his hand used for laying the railroad ties. Petitioner pointed to one point in the video, "See, that's when he is trying to punch me in the face. His wife is trying to hold him back. He pushed her, and now he is coming charging me. He is wrestling. And holding him back because he is cussing and—."

¶ 35 The video shows a man and woman on the far side of the property line. The man is pointing at the property line. A second man, presumably petitioner, comes from the near side of the property line and starts speaking to the man. The man animatedly points to the property line when petitioner starts to leave. The woman grabs the man's arm and starts leading him away. The man attempts to return to the property line, still engaged in animated conversation with petitioner, but the woman holds him back. There is no audio accompanying the video.

¶ 36 8. *"June 29 2021" parts 1, 2, 3, and 4*

¶ 37 Petitioner explained these videos as being comprised of "small 10 second strips." Petitioner was weed eating, when respondent and Alvena yelled at him, and respondent called him "stupid" and spit on him.

¶ 38 Petitioner is using a weed eater on his property while a man and woman are at the back of the property. It is unclear whether they are on petitioner's property. The video skips several times, but the man can be heard saying, "You gonna call me a dumb f***. *inaudible* Real *inaudible* John." Petitioner responds, but the audio is unintelligible.

¶ 39 In part 4 of the video, a woman stands in the alley behind petitioner's property and says, "I don't know. If I can't stand on my property and someone can get away with that, that's awful. And that's what we're going to ask *inaudible* about." The woman walks back to respondent's property. The view of a man, presumably respondent, was blocked by a tree until the man walked back to respondent's property as well.

¶ 40 C. Esther Lugo's Testimony

¶ 41 Esther Lugo, petitioner's sister, testified she was present for the June 18, 2022, incident. Esther heard yelling and saw respondent screaming at petitioner. Respondent "leaped"

off the porch and hit petitioner in the face with his right fist. Ester stated petitioner retreated first. On cross-examination, Esther described respondent as "king-konging it" to the street.

¶ 42 D. Matt Ulrich's Testimony

¶ 43 Matt Ulrich testified he was a neighbor of petitioner and respondent. On October 31, 2022, Ulrich heard yelling and saw petitioner and respondent standing on the sidewalk where the properties meet. Ulrich could not hear the whole conversation, but he noticed petitioner was holding a hammer in his hand, with it raised above his shoulder. Both men were "agitated," and it appeared mutual. Ulrich did not see respondent go onto petitioner's property. He watched the encounter for about five minutes.

¶ 44 E. Respondent's Testimony

¶ 45 Respondent testified he had lived at 214 East Walnut since June 1992. He believed petitioner moved next door in 2005. Petitioner "always had some issues pertaining to the property line." They had discussions with petitioner, which were "a little bit contentious," but not a "major problem" until 2018 when they put up a fence. Respondent denied ever calling petitioner a racial slur but admitted he had flipped his middle finger at petitioner when his "emotions got the best of [him]." He also admitted telling petitioner on occasion they should "settle this like men." Respondent felt petitioner intentionally tried to agitate him and he could not do "anything on our property" without petitioner "coming out and causing problems." He explained he and his wife would film petitioner when he was mowing because the mower regularly kicked up rocks at their property and had damaged the siding on their garage.

¶ 46 As to specific incidents, respondent explained, on June 18, 2022, he was home alone when he saw petitioner using a "magnetic collection device" on the approach in front of respondent's driveway. Petitioner acknowledged respondent, and respondent went to watch

television. Respondent then heard some commotion and saw petitioner walking up his driveway with a large jug of Roundup weed spray. Petitioner "looked upset." Respondent asked petitioner, "What the F are you doing." Petitioner accused respondent of throwing nails and screws on his driveway and spraying his driveway with weed killer, and petitioner stated he "was going to do the same" to respondent. Respondent denied in his testimony throwing nails or spraying weed killer on petitioner's property. Respondent approached petitioner and admitted petitioner likely took his position as threatening. Petitioner hit respondent in the head with the container of Roundup, and respondent punched him. The two tussled until respondent lost his balance and petitioner pushed him down in the street. Petitioner's sister got between the two men, and both men walked away and back to their own properties. Police officers came out, but neither petitioner nor respondent were cited.

¶ 47 On October 31, 2021, respondent went out to replace a concrete border on his side of the fence. Later in the day, respondent noticed "something was different," so he went out with his wife to look at the property line. Respondent realized one of the pieces of the concrete border had been moved closer to his house. Petitioner was in his yard, so respondent asked him why he moved the piece. Petitioner accused respondent of moving the railroad tie to try to divert water onto petitioner's property so petitioner would get an ordinance violation. The men began to argue, exchanging profanities, and petitioner held a hammer in his hand while he gestured. Petitioner backed up, stating, "Come on, B***." Respondent's wife held him back because she did not know what was going to happen and pulled respondent away from the argument.

¶ 48 Respondent testified petitioner had filed one other lawsuit against the Sturms. The Sturms agreed to remove "a 10th or a 20th of an inch" of the fence footings so they would not be

over the property line. Respondent denied any wrongdoing in settling and simply wanted to avoid the cost of further litigation.

¶ 49 F. Alvena Sturm

¶ 50 Alvena testified as to the October 31, 2021, incident. While respondent and Alvena were looking at the concrete border, petitioner approached and asked respondent why he moved the railroad ties. The men started arguing and "all of a sudden, [petitioner] raised a hammer and was agitating [respondent] to come over to him," calling out "come on, B***." Alvena held respondent back because she did not want him to get hurt or hit with the hammer. Neither Alvena nor respondent crossed the property line. On cross-examination, Alvena explained she wanted to keep respondent away from the property line so petitioner could not reach him.

¶ 51 Alvena stated the attorney they had for the fence dispute advised them to film petitioner due to prior fence damage. Alvena explained, "[I]f there was any damage to the fence, we would at least have proof." Alvena either stayed on their property or stood in the alley behind the properties when she was filming.

¶ 52 G. Petitioner's Rebuttal

¶ 53 Petitioner testified in rebuttal. He denied ever trying to get respondent onto his property to fight, and he denied threatening to throw nails or spray weed killer on respondent's property. Petitioner also stated he had video he believed showed respondent spraying weed killer and throwing something, "most likely" nails, on his property.

¶ 54 H. Trial Court's Decision

¶ 55 The trial court began its decision by stating, "I think a good part of this case comes down to credibility of the witnesses." The court noted petitioner's statement respondent

had moved railroad ties was simply not believable. The court also found it telling that while petitioner presented many videos and claimed to have video of respondent throwing nails and spraying weed killer, no videos showing these events were offered into evidence. The court stated, "[W]hen you have a whole lot of cameras pointing in the direction, and you have videos and you show those videos, and then you say you have videos, why aren't they presented?" The court noted it had not "researched the Clean Hands Doctrine as it applies to the Order of Protection statute." However, the court ultimately stated, "I don't mean that in a sense of I'm not granting it *** because I think the plaintiff's stalking. I'm not granting it because I don't believe the plaintiff. So petition denied."

¶ 56 This appeal followed.

¶ 57 II. ANALYSIS

¶ 58 On appeal, petitioner contends the trial court erred in denying his stalking no contact order.

¶ 59 The Stalking No Contact Order Act (Act) (740 ILCS 21/5 (West 2022)) provides a civil remedy for victims of stalking. 740 ILCS 21/5 (West 2022). Under the Act, " '[s]talking' means engaging in a course of conduct directed at a specific person," where the actor "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 2022). " 'Course of conduct' means [two] 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, or threatens a person." 740 ILCS 21/10 (West 2022). A "reasonable person" is an objective standard wherein "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 2022).

¶ 60 In a request for a stalking no contact order, the petitioner bears the burden of proving the allegations contained in a verified petition by a preponderance of the evidence. 740 ILCS 21/30(a) (West 2022). The preponderance of the evidence standard means the petitioner "need only present evidence that renders a fact more likely than not." (Internal quotation marks omitted.) *People v. Peterson*, 2017 IL 120331, ¶ 37, 106 N.E.3d 944. When deciding whether the trial court correctly denied a request for a civil no contact order, we review the court's findings by applying a manifest weight of the evidence standard. *Piester v. Escobar*, 2015 IL App (3d) 140457, ¶ 12, 36 N.E.3d 344. "A decision is contrary to the manifest weight of the evidence when the opposite conclusion is apparent or when the decision is unreasonable, arbitrary, or not based on the evidence." *Enbridge Energy (Illinois), LLC v. Kuerth*, 2018 IL App (4th) 150519-B, ¶ 62, 99 N.E.3d 210.

¶ 61 Petitioner argues on appeal the trial court failed to consider the video evidence. Petitioner contends, because the court stated the videos it had were of "other junk," it did not consider them. However, the court's comment shows it did consider the videos but found them unpersuasive. Indeed, the court stated, "I have videos of other junk, but I don't have videos of that," when referring to petitioner's claim respondent threw nails on his driveway and sprayed his property with weed killer. The record on appeal reveals the court watched and considered the videos presented, and the court determined the videos simply did not support petitioner's claims. Just because the court did not give the video evidence the weight petitioner believes it deserved does not mean the court failed to consider it.

¶ 62 In essence, petitioner asks this court on appeal to reweigh the evidence presented to the trial court. However,

> "when applying a manifest weight of the evidence standard, a reviewing court will not substitute its judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences to be drawn from the evidence, even if the reviewing court would have reached a different conclusion if it had been the trier of fact." *Dore v. Quezada*, 2017 IL App (1st) 162142, ¶ 25, 77 N.E.3d 764.

In making this determination, we are mindful of the fact the trial court had the opportunity to hear and see the witnesses and, as such, it was in a superior position to weigh the evidence and determine the credibility of the witnesses. See *Wade v. Stewart Title Guaranty Co.*, 2017 IL App (1st) 161765, ¶ 59, 82 N.E.3d 763.

¶ 63 In this case, the trial court considered the testimony and videos presented, and it found petitioner's testimony and argument unpersuasive. We see no reason to disagree with the court's assessment. As the court stated, "[A] good part of this case comes down to credibility of the witnesses." The court then explained it did not find petitioner a credible witness. Petitioner's claim a railroad tie had been moved was far-fetched considering the railroad ties were stacked and bolted into the ground. Petitioner's descriptions of the videos presented were either misleading or exaggerations of what the videos actually depicted. Petitioner claimed he had video evidence of other events, yet he did not present that evidence to the court. In her testimony, petitioner's sister similarly exaggerated what actually appeared in the video. Meanwhile, respondent's version of evidence more closely aligned with how Ulrich described the argument over the railroad ties. Respondent admitted he had not always acted perfectly and was

embarrassed by swearing and making rude hand gestures, but he otherwise denied petitioner's claims. The court clearly considered respondent to a more believable and credible witness.

¶ 64 Petitioner argues the trial court incorrectly applied the clean hands doctrine in denying his petition. "The Act contains no requirement or even a suggestion that a victim of stalking must have 'clean hands' to receive a stalking no contact order." *Ivancicts v. Griffith*, 2017 IL App (4th) 170028, ¶ 22, 90 N.E.3d 641. However, although the court mentioned the clean hands doctrine and noted petitioner was "hypervigilant," the court also stated it did not research the clean hands doctrine and therefore did not use it as part of its decision.

¶ 65 Petitioner's "hypervigilant" disposition relates to whether a reasonable person would be in fear for his safety. Although petitioner was apparently very aware of every move of his neighbors across the property line, many of the alleged incidents petitioner brought as evidence were nothing more than respondent doing work on his own property. The trial court did not find the argument a reasonable person would be fearful of these supposed incidents convincing.

¶ 66 In sum, the evidence did not support a finding of "a course of conduct" which would cause an objective "reasonable person" in petitioner's situation to "fear for his *** safety." See 740 ILCS 21/10 (West 2022). Although the animosity between petitioner and respondent is obvious, at one point coming to blows, simply not getting along with a neighbor is not grounds for a stalking no contact order. The proximity of bordering neighbors inherently lends itself to repeated contact—but that does not make it a "course of conduct" within the meaning of Act. The trial court's denial of the stalking no contact order was not against the manifest weight of the evidence.

¶ 67 III. CONCLUSION

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

¶ 69 Affirmed.