



walking path easement. The plaintiffs claim that the defendants have been harassing them and interfering with their use of a driveway easement which crosses the defendants' property and without which their property is landlocked. Personal animosity between the parties, and their attorneys, is high. It is apparent that none of the parties sincerely want to resolve this dispute.

¶ 4 The parties' claims arise from a "Declaration of Temporary Easement and Driveway Agreement" (Easement Agreement). This Easement Agreement purports to grant to the plaintiffs a driveway easement across the defendants' property to reach their otherwise landlocked property, and to grant the defendants as well as all other landowners in the subdivision a "walking path" easement around the perimeter of the large lake and across each other's property for "ingress, egress, recreational activities, dam care and repairs, and utilities if need be."

¶ 5 Both cases are here on interlocutory appeal from the circuit court of St. Clair County. Although the two interlocutory appeals have been consolidated in this court for our decision, we will address them separately. We will set forth only those facts which are directly pertinent to the issues on appeal. We will distinguish the two cases by referring to case No. 11-CH-581 as the walking path easement case and case No. 07-MR-235 as the driveway easement case. We begin with the walking path easement case, which, although it was not the first to be filed in the circuit court, was the first to be appealed to this court.

¶ 6 The walking path easement case is here on interlocutory appeal from the entry of a preliminary injunction and an order of protection against the defendants. The underlying complaint remains pending before the circuit court.

¶ 7 On May 31, 2011, the plaintiffs filed in the circuit court of St. Clair County an eight-count complaint against the defendants. Count II of the complaint seeks a temporary restraining order and preliminary and permanent injunctions against the defendants

trespassing on the plaintiffs' property, preventing the defendants from using the alleged "walking path" on the plaintiffs' property, and declaring that the Easement Agreement does not grant an easement for such a walking path. The complaint was later amended to add a count IX requesting an order of protection against the defendant Geraldine Davidson precluding her from stalking the plaintiffs or from committing any other acts of aggression or intimidation, and barring the defendants or their guests from coming within 300 feet of the plaintiffs' residence.

¶ 8 On June 8, 2011, the plaintiffs filed a motion for preliminary injunction based on count II of their complaint, and for an order of protection based on count IX of their complaint.

¶ 9 On June 8, 2011, following an evidentiary hearing, the circuit court entered an order finding that the defendants have an easement for a walking path around the lake to reach their landlocked property and enjoining the defendants from entering onto the plaintiffs' property except by use of the walking path to reach their landlocked property. This is one of the orders appealed from in the walking path easement case.

¶ 10 On June 10, 2011, following an additional evidentiary hearing on the plaintiffs' prayer for an emergency order of protection, the circuit court entered a temporary order enjoining the defendants from using the walking path onto the plaintiffs' property until further order of the court. The court declined to make a finding of stalking at that time but ordered the parties to have no communication and to not engage in videotaping, photographing, or surveillance of each other.

¶ 11 On June 14, 2011, the plaintiffs filed a motion asking the court to reconsider that portion of its order of June 8 which granted the defendants an easement for a walking path across the plaintiffs' property in order to reach their landlocked property.

¶ 12 On June 30, 2011, following additional evidentiary hearings, the circuit court entered

an order on the plaintiffs' request for an order of protection. The court ordered the defendant Geraldine Davidson not to engage in any form of communication with the plaintiffs or their attorneys, and not to enter upon the property of the plaintiffs for any reason including her work as a real estate broker/agent. The defendant was ordered not to photograph, videotape, or record the plaintiffs or to "loiter" within 100 feet of the plaintiffs' residence. This order of protection was to remain in effect until September 26, 2011, and enforcement was to be only through the court's contempt powers and not through criminal prosecution.

¶ 13 The court denied the plaintiffs' motion for reconsideration of its June 8 order granting the defendants an easement for a walking path, finding that it was moot in light of the court's June 10 order that Geraldine Davidson not use the walking path easement. The plaintiffs appeal from the entry of the June 30 order as well as the order of June 8, 2011. The plaintiffs' notice of interlocutory appeal was filed July 7, 2011.

¶ 14 The plaintiffs first argue that the circuit court erred in denying their motion to reconsider that portion of the circuit court's order of June 8 which held, with respect to the plaintiffs' request for a preliminary injunction, that the defendants had an easement for a walking path across the plaintiffs' property. We note that the order was preliminary only and does not finally resolve the dispute between the parties as to the existence of this easement. In any event, the circuit court enjoined the defendant Geraldine Davidson from using the walking path until further order of court and found no basis to impose such an injunction on her husband, Gary Davidson. The circuit court did not abuse its discretion in denying the plaintiffs' motion for reconsideration.

¶ 15 The plaintiffs next argue that the circuit court erred in denying their request for a preliminary injunction enjoining the defendants or those acting in concert with them from using the walking path easement to enter the plaintiffs' property based on its finding of the existence of an easement. They argue that the Easement Agreement does not contain

language sufficient to create such a walking path easement. The court reviewed the Easement Agreement which purported to grant such a walking path easement and concluded, preliminarily, that the Easement Agreement intended to, and did, grant such an easement to the defendants. This finding is not contrary to the manifest weight of the evidence before the court.

¶ 16 The plaintiffs argue that the defendants are barred by *res judicata* from asserting any claim to a walking path easement because they had previously filed an action involving the same parties and issues and had received an adverse final adjudication thereon. In fact, there was neither an identity of issues nor a final adjudication on the existence of a walking path easement. Accordingly, *res judicata* does not bar the defendants' claim to a walking path easement. See *Downing v. Chicago Transit Authority*, 162 Ill. 2d 70, 73-74 (1994).

¶ 17 The plaintiffs next argue that the circuit court erred in entering the "no contact" order by not ordering that the order be transmitted to the police and sheriff for enforcement, by failing to include statutory notice language as provided in section 115(b) of the Stalking No Contact Order Act (740 ILCS 21/115(b) (West 2010)), and by failing to order that enforcement be through criminal prosecution rather than through the court's contempt powers. The plaintiffs also argue that the circuit court erred in limiting the no-contact order to a period of three months and failing to extend the no-contact order for a period of two years or until the plaintiffs sell their property.

¶ 18 We note that the circuit court did not enter this order pursuant to the statute, but entered it pursuant to its equitable powers. Indeed, the court did not make the requisite finding of stalking for the statute to apply. In the exercise of its general equitable powers, the circuit court did not abuse its discretion in failing to order that the no-contact order be transmitted to the police and sheriff for enforcement, in failing to include statutory notice language as provided in section 115(b) of the Stalking No Contact Order Act, in failing to

order that enforcement be through criminal prosecution rather than through the court's contempt powers, and by limiting the order's duration to three months.

¶ 19 The plaintiffs next argue that the circuit court erred in holding that evidence that the defendants had contacted law enforcement about possible criminal activity by the plaintiffs would not support a finding of stalking unless it was shown that the defendants did so in bad faith and in violation of the law. The court correctly held that only unlawful conduct could constitute stalking under the statute (*People v. Bailey*, 167 Ill. 2d 210, 224 (1995)) and that the plaintiffs had not presented evidence that the defendants' conduct had been unlawful. This finding was not contrary to the manifest weight of the evidence and the circuit court did not err.

¶ 20 Finally, the plaintiffs argue that the circuit court erred in denying them costs and attorney fees under section 80(c) of the Stalking No Contact Order Act (740 ILCS 21/80(c) (West 2010)). As we have already held, the court's no-contact order was not entered pursuant to the Stalking No Contact Order Act. Accordingly, the circuit court did not abuse its discretion in refusing to award attorney fees and costs.

¶ 21 For the foregoing reasons, we affirm the preliminary injunction and no-contact order entered by the circuit court of St. Clair County in the walking path easement case.

¶ 22 We turn now to the driveway easement case. On August 31, 2007, the plaintiffs, William and Wendy Dribben, filed a complaint seeking a declaratory judgment, a preliminary injunction, and permanent injunctive relief against the defendants, Geraldine A. and Gary Davidson. The complaint alleges that the driveway easement which crosses the defendants' property to give access to the plaintiffs' property is in disrepair and that the defendants have interfered with the plaintiffs' efforts to repair the road. Count I seeks a declaratory judgment that the plaintiffs have a continuing right to maintain and repair the driveway easement. Count II seeks preliminary and permanent injunctions against the defendants preventing the

plaintiffs from maintaining and repairing the driveway easement.

¶ 23 Also on August 31, 2007, the plaintiffs filed a motion for a preliminary injunction for the reasons set forth in their complaint. On September 26, 2007, the circuit court entered an order enjoining either party from making, "any modifications to the road easement except as required for the routine repair and maintenance" until further order of court or written agreement of the parties.

¶ 24 On October 6, 2008, the defendants filed a petition for a temporary restraining order and preliminary and permanent injunctions against the plaintiffs enjoining them from performing any construction, repair, or maintenance work on the driveway easement, and from driving faster than 15 miles per hour on the driveway easement.

¶ 25 On October 6, 2008, the court entered an order granting the plaintiffs the right to maintain, repair, and use the driveway easement pending resolution of all issues or further order of court. The plaintiffs were ordered to give the defendants 10 days' notice of road repairs or maintenance.

¶ 26 The driveway easement case languished for several years. On May 24, 2011, the circuit court entered an order declaring that the plaintiffs have a continuing right under the Easement Agreement to maintain and repair the driveway without interference or hindrance by the defendants. Despite the entry of what would appear to be a final judgment in this cause, the court apparently continued the matter for further proceedings and set the matter for trial. The plaintiffs assert that the case continued because the defendants refused to pay their share of the costs of repairing and maintaining the driveway easement, and refused to agree not to plant crops within five feet of the driveway easement.

¶ 27 On June 14, 2011, the plaintiffs filed a motion for partial summary judgment to declare the defendants' obligation to contribute to the costs of repairing the driveway easement and to clarify the plaintiffs' rights to use the driveway easement without restriction

by the defendants.

¶ 28 On September 6, 2011, the circuit court entered an order consolidating the driveway easement case and the walking path easement case. The court also entered an order that the plaintiffs not interfere with the defendants' use of the walking path for ingress, egress, dam care, and recreational activities and utilities. We note that this was not an issue in the driveway easement case, but was only an issue in the walking path easement case.

¶ 29 In its order of September 6, 2011, the court clarified its no-contact order of June 30, 2011, entered in the walking path easement case, by declaring that it had not therein found that the defendant Geraldine Davidson was guilty of stalking as defined in the Stalking No Contact Order Act (740 ILCS 21/1 to 135 (West 2010)). The court explained that it had imposed the "no contact" order under its "general equitable and supervisory powers." Nevertheless, the court found that the no-contact order had been improvidently granted and dissolved and set it aside. We note that the court's order of June 30, 2011, entered in the walking path easement case, was already on appeal to this court at the time the circuit court dissolved it and set it aside.

¶ 30 The plaintiffs filed a notice of interlocutory appeal from the court's order of September 6, 2011, with respect to its holdings that the plaintiffs not interfere with the defendants' use of the walking path and dissolving and setting aside the no-contact order against the defendants.

¶ 31 On September 20, 2011, on the motion of the plaintiffs, this court entered an order vacating that portion of the circuit court's order of September 6, 2011, which dissolved and set aside the no-contact order which had been entered in the walking path easement case on June 30, 2011. Because that order was on appeal to this court, the circuit court had no subject matter jurisdiction to alter it in any way and its order doing so is void. *In re Marriage of Holem*, 153 Ill. App. 3d 1095, 1099 (1987).

¶ 32 We now hold the same with respect to the circuit court's order of September 6, 2011, which ordered the plaintiffs not to interfere with the defendants' use of the walking path for ingress, egress, dam care, and recreational activities and utilities. This was also a modification of the court's no-contact order which enjoined the defendant Geraldine A. Davidson from using the walking path. Because the no-contact order was on appeal to this court, the circuit court had no subject matter jurisdiction to modify it in any way. *In re Marriage of Holem*, 153 Ill. App. 3d 1095, 1099 (1987). Accordingly, that portion of the circuit court's order of September 6, 2011, which ordered the plaintiffs not to interfere with the defendants' use of the walking path easement, is hereby vacated.

¶ 33 Finally, the plaintiffs have filed numerous motions to supplement the record with evidence and pleadings which were not before the circuit court when it rendered its decisions herein. The defendants have filed motions to strike any references to such evidence and pleadings. We have ordered all of the motions to be taken with the case and now deny the plaintiffs' motions to supplement the record with postappeal evidence and pleadings, and grant the defendants' motions to strike any references to such evidence and pleadings.

¶ 34 For the foregoing reasons, the orders of the circuit court of St. Clair County are hereby affirmed in part and vacated in part.

¶ 35 Affirmed in part and vacated in part.