NOTICE
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2012 IL App (5th) 110413-U

NO. 5-11-0413

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

REBECCA NUNN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Madison County.
	)	
v.	)	No. 11-OP-843
	)	
CHARLES HACKMAN,	)	Honorable
	)	Duane L. Bailey,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Presiding Justice Donovan and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly entered a plenary order of protection against the respondent, where evidence in the record supported a finding that the respondent abused the petitioner by means of harassment and interference with personal liberty.

¶ 2 The respondent, Charles Hackman, appeals the plenary order of protection that was filed against him in the circuit court of Madison County on September 8, 2011. For the following reasons, we affirm

¶ 3 FACTS

¶ 4 On August 29, 2011, the petitioner, Rebecca Nunn, filed a petition for an order of protection against the respondent. A hearing on the petition was conducted on September 8, 2011, at which the parties testified as follows. The respondent testified that he met the petitioner in May or June 2010, proposed to her in November 2010, and resided with her and her family for approximately one year. The petitioner broke up with the respondent in June

2011. The respondent tried to reconcile, to no avail. He averred that he was very hurt by the breakup.

¶ 5 The respondent testified that before the breakup, he made approximately eight videos of sexual activity between himself and the petitioner, all of which the respondent claimed were recorded with the petitioner's consent. After the breakup, the respondent posted three of the videos on a pornographic website. He subsequently signed on to his Facebook account and posted instructions on how to access the videos, thereby allowing approximately 3,200 Facebook friends to view the videos if they so chose. The respondent denied that he posted the videos to humiliate the petitioner or to take revenge on her for breaking up with him. He stated that he last saw the petitioner on July 15, 2011, when he went to her house, but the petitioner locked herself in the bathroom and told him that she wanted nothing to do with him. The respondent emphasized that he in no way threatened the petitioner, nor had he ever physically assaulted her.

¶ 6 The respondent testified that the petitioner was scheduled for a calendar photo shoot in August 2011. He admitted that he told the petitioner that if she attended the photo shoot, he would be there to distribute nude photos of her. He further admitted to telling the petitioner that he hated her, and sending her a text message which stated: "Pay backs are a bitch. Enjoy your week." The respondent admitted that he "wanted her stressed a little bit" and he wanted her to have "about the same emotional distress [he] had." According to the respondent, he did not intend to actually show up at the photo shoot because he was scheduled to participate in an out-of-town event that day. He admitted, however, that the petitioner was unaware of his otherwise-scheduled event.

¶ 7 The petitioner testified that she consented to the recording of only one of the three videos at issue. She was aware that the video was on the respondent's cell phone, but she denied that she gave the respondent permission to post it on the Internet. The petitioner

testified that she was unaware that the other videos were being recorded, but she discovered in early August 2011 that the respondent had posted the videos on the Internet. The petitioner confirmed that she received a text message from the respondent later in the month, threatening that he would distribute nude pictures of her if she showed up for her scheduled calendar photo shoot. The petitioner testified that she took the threat seriously and did not attend the photo shoot for fear of humiliation if the respondent followed through on his threat. The petitioner added that she was afraid that if the respondent showed up he would hurt her, her coworkers, or her boss.

¶ 8 The petitioner testified that she is currently a student at a local community college. She recalled that the respondent came to the college after the breakup in June 2011 and attempted to speak with her. She told him that she did not want to talk and subsequently went to class. After class, the respondent was waiting for her at her car. The petitioner stated that she was scared, so she requested three of her friends to walk her to her car. She admitted that, despite her fear, she never felt physically threatened.

¶ 9 The petitioner testified that, in addition to showing up at her college, the respondent came to her house, randomly and unannounced, on a weekly basis after she broke up with him. She confirmed that he showed up on July 15, 2011. She locked herself in the bathroom when he refused to leave. She noted that she felt physically threatened and scared because the respondent continued banging on the bathroom door after she asked him to leave. She stated that he finally left after approximately half an hour. She denied that the respondent ever physically assaulted her or threatened to do so. She was aware that the respondent had applied for employment with the St. Louis City police department, but she stated that she sought the order of protection to protect herself and had no intent to adversely affect the respondent's chances of getting hired. At the conclusion of the hearing, the circuit court entered a plenary order of protection against the respondent, effective for two years. The

respondent filed a timely notice of appeal.

¶ 10 ANALYSIS

¶ 11 The respondent's issues on appeal are summarized as follows: whether the circuit court erred in issuing the order of protection because there was no requisite finding of abuse, nor any evidence to substantiate a finding of abuse. "A finding of abuse made under the Domestic Violence Act of 1986 will be reversed only if it is against the manifest weight of the evidence." *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." *Id.*

¶ 12 "In any proceeding to obtain an order of protection, the central inquiry is whether the petitioner has been abused." *Id.* at 348. Section 214(a) of the Illinois Domestic Violence Act of 1986 (Act) provides, "If the court finds that petitioner has been abused by a *** household member[1] ***, an order of protection prohibiting the abuse *** shall issue ***." 750 ILCS 60/214(a) (West 2010). Section 103 of the Act defines abuse as, *inter alia*, "physical abuse, harassment, *** [or] interference with personal liberty." 750 ILCS 60/103(1) (West 2010). 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 2010).

¶ 13 The respondent contends that, although the circuit court issued the order of protection, it never made the requisite finding of abuse either orally or in writing. He makes much of the fact that the designated box stating that the respondent abused the petitioner is not

[1]The Act defines "household members" as, *inter alia*, "persons who share or formerly shared a common dwelling." 750 ILCS 60/103(6) (West 2010). Accordingly, the respondent fits this criteria.

checked on the preprinted order of protection form. However, we note that the trial judge indeed made a finding of abuse at the hearing, and there is ample evidence in the record to support that finding.

¶ 14 Specifically, the comments made by the trial judge at the conclusion of the hearing indicate that he found the respondent abused the petitioner by means of harassment, as defined under the Act. See 750 ILCS 60/103(7) (West 2010). Although the trial judge noted that the respondent never physically harmed the petitioner, he recited the definition of abuse via harassment per the Act, then stated that "it's pretty clear it was done for harassment and embarrassment" and added that, pursuant to the Act, "if a reasonable person would find this to be harassment, then it could rise to the level of an order of protection."

¶ 15 The respondent emphasizes that the trial judge reviewed the specific examples of harassing conduct which is presumed to cause emotional distress as provided in section 103(7) of the Act (750 ILCS 60/103(7) (West 2010)), and distinguished those examples from the respondent's conduct in the case at bar. We find this to be of no consequence to the finding of harassment. As the appellate court previously held, "[t]he types of conduct set forth in section 103(7) of the Act are not exhaustive." *People v. Reynolds*, 302 Ill. App. 3d 722, 727 (1999). "While defendant's specific conduct is not described by the subsections of section 103(7), this is not indicative of whether it constitutes harassment." *Id.* The trial judge in this case recognized this, as he stated that, in the context of emotional distress caused by harassment, the Act is "not going to specifically talk about consensual [videos] that are published without the permission of another person." Moreover, case law holds that emotional distress "results from intentional acts that cause someone to be worried, anxious, or uncomfortable." *Reynolds*, 302 Ill. App. 3d at 727. In this case, the petitioner testified that the respondent's behavior caused her such feelings. For these reasons, we find the circuit court properly found the respondent abused the petitioner by harassment.

¶ 16 In addition to the circuit court's finding of abuse by harassment, the evidence establishes that abuse occurred by the respondent interfering with the personal liberty of the petitioner. As set forth in the Act, interference with personal liberty is defined as "committing or threatening *** harassment, *** so as to compel another to *** abstain or to refrain from conduct in which she *** has a right to engage." 750 ILCS 60/103(9) (West 2010). The evidence supports that this occurred when the petitioner opted out of the previously scheduled calendar photo shoot. She testified that she took the respondent's threat seriously and did not attend for fear of humiliation if he followed through and distributed nude photographs of her. We find this constitutes a threat of harassment (750 ILCS 60/103(9) (West 2010)) on the part of the respondent, as such behavior would cause emotional distress to a reasonable person (750 ILCS 60/103(7) (West 2010)). We further find that the threat of harassment constitutes abuse because the petitioner refrained from participating in the photo shoot, an activity in which she had a right to engage. See 750 ILCS 60/103(9) (West 2010).

¶ 17 Besides the above arguments, the respondent contends that the circuit court failed to follow section 214(c)(3) of the Act, which requires the circuit court to specify in writing that it considered certain factors before issuing the order of protection. See 750 ILCS 60/214(c)(3) (West 2010)). As the respondent notes, the requisite language was preprinted on the form, but he complains that the circuit court failed to include a specific analysis of each factor either in the order or at the hearing. We find this complaint without merit, as the Act requires the circuit court to "*at a minimum*" set forth in its order that it considered the appropriate factors. (Emphasis added.) 750 ILCS 60/214(c)(3) (West 2010). This was accomplished in this case and nothing more is required by the Act.

¶ 18 CONCLUSION

¶ 19 The circuit court's finding of abuse was not against the manifest weight of the

evidence because it was not unreasonable or arbitrary and there was evidence in the record to support the finding. See *Best*, 223 Ill. 2d at 350. Accordingly, we affirm the September 8, 2011, plenary order of protection entered against the respondent.

¶ 20 Affirmed.