



Contact Order Act (the Act) (740 ILCS 21/1 to 135 (West 2012)). The respondents appeal the order, arguing that the circuit court erred in issuing the stalking no contact orders because the petitioner presented insufficient evidence to prove stalking. We affirm.

¶ 3

### BACKGROUND

¶ 4 Kembra alleged in case No. 12-OP-1063 that Kathie engaged in continued harassment and stalking. Kembra made the same allegations in case No. 12-OP-1064 against Scott. These cases were consolidated for purposes of appeal.

¶ 5 Upon review of the verified petitions, the circuit court found no basis for an emergency order and set the matters for a consolidated hearing on both petitions, which was held on November 1, 2012. The parties were present and represented by counsel. There was no court reporter present, and therefore there was no transcript made of the hearing. The stalking no contact orders at issue are fill-in-the-blank/check-the-box forms. The orders establish that the circuit court found in each case, "Upon examination of the Verified Petition, Petitioner under oath, and other evidence, Petitioner is a victim of two or more acts of following, monitoring, observing, surveilling, threatening, communicating, or [interfering] or damaging \*\*\* property or pets by Respondent." The circuit court's orders prohibited the Eakers from stalking or contacting Kembra. The circuit court also marked the box on the forms ordering the Eakers to stay away from Kembra, her residence, school, daycare, employment, and any other specified place but did not specify a distance. The record reveals that the parties received a copy of the plenary order in each matter in open court.

¶ 6 On November 5, 2012, Kembra filed a *pro se* motion in each case requesting the court to specify a 200-foot prohibition in the plenary orders. The circuit court amended the plenary orders *nunc pro tunc* to add that the Eakers be ordered to stay at least 200 feet away from Kembra.

¶ 7 On November 19, 2012, the Eakers filed a motion to stay enforcement of the stalking

no contact orders alleging that the plenary orders were modified on an *ex parte* basis by the *nunc pro tunc* order. The Eakers alleged that they first learned of the 200-foot prohibition on November 18, 2012, when it was enforced against them as they were attempting to maintain their property. They further alleged that because their property abuts Kembra's property, the 200-foot prohibition served to evict them from their own property.

¶ 8 On November 19, 2012, the Eakers filed a timely notice of appeal in each case, appealing the entry of the plenary stalking no contact orders and the *nunc pro tunc* order.

¶ 9 On December 6, 2012, the court conducted a hearing on the Eakers' motions to stay enforcement of the stalking no contact orders. Although the record does not contain a transcript of the hearing, review of the December 6, 2012, order entered by the circuit court reveals that the *nunc pro tunc* order was vacated and that the parties stipulated to certain modifications to the plenary orders.

¶ 10 On January 9, 2013, Kembra and Kathie each filed a proposed bystander's report with the circuit court in case No. 12-OP-1063. The record contains Kathie's motion requesting the circuit court to certify her bystander's report. On the same date Kembra and Scott each filed a proposed bystander's report in case No. 12-OP-1064. Scott also filed a motion to certify his bystander's report. Although the court docket sheet indicates that the motions to certify were set for hearing on January 31, 2013, we cannot deduce from the record that the hearing took place. The record on appeal does not contain a certified bystander's report.

¶ 11 On March 1, 2013, Kembra filed a proposed bystander's report in this court along with an unsigned order to certify her bystander's report.

¶ 12 On September 9, 2013, the Eakers filed a motion seeking to supplement the record on appeal pursuant to Illinois Supreme Court Rule 329 (eff. Jan. 1, 2006) with a certified transcript from a hearing in a separate case in which they filed a stalking no contact petition against Kembra's boyfriend, Dale. This transcript was not considered by the trial court in the

present case, but the Eakers suggest that the proposed supplement to the record might clear up some disagreements regarding the testimony offered in the consolidated hearing in the present case. Kembra has not filed an objection to the motion to supplement the record on appeal. This motion was taken with the case on appeal.

¶ 13 At oral argument, counsel for the Eakers was asked whether the circuit court had in fact certified one of the proposed bystander's reports. Counsel stated that the parties had reached an agreement as to what the facts would be on the date of the hearing and that the circuit court orally agreed. He conceded that he was unaware that the record did not contain a certified bystander's report. He then asked for leave to file another motion to supplement the record.

¶ 14 Thereafter, the Eakers filed a second motion to supplement the record on appeal with the certified bystander's report. This motion also was taken with the case.

¶ 15 Prior to turning to the merits of the appeal, we first address both motions to supplement the record. With respect to the Eakers' first motion to supplement the record on appeal with the transcript from the unrelated hearing against Dale, "Illinois Supreme Court Rule 329 provides that a party may supplement the record on appeal to include omissions, correct errors, and settle controversies as to whether the record accurately reflects what occurred in the trial court." *Jones v. Ford Motor Co.*, 347 Ill. App. 3d 176, 180 (2004); Ill. S. Ct. R. 329 (eff. Jan. 1, 2006). "The rule, however, allows the record on appeal to be supplemented only with evidence actually before the trial court." *Id.* The Eakers admit that the transcript they now seek to include in the record was not before the circuit court, and thus could not have been considered by the circuit court. Accordingly, the Eakers' first motion to supplement the record on appeal is denied.

¶ 16 We next address the Eakers' second motion to supplement the record on appeal. The appellant has the burden to present a sufficiently complete record on appeal to support a

claim of trial court error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Illinois Supreme Court Rule 323 provides that in a case where no verbatim transcript is available, the appellant may prepare a substitute, in the form of either a bystander's report or an agreed statement of facts. *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241 (2007); Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). With respect to the second motion to supplement the record, counsel for the appellants was unaware until oral argument that a certified bystander's report was not part of the record on appeal. Although Rule 323 requires the trial court to settle, certify, and order filed an accurate report of proceedings in the form of a bystander's report, the duty to provide a sufficiently complete record on appeal remains with the appellant. *Foutch*, 99 Ill. 2d at 391-92; Ill. S. Ct. R. 323(b) (eff. Dec. 13, 2005). Illinois Supreme Court Rule 323, like the other supreme court rules governing appeals, is not a mere suggestion and has the force and effect of law. *Thomsen*, 371 Ill. App. 3d at 241. When the appellants became aware that the record was devoid of the certified bystander's report, they filed a motion to supplement the record pursuant to Illinois Supreme Court Rule 329 (eff. Jan. 1, 2006). The motion to supplement included an order of the trial court certifying the bystander's report prepared by Kembra. Illinois Supreme Court Rule 329 provides, in part, that material omissions may be corrected either before or after the record is transmitted to the reviewing court. Ill. S. Ct. R. 329 (eff. Jan. 1, 2006). Thus, although we do not sanction the lack of diligence on the part of the appellants to provide a sufficiently complete record on appeal, we nevertheless grant their motion to supplement the record with Kembra's certified bystander's report.

¶ 17 We now turn to the facts set forth in the certified bystander's report. The Eakers first lived on Bliss street. They later moved to Oak Ridge street, which was property owned by Mr. Eaker's grandmother's estate. Although it is not clear from the record how these two properties were connected to Kembra's property, what is clear is that the Eakers lived next

door to Kembra during the relevant period of time. On October 3, 2012, the police arrived at the Eakers' residence with their vehicle lights flashing and weapons drawn due to reports of an altercation in which guns were involved. This incident did not involve Kembra. However, she testified that prior to this incident she had previously called the police regarding Scott firing a rifle in his backyard at his residence, although she admitted on cross-examination that at no time during either of these incidents had she seen the Eakers point a gun or shoot in her direction. Kembra stated that the fact that Scott would fire a rifle in his backyard and that the police were called out to his property next door due to an incident involving weapons was alarming to her and made her feel unsafe.

¶ 18 Kembra testified that the Eakers placed a lock on the gate of her fence separating their properties. She cut that lock off of the gate and put her own lock on the gate some time later. She testified that her lock had to be cut off at some point because the Eakers put glue into the locking mechanism.

¶ 19 Kembra testified that the Eakers attached a "chicken wire" fence to her fence with plastic zip ties without her permission. She testified that she cut the zip ties on the unauthorized chicken wire fence.

¶ 20 Kembra testified that there were "no trespassing" signs in the Eakers' yard, but that a portion of what the Eakers' claimed as their yard is actually within her property line. She testified that she removed the signs that were within her property line. Kembra further testified that a preprinted "no trespassing" sign was placed on the corner of her property. The sign also contained the handwritten words "will prosecuted [*sic*] if notice is removed William O Eaker SR. as well as William O Eaker William S Eaker Kathleen Quenzel Eaker October 2-2012, New Owners Notice to get fence off land October 2, 2012, we are moving white fence on October 5<sup>th</sup> 2012 you have been given notice [*sic*]." Although the bystander's report indicates that a photograph of this sign was entered into evidence, it was not included in the

record on appeal.

¶ 21 Kembra testified about a sign that was placed at the edge of the Eakers' property that could be seen from the road that referred to a prior stalking no contact order which the Eakers had attempted to obtain against Dale. Their petition was denied after a hearing on the merits. She testified that the sign read, "11-OP-747 READ IT." The record also indicates that a photograph of this sign was entered into evidence, but it was not included in the record.

¶ 22 Kembra testified that the Eakers had painted the words "no trespassing" in large letters on the side of a pickup truck and parked it next to the fence separating the parties' properties. She testified that the message could be seen from her yard and that she believed it could be seen from the road as well. A photograph of the truck was admitted into evidence, but was not included in the record on appeal.

¶ 23 Kembra testified that the Eakers had a large, bright light installed in their yard and aimed it directly at her house and bedroom window at night. She testified that she had reported to the police that the light was bright enough to bother her when she was inside her home and bedroom and that the police had requested the Eakers to turn the light off. She further testified that the Eakers later installed yet another bright light in their backyard which shines into her house and bedroom at night. Kembra also testified that the Eakers installed a camera in their backyard that was aimed directly at her house.

¶ 24 Kembra testified that a deer carcass was hung from a tree in the Eakers' backyard that was approximately 50 feet from her yard, although she admitted that she did not know who hung the deer carcass.

¶ 25 Dale Walter testified that he is Kembra's boyfriend and was listed as a protected party in the petition for the stalking no contact order. Dale testified that the Eakers had been in Kembra's home without permission and that they had stolen a computer and a fur coat. On cross-examination, Dale admitted that he was in jail at the time he claimed that the Eakers

had been in the home without Kembra's permission. Dale testified that prior to the incident involving the lock on the gate, water from the Eakers' pool was allowed to drain out onto Kembra's property.

¶ 26 Scott's father, William Eaker, Jr., testified on behalf of the respondents. With respect to the October 3, 2012, incident involving the police, he testified that he had been involved in a disagreement with his brother-in-law that led to the police responding with their weapons drawn to the Eakers' residence. He testified that the Eakers were present but were not involved in the disagreement. On cross-examination he admitted that he had a shotgun that he had removed from his truck during the dispute. William Jr. testified that he did not see Kembra that day, but it was nearly dark. She could have been nearby at her residence and he would not have seen her.

¶ 27 William Jr. testified that the Oak Ridge property was owned by his mother's estate and that he had instructed Kathie to put up "no trespassing" signs on the property to preserve and protect the property.

¶ 28 Scott testified that he had put up "no trespassing" signs on his property because people had trespassed on his property. He testified that he had placed the large "no trespassing" signs, including the one painted on the side of the truck, because Kembra kept taking down his signs. He admitted on cross-examination that he had no independent verification that either Kembra or Dale had ever trespassed on his property, but he aimed the signs at them anyway. He further admitted that he had never seen Kembra take the signs from his property.

¶ 29 Scott testified that he had requested the utility company to install a street light to illuminate his backyard to discourage trespassers. He admitted that the police instructed him to turn the light off since it was aimed at Kembra's house and bedroom. He testified that the police had instructed Kembra to turn off her porch light as well, although on cross-examination he admitted that he had never asked her to turn her light off prior to

pointing a street light at her home. Scott testified that he installed a camera pointed at the gate to discourage trespassers, and not at Kembra's backyard.

¶ 30 Scott also testified about the October 3, 2012, incident. He stated that his father had a disagreement with his uncle that did not involve him or Kathie. He testified that he called the police to keep the peace. He also testified that Kembra was not present when the disagreement took place, although on cross-examination he admitted that she could have been at her home next door and that he did not see her.

¶ 31 Scott testified that he sought a stalking no contact order against Dale in 2011 because he alleged that Dale came onto his property and exposed himself to children. He testified this also was part of his reason for putting up "no trespassing" signs. He admitted on cross-examination that the court had denied his petition after a hearing was held. He testified that he put a lock on the gate because he was instructed to do so by the judge who presided over the hearing for the stalking no contact order against Dale. He also testified that he wanted to secure his property from trespassers because he has an above-ground pool and his property needed to be secure for liability purposes.

¶ 32 Kathie testified that Kembra cut the wire that was used to attach a small wire fence to the fence which separated their properties. She testified that Kembra threw the cut wire into their backyard which caused an injury to both her son and dog when the wire was stepped on.

¶ 33 Kathie testified that she had put up "no trespassing" signs to prevent people from entering her property. On cross-examination she admitted that she had never seen Kembra or Dale trespass on her property. She testified that a trespasser had unplugged the pump to their pool but admitted she had no evidence that it was Kembra.

¶ 34 Kathie testified that on October 3, 2012, her father-in-law had a disagreement with his brother-in-law and that the police responded to the scene. She testified that although the

police had their weapons drawn when they arrived, they walked to the scene in a casual manner with the weapons at their side. Kathie testified that she did not know whether Kembra was present during the incident. Kathie testified that the judge in the prior hearing against Dale told the Eakers to put a lock on the gate, although she admitted on cross-examination that the fence did not belong to her and was not on her property.

¶ 35 After hearing the testimony, the circuit court entered a plenary order in favor of Kembra. This appeal follows.

¶ 36 ANALYSIS

¶ 37 At the outset it should be noted that although they raised the issue in their notice of appeal, the Eakers' claim of error related to the *nunc pro tunc* order was not addressed in their brief. The Eakers' only argument on appeal is that the circuit court erred in issuing the stalking no contact orders because Kembra presented insufficient evidence to prove stalking. Before a stalking no contact order can issue, the trial court must first find by a preponderance of the evidence that the petitioner has been a victim of stalking as defined by the Act. 740 ILCS 21/30, 80(a) (West 2012). Here, the circuit court found Kembra to be a victim of stalking.

¶ 38 We review findings of fact made by a trial court under the manifest weight of the evidence standard. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶ 22. "A reviewing court should not overturn a trial court's finding merely because it does not agree with the lower court or because it might have reached a different conclusion had it been the fact finder." *Clean World Engineering, Ltd. v. MidAmerica Bank, FSB*, 341 Ill. App. 3d 992, 997 (2003). "The trial judge, as the trier of fact, is in a position superior to a reviewing court to observe

witnesses while testifying, to judge their credibility, and to determine the weight their testimony should receive." *Id.* "When the testimony of witnesses is conflicting, it is within the exclusive province of the trial court, as the trier of fact, to determine the witnesses' credibility and the weight to be given their testimony." (Internal quotation marks omitted.) *Hoffman v. Altamore*, 352 Ill. App. 3d 246, 253 (2004).

¶ 39 The purpose of the Act is to provide stalking victims with a civil remedy requiring the offender to stay away from them and protected third parties. 740 ILCS 21/5 (West 2012). "Stalking" is defined as "engaging in a course of conduct directed at a specific person, and he or she 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 2012). Under the Act, stalking generally refers to a course of conduct and not just a single act. 740 ILCS 21/5 (West 2012). "Course of conduct" is defined as "2 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, threatens, or communicates to or about, a person, engages in other contact, or interferes with or damages a person's property or pet." 740 ILCS 21/10 (West 2012).

¶ 40 Here, there was sufficient evidence to support the trial court's finding that Kembra was a victim of stalking as defined by the Act. First, there was testimony that the Eakers had engaged in surveillance. Kembra testified that the Eakers had installed a camera in their backyard aimed directly at her house. Although Scott confirmed that they had installed the camera, he testified that they had pointed it at the gate to discourage trespassers, and not at Kembra's backyard. It appears that the circuit court, faced with conflicting testimony, determined Kembra's testimony regarding the camera to be more credible than the Eakers. Second, there was testimony that the Eakers had damaged Kembra's property. It was Kembra's uncontroverted testimony that the lock she had placed on her gate had to be

removed because the Eakers put glue into the lock. The circuit court was in a superior position to observe Kembra while testifying and apparently found her testimony regarding the lock to be credible. We cannot say that the circuit court's finding that Kembra was a victim of two or more acts prohibited by the statute was unreasonable, arbitrary, or not based on the evidence presented or that an opposite conclusion is clearly apparent. Accordingly, we find no trial court error.

¶ 41

#### CONCLUSION

¶ 42 For the foregoing reasons, we affirm the circuit court's issuance of the stalking no contact order. The Eakers' motion to supplement the record with the transcript from the prior hearing against Dale is denied. The Eakers' motion to supplement the record with the certified bystander's report is granted.

¶ 43 Affirmed.