FIFTH DIVISION
June 30, 2016

No. 1-15-0030

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
MARIANNE KAPRAUN,	)	Circuit Court of
	)	Cook County
Petitioner-Appellee,	)	
	)	
v.	)	No. 14 OP 20230
	)	
JOHN P. STRAUSS,	)	
	)	Honorable
Respondent-Appellant.	)	Callie Lynn Baird,
	)	Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Where the evidence supports the granting of an order of protection, the circuit court is affirmed.

¶ 2 Petitioner Marianne Kapraun (Kapraun) obtained an order of protection against respondent John P. Strauss (Strauss). On appeal, Strauss contends that the circuit court of Cook County erred in granting the order of protection and denying his amended motion for a new trial. For the reasons stated below, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On August 5, 2014, Kapraun filed a petition for an order of protection against Strauss pursuant to the Illinois Domestic Violence Act of 1986 (the Domestic Violence Act or the Act) (750 ILCS 60/101 *et seq.* (West 2014)). She indicated in the petition that she and Strauss were in a dating relationship from November 2011 to December 2012 and occasionally shared a residence. Kapraun alleged, among other things, that Strauss had verbally and physically abused her, appeared at or near her home uninvited, and sent her troubling emails. During the emergency order of protection hearing on August 5, 2014, Kapraun's counsel also argued that Strauss had filed complaints with the Illinois Department of Financial and Professional Regulation (IDFPR) and the Illinois Department of Employment Security (IDES) relating to Kapraun. Apparently referring to the IDFPR matter, Strauss responded that "[t]hey are speculating that it is me, and I have had absolutely no contact with that organization whatsoever." Strauss also indicated that he had not seen Kapraun in the prior year and had not contacted her by telephone "for months." The court issued an emergency order directing Strauss to "stay away" from Kapraun and providing for "no contact by any means."

¶ 5 The sole witnesses during the hearing on the plenary order of protection on August 26, 2014, were Kapraun and Strauss. Strauss lived in Kapraun's residence in North Aurora from April through June of 2012. Kapraun testified that he "became very aggressive" during the time period they lived together, and she "was wrestled to the floor" by him. In October 2012, she and Strauss moved into an apartment in Chicago, where they lived together for approximately eight weeks. She claimed he attempted to exploit her financially and "became very verbally abusive." Kapraun testified that on December 17, 2012, Strauss "slammed [her] arm in the door" in their apartment and then "begged" Kapraun not to call the police. She was

later arrested for violating an order of protection secured by Strauss on that date. Kapraun also testified regarding other orders of protection sought by both her and Strauss.

¶ 6 With respect to the IDES, Kapraun stated, "I received several emails from Mr. Strauss that if I didn't contact him, he's going to hit send and initiate [an] audit." An audit was initiated, revealing that the IDES owed Kapraun $87. She further testified that Strauss initiated a complaint with the IDFPR; he previously had sent her emails stating that she was practicing medicine without a license. Kapraun represented that the matter was ultimately dismissed. Strauss also sued Kapraun in small claims court, seeking the return of his chandelier and dress shirt; the lawsuit was withdrawn due to Strauss's bankruptcy proceedings.

¶ 7 Kapraun testified that he "showed up unannounced" at her home in North Aurora on multiple occasions in April 2013; she filed a police report after one incident. His actions made her feel "[v]ery uneasy" and "scared." Although he made no threats, Strauss also "showed up sitting in the waiting room" of Kapraun's workplace in August 2013. She further testified that Strauss repeatedly threatened her to "recant" what she had communicated to one of his creditors, *i.e.*, that Strauss appeared to have significant assets. Kapraun's counsel questioned her regarding multiple emails purportedly sent by Strauss in September and October 2013 wherein he allegedly used foul language, suggested they meet, and/or relayed knowledge of her whereabouts or plans. According to Kapraun, Strauss "had a key logger in my computer that saw every strike of my keys." She received "thousands" of emails from Strauss "through 2013."

¶ 8 On cross-examination, Kapraun testified that after Strauss moved out of her North Aurora home in June 2012, they continued to speak with one another. She was "not quite sure" why she reached out to Strauss after their breakup, stating "[m]aybe it was to respond to his emails or his phone calls or just to get him to stop sending photos and things like that via [email]." She

clarified that she had called the Chicago police non-emergency telephone number on December 17, 2012, after the "door" incident, and filed a report; no charges were filed.

¶ 9 Kapraun was "not quite sure" and could not "recall" whether she was "ever asked or told by anyone to stay away" from Strauss or cease contact with him. Strauss's counsel inquired, "Why did you not stay away from him despite this history of mental or physical abuse?" She responded, "Because Mr. Strauss continued to contact me." She did not "believe" she had contacted him on certain dates in March 2014 referenced by Strauss's counsel. According to Kapraun, the "last time" she contacted Strauss was in April 2014. In "several phone calls," she requested he return her grandmother's pearls so she could wear them to her son's wedding in August 2014. After her testimony, the court denied Strauss's motion for a directed finding.

¶ 10 Strauss testified that he was the president of a company, where he had been employed for 15 years. He stated that he and Kapraun began experiencing problems in approximately April 2012 when "she started drinking on an almost daily basis." He testified that he had moved out of Kapraun's home after she repeatedly struck him while intoxicated and threatened to "take [his] business down as well as physically destroy" his work computers, which were in her basement. Strauss testified that on the day after he moved out, Kapraun "initiated as much as 30 emails to me a day" and travelled to Wisconsin, where he was living. According to Strauss, the parties exchanged approximately 5,000 emails "from that time to the present." Strauss stated, "The last email that I sent to her was January of 2014. The last phone call was I believe January of 2014." He stated that Kapraun "[a]bsolutely" had contacted him since January 2014.

¶ 11 Strauss further testified that, on December 16, 2012, Kapraun was "intoxicated, turning on the lights, punching me." He secured an emergency order of protection on the next day, and she was escorted by the police out of their apartment building. Strauss also testified that he filed

for other orders of protection based on multiple incidents, including when Kapraun repeatedly struck him after the two "had been drinking" at a restaurant. He stated that "she was harassing me in terms of her crazy out of control behavior when she drinks at night time." She allegedly emailed him 150 times while an order of protection was in effect; he never contacted her.

¶ 12 Strauss also testified that Kapraun told him her paramour was "going to have [him] hurt." On February 5, 2014, Strauss filed a police report with Skokie Police for harassment; he subsequently "filed an order of protection." He indicated that the Skokie police department had subpoenaed Kapraun's telephone records. Strauss prepared a spreadsheet for the Skokie police department that documented "[a]ll the contact that she has initiated to me after the Skokie Police contacted her attorney to tell her to cease contact with me." To prepare the spreadsheet, Strauss used email messages, voice messages, telephone records, and "screen shots of missed calls" from Kapraun; he indicated that telephone bills were a source of his information. The spreadsheet indicated that Kapraun attempted to contact him 96 times since February 5, 2014; Strauss stated that he never responded to her attempted contact. Over objection, the spreadsheet was admitted into evidence. Also admitted into evidence were "a collection of photos" sent by Kapraun to Strauss from January 28, 2013, to October 20, 2013, and 2500 emails sent by Kapraun from December 2011 to April 19, 2014. Strauss confirmed that certain correspondence from Kapraun was sent to him "during the time there were pending orders of protection."

¶ 13 During cross-examination, Strauss stated that he "did not initiate an email to her, a phone call, a text since" January 2014. Kapraun's counsel questioned Strauss about a "friend request" on Facebook, an online social networking service, sent from Strauss to Kapraun on April 6, 2014. Characterizing the request as a "mistake," Strauss testified that "[a]t 4:42 in the morning with out [*sic*] my glasses. [*Sic*]. I'm looking at my inbox from Facebook. I see her picture. I

click on what I think is her profile. And I clicked on add friend and the moment I noticed it that morning, I reversed it."

¶ 14 Strauss denied filing a complaint with the IDFPR but admitted contacting the office of the Illinois Attorney General. He testified that Kapraun "wanted to put" a certain business "out of business," and that she asked him to "call because of what was going on there." When questioned regarding his earlier statement that he did not recall filing a complaint with the IDFPR, Strauss explained that he "went through 2500 emails and found out that it's -- that I got referred to the [IDFPR][.]" He further testified that he "made a phone call in March of 2013" to IDES "because she's lying to my creditors that I made $12 or 13 million a year and a $60,000 settlement got botched because of" Kapraun's "lies and mistruths."

¶ 15 The court stated, in part, that Strauss had "absolutely no credibility," characterizing him as "evasive" and "argumentative." Conversely, the court found that Kapraun "testified very credibly" and "she makes it very clear that she wanted to cease having contact with him." The court discussed certain evidence, including Kapraun's undisputed testimony regarding his appearances at her North Aurora home. Referring to the IDES and IDFPR complaints, the court noted that Strauss had testified at the emergency hearing that "he, in fact, had not contacted those agencies." The court found, in part, "that the petitioner has established by a preponderance of the evidence that the respondent has a prior history of abuse and currently engaged in abuse and that if an order of protection is not issued, there's a likelihood that he will engage in future abuse[.]" On August 26, 2014, the circuit court entered a plenary order of protection, directing Strauss to "stay away" from Kapraun for two years.

¶ 16 Strauss filed a motion for a new trial and an amended motion for a new trial pursuant to section 2-1203 of the Code of Civil Procedure. 735 ILCS 5/2-1203 (West 2014). Strauss

contended, in part, that the circuit court "did not consider the list of phone calls that [he] tried to submit" and "refused to look" at any of the "approximately 2500 emails and pictures" he had presented; he argued that certain emails would have discredited Kapraun's testimony and supported Strauss's testimony. Strauss further claimed that the court had found that "Kapraun's pearls were taken by" him; he submitted photographs purportedly showing Kapraun wearing the pearls. He also claimed to have certain audio and video recordings on his telephone which were not played during the hearing. He also contended that Kapraun requested a ride in Strauss's automobile in September 2013, "after the date that she claimed to have been harassed." Strauss represented that the "Skokie Police are now investigating this matter and are able to subpoena telephone records which are not available to civil attorneys." The amended motion provided that such telephone records "should show that Ms. Kapraun continued to call him over 30 times a day on numerous occasions throughout their relationship."

¶ 17 Kapraun responded, in part:

> "Even more concerning and alarming is the fact that the defendant appears to be engaged in cyber stalking of [Kapraun]. In group exhibit A of the defendant's amended motion he has attached pictures from [Kapraun's] Face Book [*sic*] account that are dated August 16th and depict pictures she posted from her son's wedding that occurred in August of 2014. Said pictures were posted and then viewed by Strauss *after* this Court issued the Emergency Order of Protection on August 5, 2014. Even though the EOP was clear, do not contact her or stalk her, Strauss ignored the order and went on her Face Book [*sic*] page. This gives credence to the Court's findings and the real danger that Strauss poses."
> (Emphasis in original.)

¶ 18 The court ordered Strauss to provide transcripts of certain recorded conversations. The transcript of one of the audio recordings reflects a seemingly heated conversation between a "male voice" and a "female voice." The female voice stated, among other things, that: "[t]his is my house, not yours"; "I can do whatever I want"; "[y]ou threatened me"; and "[y]ou raped me." The male voice stated, at various points in the exchange: "[y]ou just hit me"; "[y]ou hit me twice"; "[t]hree times you hit me"; "[y]ou hit me four times"; "that's assault"; "you're destroying my network"; "[y]ou're drunk"; and "[y]ou just assaulted me again." The female voice stated, in part, "Oh, your business is going the wayside. [*Sic.*] I'm going to destroy it."

¶ 19 During a hearing on the section 2-1203 motion on November 24, 2014, Strauss's counsel indicated that the court had received subpoenaed materials from the Skokie police department, *i.e.*, "all the phone calls *** that Mr. Strauss received on his phone." Counsel stated that the telephone records were from the "entire period of time that they were related" and that "more than 60" calls were from February 2014. According to Strauss's counsel, a former Skokie police officer, Benny Johnson,[1] had called Kapraun and "told her not to contact [Strauss] anymore." Explaining the relevance of the records, Strauss's counsel stated that Kapraun had testified that "in February of 2014 she contacted the defendant during this -- the respondent once by phone. But apparently she contacted him hundreds of times."[2] Kapraun's counsel responded that "Strauss should have brought that to the Court's attention" during the plenary order hearing.

¶ 20 The court noted that one of the exhibits offered into evidence was the spreadsheet wherein Strauss "had compiled *** all the phone calls in the month of February of 2014 that he alleged that the petitioner had made to him and vice versa, which is documents you say you have

[1] The record references both "Benni Jonsson" and "Benny Johnson." For ease of reference, we use "Benny Johnson" herein.

[2] The question posed to Kapraun during the prior hearing was, "So how many times in February would you say you contacted him?" She responded, "I contacted him one day in February."

now." Strauss's counsel agreed. The court denied Strauss counsel's request for a continuance "to bring in an officer to testify to what your client already testified to and was admitted into evidence" and ultimately denied Strauss's section 2-1203 motion. The court concluded that there was no "newly discovered evidence" because "Mr. Strauss was in possession of all of those documents, everything that you've submitted; even these Skokie police records or the phone records, those were introduced and considered by me when I made my finding at the hearing." Stating that Strauss wanted "another bite of the apple," the court reiterated that it found him to be "an unbelievably incredible witness" and noted that he had "admitted that he filed all of those complaints." Strauss timely appealed from the court's order on November 24, 2014, denying his section 2-1203 motion and the August 26, 2014, plenary order of protection.

¶ 21 ANALYSIS

¶ 22 Strauss advances two primary arguments on appeal. First, Strauss asserts that the circuit court's determination that Strauss had harassed Kapraun was against the manifest weight of the evidence. He argues that the evidence admitted at trial actually demonstrated quite the opposite: that Strauss was harassed by Kapraun. Strauss contends that his actions could not – and did not – cause Kapraun emotional distress, and that her "main purpose for obtaining an order of protection was to abuse the Domestic Violence Act in an attempt to harass" him. Second, Strauss asserts that the court "abused its discretion and did not provide for substantial justice between the parties by not allowing a new trial" under section 2-1203 based on the "new evidence" *i.e.*, the "official phone records." He further contends that the court "abused its discretion in not allowing for a continuance for a police officer investigating [Kapraun] to testify and/or allowing a new trial based upon this new evidence." We address each contention in turn.

¶ 23 Court's Grant of Plenary Order of Protection

¶ 24 Strauss contends on appeal that the circuit court's finding that he "had harassed [Kapraun] in the past and currently and that said harassment necessitated an order of protection against [Strauss]" was against the manifest weight of the evidence. Kapraun responds that "the Court heard an abundance of evidence showing that Strauss had gone to outrageous and shocking lengths to harass Kapraun and made the proper determination to grant the order of protection."

¶ 25 Section 214(a) of the Domestic Violence Act provides, in part, that "[i]f the court finds that petitioner has been abused by a family or household member ***, an order of protection prohibiting the abuse *** shall issue." 750 ILCS 60/214(a) (West 2014). Kapraun and Strauss were "[f]amily or household members" for purposes of the Act in that they "formerly shared a common dwelling" and "had a dating or engagement relationship." 750 ILCS 60/103(6) (West 2014). Section 205(a) of the Act provides, in part, that the standard of proof in an order of protection proceeding is "proof by a preponderance of the evidence, whether the proceeding is heard in criminal or civil court." 750 ILCS 60/205(a) (West 2014). "Together, then, sections 205(a) and 214(a) establish two things: (1) whether the petitioner has been abused is the central issue in order-of-protection proceedings, and (2) whether the petitioner has been abused is an issue of fact that must be proven by a preponderance of the evidence." *Best v. Best*, 223 Ill. 2d 342, 348 (2006). We will reverse a court's finding of abuse "only if it is against the manifest weight of the evidence." *Id*. at 348-49. "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.* at 350.

¶ 26 The Act defines "abuse" as "physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation[.]" 750 ILCS 60/103(1) (West 2014).

"Harassment" is defined in the Act as follows:

> "(7) 'Harassment' means 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. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct shall be presumed to cause emotional distress:
>
> (i) creating a disturbance at petitioner's place of employment or school;
>
> (ii) repeatedly telephoning petitioner's place of employment, home or residence;
>
> (iii) repeatedly following petitioner about in a public place or places;
>
> (iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner's windows;
>
> (v) improperly concealing a minor child from petitioner ***; or
>
> (vi) threatening physical force, confinement or restraint on one or more occasions." 750 ILCS 60/103(7) (West 2014).

Two of the elements of harassment under the Act are that the conduct "would cause a reasonable person emotional distress" and "does cause emotional distress to the petitioner." Strauss raises challenges with respect to each of these elements.

¶ 27 Strauss contends that "[t]he 'reasonable person' standard outlined in the above definition of harassment must logically be a reasonable person under the circumstances standard as it is outlined in the Stalking No Contact Order Act." The Stalking No Contact Order Act defines "[r]easonable person" as "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 2014). According to Strauss, "[g]iven the evidence elicited at trial through testimony and exhibits, no reasonable person in Petitioner's position who had been constantly communicating back and forth with Respondent would feel emotional distress[.]"

¶ 28 As an initial matter, we note that Strauss cites no authority for his application of the Stalking No Contact Order Act definition of "reasonable person" to the Domestic Violence Act. The definition of "harassment" in the Domestic Violence Act applies to the instant case; such Act requires, in part, that the conduct "would cause a reasonable person emotional distress." 750 ILCS 60/103(7) (West 2014). Simply put, the record is replete with evidence of conduct by Strauss that would cause a reasonable person emotional distress, *e.g.*, Kapraun's testimony regarding physical abuse, threatening communications and uninvited visits to her home. Even assuming *arguendo* that the Stalking No Contact Order Act definition of "reasonable person" applies, we disagree with Strauss's conclusion. We believe that the evidence demonstrates that a person in Kapraun's circumstances with her knowledge of Strauss and his prior acts would nevertheless suffer emotional distress as a result of certain of his actions.

¶ 29 Strauss contends that Kapraun harassed him by, among other things: her "contact with the attorneys in [his] bankruptcy proceeding" which "caused a settlement to be derailed"; threatening to destroy his computer network; and a "pattern of incessant contact initiated" by Kapraun that was uninvited and "for no proper purpose." He asserts that "[u]nder the circumstances no reasonable person would feel harassed in August of 2014 after no significant contact by their 'harasser' for months and no reasonable person would fear for their well-being because of this 'harassment' after the victim was harassing their persecutor." Based on the evidence presented in this matter, we do not find Strauss's argument persuasive. As a

preliminary matter, we observe that the circuit court action that is the subject of the instant appeal was initiated by Kapraun, not Strauss. At the conclusion of the plenary order hearing, Strauss's counsel acknowledged that "the petition isn't reciprocal obviously." Although Strauss attempts to shift the focus to Kapraun's conduct, the question of "whether the *petitioner* has been abused is the central issue in order-of-protection proceedings." (Emphasis added.) *Best*, 223 Ill. 2d at 348.

¶ 30 In addition, we reject Strauss's assertion that the lack of "significant contact" from him in the months prior to the filing of Kapraun's petition means that "no reasonable person would feel harassed in August of 2014." We initially note that Strauss provides no support for arbitrarily narrowing the applicable time frame to the "months" prior to Kapraun's petition. Strauss's actions and communications in 2012 and 2013 are relevant to the determination of whether Kapraun was abused, and the cumulative effect of his conduct may have reasonably resulted in, or contributed to, her August 2014 filing. Furthermore, both parties testified to communications from Strauss to Kapraun in the months prior to Kapraun's petition that "would cause a reasonable person emotional distress." For example, she testified that Strauss "filed for an order of protection" in early May 2014 shortly after he contacted her "stating that if [Kapraun] did not meet with him *** the following day, that [she] would be very unhappy." Despite filing a police report against Kapraun for harassment two months earlier, Strauss also testified that he mistakenly sent a 'friend request' through Facebook to Kapraun on April 6, 2014. Although he "accidentally hit friend rather than hit her profile," she nevertheless received such "friend request" via Facebook. At a minimum, Strauss apparently was viewing or intending to view her profile – conduct that was "not necessary to accomplish a purpose that is reasonable under the circumstances" and "would cause a reasonable person emotional distress." See 750 ILCS

60/103(7) (West 2014). Furthermore, throughout her testimony, Kapraun expressed unease and fear while describing different incidents involving Strauss.

¶ 31 Strauss also contends on appeal that "Petitioner's abuse of the [D]omestic [V]iolence [A]ct in order to harass Respondent shows that she could not be feeling emotional distress in August of 2014 requiring an order of protection and that Petitioner's main purpose for obtaining an order of protection was to abuse the Domestic Violence Act in an attempt to harass Respondent." Although we find Strauss's reasoning to be somewhat circular, his fundamental assertions appear to be: (a) Kapraun invoked the Act for the improper purpose of harassing him; and (b) such "abuse" of the Act indicates that she "could not be feeling emotional distress." As the evidence does not appear to establish that Kapraun "abused" the Act, we reject both assertions.

¶ 32 Strauss cites *Wilson v. Jackson*, 312 Ill. App. 3d 1156, 1167 (2000), for the proposition that "even if respondent's actions constituted abuse, they were insufficient to warrant an order of protection in light of petitioner's misuse of the Domestic Violence Act." Strauss's reliance on *Wilson* is not persuasive. After "[a] careful review of the entire record," the appellate court in *Wilson* was "convince[d] *** that petitioner's primary purpose in seeking an order of protection was not to prevent abuse but was to obtain visitation with and custody of" the parties' child. *Id.* at 1164. The court observed that "[w]hile petitioner's desire to be a part of his child's life is laudable, obtaining an order of protection is not the proper procedure for establishing visitation." *Id.* at 1164-65. Conversely, Kapraun utilized a "proper procedure" by filing a petition pursuant to the Domestic Violence Act. Our legislature has stated that one of the underlying purposes of the Act is to "[s]upport the efforts of victims of domestic violence to avoid future abuse by promptly entering and diligently enforcing court orders which prohibit abuse ***." 750 ILCS

60/102(4) (West 2014). Furthermore, the *Wilson* court "emphasize[d] that not every case of improper use of the Act would require reversal. It is both the misuse of the Act, and the dearth of evidence of abuse *** that compel reversal." *Wilson*, 312 Ill. App. 3d at 1165. Even assuming *arguendo* Kapraun had "misused" the Act, reversal would be inappropriate under *Wilson* given the adequacy of the evidence of abuse herein.

¶ 33 Strauss also cites *In re Marriage of Gordon*, 233 Ill. App. 3d 617, 643 (1992), wherein the circuit court was "very familiar with the whole background of the case" and "was aware of the animosity between the parties." According to Strauss, the trial judge here "knew or should have known that the parties had been going at each other multiple times for orders of protection and had harassing [*sic*] each other and based upon the animosity between the parties it should have been clear that this order of protection was not intended to protect Petitioner but rather to harass Respondent." We again find Strauss's contention unpersuasive. Although it appears from the record that the trial judge was familiar with the parties and the issues based on one or more earlier proceedings before the judge, such familiarity does not lead to the conclusion that Kapraun's petition was intended to harass Strauss. In fact, the court's prior interactions with the parties may have contributed to the court's determination here.

¶ 34 We will reverse a finding of abuse only if it is against the manifest weight of the evidence, *i.e.*, the finding is unreasonable, arbitrary, or not based on the evidence presented. *Best*, 223 Ill. 2d at 350. In the instant case, the circuit court's finding of abuse was supported by the evidence. Thus, it was not against the manifest weight of the evidence. By his own admission, Strauss initiated a number of complaints directed at Kapraun, including multiple petitions for orders of protection, a lawsuit seeking the return of a shirt and a chandelier, and his complaint alleging her unauthorized practice of medicine. His actions caused Kapraun to expend

her time, money and energy, and potentially jeopardized her personal and professional reputation. Furthermore, returning to the definition of "harassment" in the Act, certain conduct by Strauss does not appear to have been "necessary to accomplish a purpose that is reasonable under the circumstances." 750 ILCS 60/103(7) (West 2014). For example, discussing the IDES matter, Strauss testified, "I made a phone call in March of 2013 because she's lying to my creditors that I made $12 or 13 million a year and a $60,000 settlement got botched because of [Kapraun's] lies and mistruths."

¶ 35 Although both parties testified to physical and verbal abuse and other threatening interactions, the court described Strauss as "evasive" and "argumentative." Strauss also acknowledged during the plenary order hearing that he "got referred" to the IDFPR, despite his earlier statement to the contrary. Under the manifest weight standard, it is the trial court that decides the credibility of the witnesses. See, *e.g.*, *Prairie Eye Center, Ltd. v. Butler*, 329 Ill. App. 3d 293, 298-99 (2002). Thus, we defer to the circuit court as the finder of fact because it is best positioned to "observe the conduct and demeanor of the parties and witnesses." *Best*, 223 Ill. 2d at 350. We will not substitute our judgment for that of the circuit court "regarding the credibility of the witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Id.* at 350-51. We thus give deference to the court's assessment that Kapraun "testified very credibly," whereas Strauss had "absolutely no credibility."

¶ 36 Based on our review of the record and for the foregoing reasons, we conclude that the court's finding of abuse was not against the manifest weight of the evidence.

¶ 37 Court's Denial of Section 2-1203 Motion

¶ 38 Strauss also contends that the circuit court "abused its discretion and did not provide for substantial justice between the parties by not allowing a new trial under 735 ILCS 5/2-1203

based on the new evidence tendered by Respondent and the availability of a police officer to testify to the behaviors of Petitioner." Section 2-1203(a) of the Code of Civil Procedure provides that "[i]n all cases tried without a jury, any party may, within 30 days after the entry of the judgment ***, file a motion for rehearing, or a retrial, or a modification of the judgment or to vacate the judgment or for other relief." 735 ILCS 5/2-1203(a) (West 2014). The decision to grant or deny a section 2-1203 motion "lies within the discretion of the circuit court and will not be reversed absent an abuse of that discretion." *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007). "Whether a trial court has abused its discretion turns on whether the court's refusal to vacate" its earlier order "violates the moving party's right to fundamental justice and manifests an improper application of discretion." (Internal quotation marks omitted.) *In re Marriage of King*, 336 Ill. App. 3d 83, 87 (2002); see also *In re Marriage of Sutherland*, 251 Ill. App. 3d 411, 414 (1993) ("On review, the appellate court must examine not merely whether the court's order pursuant to section 2-1203 represented an abuse of discretion but, rather, whether regarding that order, substantial justice is being done between the parties").

¶ 39 The purpose of a section 2-1203 motion is "to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law." *Stoval*, 374 Ill. App. 3d at 1078. Strauss contends that "two pieces of newly discovered evidence, mainly telephone records and testimony by a Skokie police officer should be considered by the court in granting a new trial." "To justify setting aside a prior order based on newly discovered evidence, (1) the party seeking to overturn the order must show due diligence in discovering the evidence; (2) the party must also show that he could not have produced the evidence at the first trial by exercising due diligence; (3) the party must demonstrate that the evidence is so conclusive that it would probably change the trial result; (4) the evidence must be

material and relate to the issues; and (5) the evidence cannot merely be cumulative or serve the sole purpose of impeachment." *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409-10 (2005).

¶ 40 As to the telephone records, Strauss asserts that he "was unable to procure these records himself and they were obtained after the proceedings on August 26, 2014 as part of a police investigation into a complaint of telephone harassment on behalf of Petitioner against Respondent." Simply put, such telephone records do not constitute new evidence. A spreadsheet prepared by Strauss which provided information regarding telephone calls from Kapraun was entered into evidence during the plenary order hearing.[3] Although it had expressed skepticism regarding the spreadsheet, the court confirmed during the hearing on the section 2-1203 motion that it had considered the records during the plenary hearing. The subpoenaed telephone records were duplicative or "cumulative" in nature, and do not justify a new trial or reconsideration.

¶ 41 We also presume, although need not decide, that Strauss had access to his own telephone records at the time of the plenary order hearing, given his ability to produce a spreadsheet that apparently listed calls from Kapraun. As Kapraun observes, Strauss "must suffer the consequences of his failure to present to evidence persuasively when he had the opportunity to do so at the original trial." Furthermore, "[r]ehearing or reconsideration is not warranted unless the newly discovered evidence is of such conclusive or decisive character as to make it probable that a different judgment would be reached." *Patrick Media Group, Inc. v. City of Chicago*, 255 Ill. App. 3d 1, 8 (1993). Based on our review of the record, we conclude that the subpoenaed telephone records – even if considered a "much more credible source of information," as Strauss contends – would not have changed the result of the plenary order hearing.

[3] Neither the spreadsheet nor the other exhibits – at least not in their entirety – appear to be included in the record on appeal. "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 42 Strauss also asserts that the "testimony by a Skokie police officer" constituted another piece of newly discovered evidence. He asserts that the testimony of "the investigating officer from the Skokie Police Department, Detective Johnson" would have "attacked" Kapraun's credibility and "bolstered" Strauss's testimony and other evidence. We do not find this argument persuasive. As a threshold matter, it appears that Officer Johnson was not subpoenaed, in light of Strauss's counsel's statement during the November 24, 2014, hearing: "I probably could subpoena [Benny Johnson] although he's in the FBI." Given his reference to Officer Johnson during his testimony on August 26, 2014, Strauss knew the officer's name at such time – at least three months prior to the section 2-1203 motion hearing. Any potential testimony by Officer Johnson would not constitute "newly discovered" evidence.

¶ 43 In any event, a police officer would not be permitted to authenticate the subpoenaed telephone records. See, *e.g.*, Ill. R. Evid. 803(6) (eff. Apr. 26, 2012). Strauss's counsel acknowledged during the November 24, 2014, hearing that the phone records "were certified, I believe, from the phone company." Furthermore, we agree with Kapraun's assessment that "[c]alling an officer from Skokie to testify to these records would have served no purpose but to further delay the action." Even if an officer were to testify regarding his investigation of claims of telephone harassment by Kapraun against Strauss, such evidence would not "make it extremely probable that a different judgment would have been reached," as Strauss suggests. The finding of abuse by Strauss against Kapraun was supported by the evidence. Finally, even Strauss's counsel appeared to concede at the conclusion of the hearing on the section 2-1203 motion that there was no "new evidence." See *Stoval*, 374 Ill. App. 3d at 1078 (stating "newly discovered evidence" is "evidence that was not available prior to the hearing").

¶ 44 In sum, we conclude that the circuit court did not abuse its discretion in its denial of

Strauss's section 2-1203 motion and that "fundamental justice" (*King*, 336 Ill. App. 3d at 87) and "substantial justice" (*Sutherland*, 251 Ill. App. 3d at 414) has been done between the parties. We also reject Strauss's contention that the court erred in denying his request for a continuance during the November 24, 2014, hearing. "A trial court's decision to deny a continuance will not be reversed absent an abuse of discretion." *In re Tashika F.*, 333 Ill. App. 3d 165, 169 (2002). "Additionally, the denial of a request for a continuance will not be grounds for reversal unless the complaining party has been prejudiced by such denial." *Id.* During the November 24, 2014, hearing, the court – addressing Strauss's counsel – stated: "[Y]our request for a continuance so that you can now bring in an officer to testify to what your client already testified to and was admitted into evidence is denied." The trial court's denial of Strauss's request did not constitute an abuse of discretion and, as discussed above, he was not prejudiced by the court's denial.

¶ 45 CONCLUSION

¶ 46 The judgment of the circuit court of Cook County is affirmed in its entirety for the reasons set forth herein.

¶ 47 Affirmed.