2016 IL App (4th) 150976-U

NO. 4-15-0976

FILED
September 30, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MICHAEL SHEEHAN,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Macon County
SHEILA WOLF,	)	No. 15OP414
Respondent-Appellant.	)	
	)	Honorable
	)	Phoebe S. Bowers,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's ruling on the plenary stalking no-contact order was not against the manifest weight of the evidence.

¶ 2 In July 2015, petitioner, Michael Sheehan, filed a verified petition for a stalking no-contact order. That same month, the trial court entered an emergency stalking no-contact order. In August 2015, the court entered a plenary stalking no-contact order, set to expire on August 19, 2016. In September 2015, respondent, Sheila Wolf, filed a motion to reconsider. In November 2015, the court denied the motion to reconsider.

¶ 3 Respondent appeals, arguing the trial court (1) erred in entering a stalking no-contact order where the statutory requirements for such an order were not met; and (2) abused its discretion in entering the emergency stalking no-contact order where there was no evidence of imminent harm. We affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Sheehan's Petition

¶ 6 In July 2015, petitioner filed a verified petition for a stalking no-contact order, seeking protection for petitioner; his wife, Jeneen; and his son, C.S. The petition alleged the following incidents warranted a stalking no contact order: (1) in November 2013, respondent stood behind C.S. in a threatening manner in the lunchroom at the boy's school; (2) in April 2014, respondent followed C.S. to a park, causing C.S. to call 9-1-1; (3) in May 2015, respondent's son, Z.W., threw rocks at C.S. and respondent shouted at petitioner and C.S. to go inside their home; and (4) in June 2015, respondent went to petitioner's place of business and told the partner in charge that petitioner and C.S. were bad people. The trial court entered an emergency stalking no-contact order.

¶ 7 B. Plenary Order Hearing

¶ 8 In August 2015, the matter proceeded to a hearing for a plenary order, where the trial court heard the following evidence.

¶ 9 1. *Petitioner*

¶ 10 Petitioner testified respondent was his neighbor and the parties' children went to school together. In November 2013, an incident occurred in the school cafeteria which required involvement by the school authorities. According to petitioner, respondent approached C.S. in the cafeteria and stood behind him, staring down at him.

¶ 11 Petitioner testified about a May 2015 encounter between the parties. According to petitioner, a creek ran through his backyard. Respondent's backyard was on the opposite side of the creek and two properties down. Petitioner was in his kitchen looking out the window and saw Z.W. "across the creek in the neighbor's yard yelling into our yard at my son[,] calling him

an 'F'ing bitch.' " Initially, petitioner was unconcerned; however, he observed Z.W. throw a rock in C.S.'s direction, so petitioner went into the backyard. According to petitioner, C.S. was recording Z.W. throwing rocks. At that point, respondent came over from her backyard and started screaming at petitioner about surveillance equipment and tracking devices. Petitioner suggested respondent go home, which she eventually did.

¶ 12 Petitioner further testified he was unaware that C.S. had ever threatened to shoot respondent's house with a BB gun. Petitioner was aware, however, that respondent had made complaints to the children's school regarding C.S. bullying Z.W. The school authorities had not verified any incidents of bullying, but the two children were separated at school, had new schedules, and took different buses.

¶ 13 2. *Jeneen Sheehan*

¶ 14 Jeneen Sheehan testified, in April 2014, C.S. and a friend walked to a nearby park. The route to the park required the children to walk past respondent's house. Approximately half an hour after the boys left, Jeneen received a phone call from C.S. C.S. sounded distressed and reported respondent was following him. Jeneen drove to the park and saw respondent walking away from her home and toward the park. According to Jeneen, she picked the children up, learned C.S. had called 9-1-1, and drove home. On the way home, she saw respondent walking back to her house. A police officer later responded to the 9-1-1 call and spoke with C.S.

¶ 15 3. *Thomas Leach*

¶ 16 Thomas Leach testified he and petitioner were partners at Sikich, a public accounting firm. In June 2015, respondent, who had accounts at Sikich, had an appointment to meet with Leach. According to Leach, respondent mentioned she discussed concerns she had

regarding petitioner's access to her information with a different partner at Sikich the year before, but her concerns were satisfied, and she was happy working with this other partner. Respondent then went on to detail her concerns regarding petitioner and his family, and she described several incidents, including seeing C.S. using a tracking device on Z.W. This visit prompted Leach to contact legal counsel to address several business and safety issues.

¶ 17 4. *Respondent*

¶ 18 Respondent testified she recalled the park incident took place in March 2014. According to respondent, she went to check her mail and saw C.S. and another boy crouched down on her property. When C.S. saw respondent, he jumped up and began running in the direction of the park. Respondent retrieved her mail and looked up the sidewalk. C.S. was stopped, "looking back as if he was seeing what [respondent] was doing[,] as if he might be coming back." The children then continued on toward the park and turned where respondent could no longer see them. Concerned the boys might cut through the backyard and double back, respondent walked down the sidewalk to see where the boys were. When she saw the boys had gone to the park, she returned home and called the nonemergency number to make a trespassing report.

¶ 19 Respondent testified, in May 2015, Z.W. was outside playing in a neighbor's backyard. Respondent heard yelling, so she went outside and saw C.S. pointing a cell phone camera at Z.W. At that point, petitioner came outside. According to respondent, she told C.S. to stop filming her children and asked them to leave her children alone, which caused petitioner to go on a "tirade." Respondent admitted her voice was raised so she could be heard over the wind and the flooded creek.

¶ 20 Finally, respondent testified she met with Leach to explain why she was moving her accounts from Sikich. According to respondent, she had accounts handled by another Sikich employee and she wanted to make sure Leach knew her choice to move the accounts had nothing to do with the employee's performance. Respondent testified she did not intend to intimidate or threaten petitioner by speaking to Leach. However, she did tell Leach about the bullying problems between C.S. and Z.W. and other conflicts between petitioner and respondent.

¶ 21 5. *Z.W.*

¶ 22 Z.W. testified, in May 2015, he was playing in a neighbor's backyard when C.S. began filming him on a cell phone. According to Z.W., C.S. bullied him and made threats against him. Z.W. asked C.S. to stop filming him, and C.S. refused. Z.W. testified he was angry and throwing rocks into the creek that ran between the boys. After petitioner and respondent came outside, Z.W. went with respondent to the police department to report the incident.

¶ 23 6. *Mark Rade*

¶ 24 Former Macon County police officer Mark Rade testified, on March 4, 2014, he spoke with respondent at her home. Rade could not recall any details, but he remembered he was responding to a "trespass situation or possibly some harassment." According to Rade, there were ongoing trespassing problems. No further action was taken.

¶ 25 7. *Timothy Hoffman*

¶ 26 Timothy Hoffman, a Macon County sheriff's deputy, testified he was the school resource officer in November 2013, at which time he responded to a call at respondent's residence. At that time, respondent reported C.S. threatened to shoot a BB gun at either respondent's house or Z.W. No further action was taken.

¶ 27 C. Motion To Reconsider

¶ 28 Following the hearing, the trial court granted the plenary order. In September 2015, respondent filed a motion to reconsider. In its written order, the court noted (1) the incident in which respondent followed C.S. to the park, prompting C.S. to call 9-1-1; (2) the shouting match across the creek; and (3) the trip respondent made to petitioner's workplace, purportedly to discuss her accounts, but primarily to disparage petitioner. The court found these three incidents established, by a preponderance of the evidence, the "course of conduct" required by the Stalking No Contact Order Act (Act) (740 ILCS 21/10 (West 2014)). The court further found the three incidents would cause a person in petitioner's position to suffer anxiety, alarm, and fear for his or his family's safety. Accordingly, in November 2015, the court denied the motion to reconsider.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Respondent appeals, arguing the trial court (1) erred in entering a stalking no-contact order where the statutory requirements for such an order were not met; and (2) abused its discretion in entering the emergency stalking no-contact order where there was no evidence of imminent harm. We turn first to respondent's claims regarding the plenary stalking no-contact order.

¶ 32 A. Plenary Order

¶ 33 Respondent contends the trial court erred as a matter of law in finding the Act's requirements were met and its ruling is subject to *de novo* review. Petitioner asserts respondent's arguments actually address the sufficiency of the evidence and, therefore, we must determine whether the court's ruling was against the manifest weight of the evidence. We conclude respondent's claims relate to the sufficiency of the evidence to prove (1) petitioner feared for his

or his family's safety or suffered emotional distress, and (2) respondent knew or should have known her actions "would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress." *Id.*

¶ 34 The standard of proof in proceedings to obtain a stalking no-contact order is proof by a preponderance of the evidence. 740 ILCS 21/30(a) (West 2014). A plenary stalking no-contact order is subject to a manifest-weight-of-the-evidence standard of review. *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶¶ 22-24, 993 N.E.2d 594. "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." *Id.* ¶ 22.

¶ 35 " 'Stalking' means 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." (Emphasis added.) 740 ILCS 21/10 (West 2014). The petitioner must prove the "course of conduct" included at least two acts in which the respondent "follows, monitors, observes, surveils, threatens, or communicates to or about, a person." *Id.* " 'Emotional distress' means significant mental suffering, anxiety[,] or alarm." *Id.*

¶ 36 The trial court is in the best position to observe the conduct and demeanor of the parties and witnesses. *Stapp v. Jansen*, 2013 IL App (4th) 120513, ¶ 17, 988 N.E.2d 234. "Where a conflict in the witnesses' testimony exists, a reviewing court will not substitute its judgment for that of the trier of fact, whose function it is to determine the credibility of the witnesses' testimony and the inferences to be drawn therefrom." *Id.* We will not overturn the trial court's factual findings merely because we might have reached a different conclusion. *Id.*

¶ 37 To the extent the witnesses' testimony conflicted, we defer to the court's findings, which credited petitioner's evidence. Accordingly, we decline to substitute our judgment for that of the trial court with respect to witness credibility, the weight given to the evidence, or the inferences drawn therefrom. *Best v. Best*, 223 Ill. 2d 342, 350-51, 860 N.E.2d 240, 245 (2006).

¶ 38 Here, the evidence established at least three occasions where respondent engaged in a course of conduct under the Act. First, the testimony credited by the trial court established respondent followed C.S. and his friend to the park, causing C.S. enough concern that he felt compelled to call 9-1-1. The record also contains evidence of a verbal altercation where respondent screamed at petitioner and his son while they were on their own property and respondent was on a neighbor's property. Finally, testimony established that respondent went to petitioner's place of business specifically to disparage petitioner's character to his business partner. While there is evidence respondent eventually closed some of her accounts at Sikich, her own testimony was unequivocal that she thought petitioner's business partner ought to know what a bad person he was. Moreover, the evidence showed respondent called the police on numerous occasions to complain about C.S.'s alleged trespassing on her property.

¶ 39 This evidence is clearly sufficient to show respondent engaged in a course of conduct from which the Act seeks to offer protection. The trial court's conclusion that a reasonable person in petitioner's circumstances would fear for his or his son's safety or suffer emotional distress was also not against the manifest weight of the evidence. Although no one explicitly testified they feared for their safety or suffered emotional distress, this was a reasonable inference to draw from this evidence. Not only did respondent repeatedly call police, but she further escalated these encounters by going to petitioner's workplace with the intention of causing him professional problems. Further, we conclude the court's finding that a reasonable

person should have known that respondent's conduct would cause petitioner fear, anxiety, or alarm was not against the manifest weight of the evidence. A reasonable person should know that following someone's child to a park, screaming at someone who is on their own property, and visiting someone's workplace with the intention of causing professional problems would cause that person to suffer anxiety and alarm. Accordingly, we conclude the court's ruling on the plenary order was not against the manifest weight of the evidence.

¶ 40 B. Emergency Order

¶ 41 Respondent also contends the trial court abused its discretion in entering the emergency stalking no-contact order where there was no evidence of imminent harm. In this case, the emergency order expired on July 24, 2015, is not subject to future extension, and is without legal effect as respondent is subject only to the plenary order. Because we find this claim moot, we need not address the merits of the argument. "As a general rule, courts in Illinois do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided." *In re Alfred H.H.*, 233 Ill. 2d 345, 351, 910 N.E.2d 74, 78 (2009). Because respondent is subject only to the current plenary order, any decision by this court with regard to the emergency order would be advisory. Although various exceptions to the mootness doctrine exist, respondent does not argue an exception applies in this case. Accordingly, we decline to address the merits of this claim.

¶ 42 III. CONCLUSION

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

¶ 44 Affirmed.