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2017 IL App (4th) 160323-U

NO. 4-16-0323

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
January 5, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

ANN M. WHEATLEY,	)	Appeal from
Petitioner-Appellee,	)	Circuit Court of
v.	)	Woodford County
TERI WHALEN,	)	No. 15OP116
Respondent-Appellant.	)	
	)	Honorable
	)	Michael L. Stroh,
	)	Judge Presiding.

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JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Turner and Justice Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in granting petitioner a stalking no contact order because petitioner failed to present sufficient evidence to justify the order.

¶ 2 On December 29, 2015, the trial court granted petitioner Ann M. Wheatley's petition for a stalking no contact order. Respondent, Teri Whalen, appeals, arguing the court erred in granting Ann's petition. We reverse.

¶ 3 I. BACKGROUND

¶ 4 On December 9, 2015, Ann filed a verified petition for a stalking no contact order against Teri. Ann alleged she was seeking the order because Teri had been calling, texting, and harassing her, beginning in 2008. In addition, Ann alleged Teri accessed her and her husband Christopher (Chris) Wheatley's financial information multiple times without their authorization while working at a local credit union.

¶ 5 That same day, the trial court granted Ann an emergency stalking no contact order against Teri and set a hearing for December 23, 2015. On December 23, 2015, the court extended the emergency order until December 29, 2015.

¶ 6 On December 29, 2015, the trial court held a hearing on the petition. Ann testified she was asking for an extension of the emergency order of protection for the next two years. According to Ann, over the prior eight years, Teri had telephoned her, texted her, and created fake Facebook pages from which she would send Ann friend requests. Ann stated she had documentation showing Teri had been bothering her on Facebook and via text messages since 2012. Ann's exhibit No. 3 showed single texts from Teri's phone on February 22, 2015, and May 30, 2015. The May 30 text asked if Ann would like to get coffee sometime. Ann said she had messages asking Teri to stop. She had blocked 11 Facebook pages she alleged Teri had created and from which Teri sent friend requests. Ann complained to Teri about Teri "liking" Ann's comments on Facebook and asked her to stop that. Ann also testified Teri had accessed her and Chris's accounts at the credit union where Teri worked.

¶ 7 On cross-examination, Ann admitted she responded to Teri's communications on occasion. Ann said she did not initiate contact but responded to some of Teri's communications over the prior eight years. Ann admitted she did not always tell Teri to stop communicating with her.

¶ 8 Shawn Harrison, the internal audit risk manager for the credit union where Teri was employed, testified Ann contacted him in December 2015 to see if Teri had accessed Ann's account without her permission. Ann also contacted him two times in 2013, once in March and again in November. Harrison looked into the matter in 2013 and found Teri had not accessed any of Ann's information in the credit union's database. However, when he looked into the

matter in 2015, he discovered multiple account accesses in 2014 and 2015. Teri had also accessed Chris's account in 2014 and a couple of times in 2015. Harrison testified Teri may have had legitimate reasons to access their accounts. The screens Teri accessed would have displayed the account holder's name, address, date of birth, social security number, and possibly account balances.

¶ 9 Chris testified he had no reason to pursue a mortgage or refinance anything through the credit union. Therefore, Teri had no reason to look into his accounts.

¶ 10 Teri testified she was a member service representative, home loan originator, and interviewer at the credit union. Teri testified she referred a home equity loan to Ann and Chris through text messages and placed their names on a tracking list. Teri testified she would periodically check the accounts of people on her tracking list to see if they had taken out a home equity loan. Teri testified she believed she and Ann were on civil terms when she contacted Ann about the home equity loan.

¶ 11 Chris questioned Teri about petitioner's exhibit No. 10, which was an exchange via Facebook on August 6, 2013. Teri admitted writing the Facebook message to Ann, apologizing to Ann for bothering her. As for accessing Ann's and Chris's accounts with regard to the home equity loan, Teri testified Ann never told her not to look at Chris's accounts. Teri testified she was fired from the credit union for accessing Ann's and Chris's accounts. According to Teri, she lost her job because she did not have proof of the conversations with Ann. Teri acknowledged neither Ann nor Chris reached out to her to look into a home equity loan for them.

¶ 12 The trial court found Teri had engaged in two or more acts of stalking. Further, according to the court:

"Now, obviously, there's been no testimony here regarding the Wheatleys fearing for their safety. So that moves us on to the [*sic*] whether a reasonable person would suffer emotional distress. A reasonable person has been defined by the statute to mean a person in the petitioner's circumstances with the petitioner's knowledge of the respondent and respondent's prior acts. In this particular instance using the reasonable person standard—it is not a subjective standard, it is an objective standard—using that standard, this court in light of all of the evidence presented can conclude by a preponderance of the evidence that a reasonable person would suffer emotional distress from these acts that were perpetuated or done by the respondent in this case."

The court granted the stalking no contact order for a period of two years.

¶ 13 On January 27, 2016, Teri filed a motion to reconsider. On February 29, 2016, the trial court denied the motion to reconsider.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 Teri argues we should reverse the trial court's decision because Ann failed to meet her burden of proof. According to Teri, she and Ann engaged in adolescent behavior. Teri argued the Wheatleys were at most "bothered" by her actions, which does not justify the court's order. Further, according to Teri:

"Given the lack of \*\*\* evidence in the record, to establish the Wheatley's [*sic*] emotional distress, the Court filled in that void

by presuming such emotional distress under a strained application of the reasonable person standard. The reasonable person standard, under the Act, is a check on overly sensitive or susceptible persons obtaining relief under the Act, where the behavior towards them would not cause a reasonable person to react similarly. The purpose of the reasonable person standard is to assess whether the victim[']s fear, anxiety or emotional distress is a reasonable response to [Teri's] conduct. It is not to supply that response, where it has not been experienced. Harm, the victimization, must needs [*sic*] be there for a plenary order to enter, and cannot be supplied by a strained presumption under the reasonable person standard."

¶ 17 Section 5 of the Stalking No Contact Order Act (Act) provides the purpose of the Act, stating in part:

"Stalking generally refers to a course of conduct, not a single act. Stalking behavior includes following a person, conducting surveillance of the person, appearing at the person's home, work or school, making unwanted phone calls, sending unwanted emails or text messages, leaving objects for the person, vandalizing the person's property, or injuring a pet. *Stalking is a serious crime.* Victims experience fear for their safety, fear for the safety of others and suffer emotional distress. Many victims alter their daily routines to avoid the persons who are stalking them. Some victims

are in such fear that they relocate to another city, town or state. While estimates suggest that 70% of victims know the individuals stalking them, only 30% of victims have dated or been in intimate relationships with their stalkers. All stalking *victims* should be able to seek a civil remedy requiring the offenders stay away from the victims and third parties." (Emphases added.) 740 ILCS 21/5 (West 2014).

In addition, section 15 of the Act (740 ILCS 21/15 (West 2014)) states, "A petition for a stalking no contact order may be filed when relief is not available to the petitioner under the Illinois Domestic Violence Act of 1986 \*\*\* by any person who is a *victim* of stalking." (Emphasis added.)

¶ 18 The General Assembly provided specific definitions for the following terms used in the Act:

" 'Emotional distress' means significant mental suffering, anxiety or alarm.

\* \* \*

'Reasonable person' means a person in the petitioner's circumstances with the petitioner's knowledge of the respondent and the respondent's prior acts.

'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." 740 ILCS 21/10 (West 2014).

Pursuant to section 30 of the Act (740 ILCS 21/30 (West 2014)), the petitioner bears the burden of proving by a preponderance of the evidence that the conduct at issue constitutes stalking.

*McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 10, 30 N.E.3d 557. Pursuant to these statutory definitions and the evidence presented, Ann failed to meet her burden of presenting sufficient evidence to establish Teri engaged in a course of conduct directed at either Ann or Chris when Teri knew or should have known her course of conduct would cause a person in Ann's circumstances to fear for her or Chris's safety or suffer significant mental suffering, anxiety, or alarm. 740 ILCS 21/10 (West 2014). As a result, we hold the trial court's order is against the manifest weight of the evidence. *McNally*, 2015 IL App (1st) 134048, ¶ 12, 30 N.E.3d 557.

¶ 19 The trial court even noted neither Ann nor Chris presented any evidence Ann feared for her own or Chris's safety. We also note Ann and Chris failed to introduce any evidence Ann suffered significant mental suffering, anxiety, or alarm. At most, Ann presented evidence Teri's actions bothered her and Chris. Based on the evidence presented, Teri's actions do not rise to the level of stalking.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we reverse the trial court's order granting the stalking no contact order.

¶ 22 Reversed.