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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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NORA KOSTRO,	)	Appeal from the
	)	Circuit Court
Petitioner-Appellee,	)	of Cook County.
	)	
v.	)	
	)	No. 16 OP 30512
JENNIFER MARQUEZ,	)	
	)	
Respondent-Appellant.	)	The Honorable
	)	Bridget Hughes,
	)	Judge, presiding.

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PRESIDING JUSTICE COBBS delivered the judgment of the court.  
Justices Fitzgerald Smith and Lavin in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court's entry of a two-year plenary stalking no contact order against respondent is affirmed where she was not precluded from presenting evidence.

¶ 2 Petitioner Nora Kostro (Nora) sought a "stalking no contact" order against respondent Jennifer Marquez (Jennifer) after receiving daily threatening communications. Following a hearing, the circuit court of Cook County entered a two-year plenary stalking no contact order pursuant to the Stalking No Contact Order Act (Act). 740 ILCS 21/1 *et seq.* (West 2016).

Jennifer appeals, contending that she was denied her constitutional right to procedural due process. We affirm.

¶ 3

### BACKGROUND

¶ 4

On August 9, 2016, Nora filed a petition for an emergency stalking no contact order pursuant to the Act (740 ILCS 21/5 (West 2016)). The petition included the following allegations. Nora and her husband, Chris Kostro (Chris) had terminated babysitting services provided by Jennifer because she had become unreliable and they did not feel safe leaving their children with her. Subsequent to Jennifer's termination, Nora and Chris received harassing and threatening communications from Jennifer. She sent text messages, emailed and called multiple times a day, every day from July 11, 2016, through August 9, 2016. Jennifer threatened the well being of their children, their dog, and she even threatened to show up at their house and/or work "angry", which Jennifer stated that they would not want. In one email, Jennifer warned Nora and Chris that they had better change their locks. Jennifer also threatened to have police in her family harass them. On August 9, Jennifer sent a text stating that "[y]ou have not seen out of control yet \* \* \* my mom will never forget \* \* \* day & night \* \* \* and it is all your fault." On the same day an emergency stalking no contact order was entered against Jennifer. It was extended on several subsequent dates.

¶ 5

On December 19, 2016, the circuit court conducted a plenary hearing on the matter. Chris testified that Jennifer had been their babysitter for about seven months and that Jennifer's services had been terminated seven months prior to the hearing. After the working relationship was ended, Jennifer and her husband, George Marquez, sent constant threatening emails and text messages. Chris asked Jennifer to stop communicating with him in the beginning of August. The contact from Jennifer stopped once the emergency order was entered. George Marquez continued

to contact Chris until September.<sup>1</sup> There had been a dispute over wages and Jennifer claimed she was owed \$2,000, which had been paid. Chris also testified that Jennifer claimed she had been hurt on the job and had requested insurance information, which was refused. Chris was the only witness to testify.

¶ 6 During Chris's testimony, the circuit court interjected and asked Jennifer's counsel "[i]f there was anything the he wished to respond to." Counsel replied that this was a dispute over working conditions, money was owed, and that Jennifer had been hurt on the job and there was no agreement to give her insurance information. Counsel stated that, "[m]y client's position is not that they want to stalk or do anything like that and it never has been. It's been that my client, Miss Marquez, believes she's owed some money."

¶ 7 The court determined that there was no need for constant contact between the parties. The court reasoned that if Nora and Chris had not come here for an order, Jennifer may still contact them. The court then stated that, "[i]f you believe that this gentleman and his wife owe you money for wages, you can sue them civilly. If you were hurt and you believe you have an injury cause of action against them, then you can sue them civilly. But you cannot contact them, harass them or say threatening things. That you cannot do."

¶ 8 Jennifer's counsel inquired about putting on his case, and the court stated that it had heard from both sides on the matter and inquired, "[i]s there some other information you want to tell me that you don't think I know?" Jennifer's counsel responded in the affirmative and the court replied, "[t]ell me what you think I didn't hear."

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<sup>1</sup> Nora also filed a petition for an emergency stalking no contact order against George Marquez , which was granted on September 1, 2016, followed by the entry of a two-year plenary stalking no contact order. A separate appeal, docketed as No. 1-17-0180, is pending with regard to that order.

¶ 9 Counsel then stated that the "statute specifically excepts work place disputes and disputes between an employer and employee from the definition of harassment." He further stated that there had not been "any actual evidence entered about contact which would be harassment under the statute." He indicated that Jennifer was contacting Nora and Chris about an employment issue. The court again asked if there was anything else that counsel wanted to tell her. Counsel responded "I have nothing further. I would like to call witnesses."

¶ 10 The circuit court disagreed with counsel and found that "the amount of emails they sent to this couple, there were so many of them that it did cross the line and escalate the situation from a simple work dispute to something that caused them stress and harassment." Jennifer's counsel moved for a directed verdict, which was denied. The court then entered a two-year plenary stalking no contact order against Jennifer. Jennifer timely appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, Jennifer's sole argument is that she was denied her constitutional right to procedural due process because the circuit court denied her a meaningful opportunity to present evidence or call witnesses in support of her case.

¶ 13 Our supreme court has repeatedly held that cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort. Consequently, courts must avoid reaching constitutional issues when a case can be decided on other, nonconstitutional grounds. *Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 34; *In re E.H.*, 224 Ill. 2d 172, 178 (2006). We conclude that this case can be decided on evidentiary grounds.

¶ 14 In determining whether evidence is relevant, the circuit court must consider the evidence in light of the factual issues raised by the pleadings, and it is not error to exclude testimony

which does not bear on the specific issues under consideration. *Mulloy v. American Eagle Airlines, Inc.*, 358 Ill. App. 3d 706, 712 (2005); *Aguinaga v. City of Chicago*, 243 Ill. App. 3d 552, 567 (1993). A circuit court may exclude evidence that is only marginally relevant, unduly prejudicial, confusing, or misleading. *Holmes v. South Carolina*, 547 U.S. 319, 326-27 (2006); *Mulloy*, 358 Ill. App. 3d at 712. The circuit court is vested with the discretion to determine the relevancy and admissibility of evidence, and its decision will not be overturned on appeal absent a clear abuse of discretion. *Addis v. Exelon Generation Co., L.L.C.*, 378 Ill. App. 3d 781, 794 (2007); *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 384 (2003). A court abuses its discretion only when no reasonable person would agree with its decision. *Simich v. Edgewater Beach Apartments Corp.*, 368 Ill. App. 3d 394, 411 (2006) (citing *Dawdy v. Union Pacific R.R. Co.*, 207 Ill. 2d 167, 177 (2003)).

¶ 15 The legislature passed the Act in 2010 to provide a remedy for victims who have safety fears or emotional distress as a result of stalking and harassment. 740 ILCS 21/5 (West 2016). Section 10 of the Act defines stalking as "engaging in a course of conduct directed at a specific person, where 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 2016). Section 5 states in pertinent part that a: "[c]ourse of conduct means 2 or more 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." *Id.* In addition, examples of stalking and harassment include making unwanted phone calls, and sending unwanted emails or text messages. See 740 ILCS 21/5 (West 2016); *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 10.

¶ 16 Here, the record demonstrates that the circuit court made numerous attempts to elicit from Jennifer's counsel what else he might seek to present. Counsel repeatedly responded that this was an employer/employee dispute, which he claimed was an exception to the Act. Counsel argued that this was a dispute over working conditions and money owed for services and that under these circumstances the communications were exempt. He merely offered legal justification for the conduct based on the Act, referring to the definition that "[s]talking does not include an exercise of the right to free speech \* \* \* that is otherwise lawful \* \* \* and arises out of a bona fide labor dispute." See 740 ILCS 21/10 (West 2016). Counsel never stated that Nora's allegations regarding the threatening communications were false, inaccurate or misleading. Further, Jennifer was not prevented from making an offer of proof. We conclude that the purported evidence that this was a labor dispute was not marginally relevant; in fact it was irrelevant given the threatening content and sheer number of communications for which there was no justification or exemption under the Act. *Id.*; *Holmes*, 547 U.S. at 326-27. Thus, we find no abuse of discretion.

¶ 17 We also find that the evidence amply supported the circuit court's determination that Nora feared for her safety and the safety of her family. See 740 ILCS 21/10 (West 2016). We agree with the court when it stated that Jennifer's threatening communications did "escalate the situation from a simple work dispute to something that caused them stress and harassment." We conclude that Jennifer's communications were covered under the Act and a plenary order was warranted to prevent further conduct of a similar nature. See *McNally*, 2015 IL App (1st) 134048, ¶ 16. Accordingly, we hold that the court did not abuse its discretion in entering a two-year plenary stalking no contact order against Jennifer. Since we have decided this case on

evidentiary grounds, we need not consider Jennifer's constitutional challenge. *People v. Ringland*, 2017 IL 119484, ¶ 38; *Beahringer v. Page*, 204 Ill. 2d 363, 370 (2003).

¶ 18

CONCLUSION

¶ 19

For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 20

Affirmed.