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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

NORA KOSTRO,)	Appeal from the
)	Circuit Court
Petitioner-Appellee,)	of Cook County.
)	
v.)	
)	No. 16 OP 30575
GEORGE MARQUEZ,)	
)	
Respondent-Appellant.)	The Honorable
)	Bridget Hughes,
)	Judge, presiding.

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 he was not precluded from presenting evidence.

¶ 2 Petitioner Nora Kostro (Nora) sought a "stalking no contact" order against respondent George Marquez (George) 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). George

appeals, contending that he was denied his constitutional right to procedural due process. We affirm.

¶ 3

BACKGROUND

¶ 4

On September 1, 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 George's wife, Jennifer Marquez (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 George and Jennifer. They sent text messages, emailed and called multiple times a day, every day from July 11, 2016, through September 1, 2016. Nora secured an emergency stalking no contact order against Jennifer on August 9, 2016. Thereafter, George continued to threaten to appear at their place of business, their work, their place of worship, and their children's swim school. Since receiving the order against Jennifer, George's behavior had escalated, and Nora was fearful for her safety, as well as the safety of her husband, children and their dog. Nora was terrified that George would harm them. Nora reported George's actions to the Mount Prospect police department and George had been warned repeatedly, but continued to stalk the family electronically. On the same day an emergency stalking no contact order was entered against George, followed by a default order on September 20, 2016. Thereafter, the default order was vacated on George's motion, and the original order entered on September 1, 2016, was reinstated.

¶ 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 George, sent constant threatening emails and text messages. The contact from Jennifer stopped once the August 9, 2016, emergency order was entered. George continued to contact Chris until September. 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 George's counsel "[i]f there was anything the he wished to respond to." Counsel responded that, "[m]y client's position is not that they want to stalk or do anything like that and it never has been." He also stated that George's "involvement, even if we take what they say as true, he's very late in the game * * * and none of this constitutes harassment."

¶ 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, George may still contact them. The court then stated that, "if you think you have a * * * cause of action against them, you can sue them civilly. But, you cannot contact them, harass them or say threatening things. That you cannot do."

¶ 8 George'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?" George's counsel responded in the affirmative and the court replied, "[t]ell me what you think I didn't hear."

¶ 9 Counsel then stated that there had not been "any actual evidence entered about contact which would be harassment under the statute." 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." George's counsel moved for a directed verdict, which was denied. The court then entered a two-year plenary stalking no contact order against George.¹ George timely appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, George's sole argument is that he was denied his constitutional right to procedural due process because the circuit court denied him a meaningful opportunity to present evidence or call witnesses in defense of his 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

¹ A separate appeal, docketed as No. 1-17-0179, is pending with regard to a two-year plenary no stalking contact entered against Jennifer Marquez.

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 George's counsel what else he might seek to present. Counsel responded that George's "involvement, even if we take what they say as true, he's very late in the game * * * and none of

this constitutes harassment." He merely offered legal justification for the conduct based on the Act. See 740 ILCS 21/10 (West 2016). Counsel never stated that Nora's allegations regarding the threatening communications were false, inaccurate or misleading. Further, George was not prevented from making an offer of proof. We conclude that given the threatening content and sheer number of communications 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 George's threatening communications did "escalate the situation * * * to something that caused them stress and harassment." We conclude that George'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 George. Since we have decided this case on evidentiary grounds, we need not consider George'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.