2018 IL App (1st) 170940-U
Order filed: July 13, 2018

FIRST DISTRICT
FIFTH DIVISION

No. 1-17-0940

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

AMBER RITTER,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	Cook County.
	)	
v.	)	No. 16 OP 71254
	)	
RONALD D. JOLLY,	)	Honorable
	)	Patrice Ball-Reed,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Plenary order of protection granted in favor of petitioner is affirmed, where the order was supported by sufficient evidence of harassment and the Illinois Domestic Violence Act of 1986 did not violate respondent's first-amendment rights.

¶ 2 Respondent-appellant, Ronald D. Jolly, appeals from a plenary order of protection granted in favor of petitioner-appellee, Amber Ritter. For the following reasons, we affirm.[1]

¶ 3 I. BACKGROUND

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

¶ 4 Petitioner initiated these proceedings on March 1, 2016, by filing a petition for an order of protection pursuant to the Illinois Domestic Violence Act of 1986 (Act). 750 ILCS 60/101, *et seq*. (West 2016). Therein, petitioner generally alleged that she and respondent had a prior dating relationship and that, *inter alia*, respondent had subsequently engaged in harassing behavior by contacting petitioner's supervisors at her place of employment and filing Freedom of Information Act (FOIA) requests with her employer in an effort to threaten her livelihood. After the parties engaged in significant discovery practice and the trial court denied a number of dispositive motions, the matter proceeded to a two-day hearing held in January, 2017. At the hearing, the trial court heard testimony from the two parties and accepted a number of exhibits into evidence. The testimony and evidence introduced generally established the following.

¶ 5 Petitioner and respondent are both attorneys. While they were both employed in the City of Chicago Law Department, and while petitioner was married, the two engaged in an affair which lasted approximately one year. During the course of the affair, petitioner wavered as to whether or not she would leave her husband. The affair ended in late 2009 or early 2010, after petitioner decided not to end her marriage.

¶ 6 In June, 2010, petitioner complained to her supervisors at the Law Department that respondent was threatening to expose the affair to petitioner's family if petitioner did not leave her job at the Law Department, something respondent contended petitioner promised to do. At a meeting that month, respondent was instructed by the head of the Law Department, the corporation counsel, that he would be fired if he contacted petitioner again. When respondent subsequently violated that order, he was suspended for three days in October, 2010.

¶ 7 In January, 2013, respondent engaged in what he readily admits were "some ugly actions." Specifically, respondent left a coffee mug containing urine in petitioner's office and

twice vandalized photos of petitioner located on petitioner's office door. Finally, respondent was videotaped entering petitioner's office, unzipping his pants, and standing behind petitioner's desk, after which he moved off camera and either urinated or ejaculated. As a result of these actions, respondent resigned from his position at the Law Department in January, 2013, and petitioner filed for and received a two-year plenary order of protection against respondent in February, 2013.

¶ 8 In May, 2013, respondent purchased four website domain names containing variations on petitioner's name. Petitioner filed a motion to modify the prior order of protection to address this situation, and on July 31, 2013, an agreed order was entered. Pursuant to that order: (1) respondent admitted that he purchased the domain names and that this action constituted harassment under the Act; (2) respondent agreed to relinquish any rights he had or may ever have with respect to website domain names containing permutations of petitioner's name; and (3) the prior order of protection was amended to enjoin respondent from publishing any content on any form of electronic media using any permutation of petitioner's name.

¶ 9 In January, 2015, petitioner filed a motion to extend the original order of protection. Before deciding the motion, the trial court ordered respondent to undergo counseling. A written report tendered to the court regarding that counseling indicated that respondent was still mourning the loss of his relationship with petitioner. The trial court ultimately denied that motion, but ordered respondent to undergo counseling until May 27, 2016, and to provide petitioner's counsel with monthly, written documentation with regard to that counseling.

¶ 10 Beginning in April, 2015, respondent began sending the emails and making the FOIA requests which ultimately resulted in petitioner initiating these proceedings and the entry of a second order of protection. Specifically, in a single email sent in April, 2015, and in four

additional emails sent in February, 2016, respondent contacted: (1) two of petitioner's direct supervisors at the Law Department; (2) the corporation counsel and first assistant corporation counsel; and (3) the chief of staff for the mayor of the City of Chicago.

¶ 11 In these emails, respondent provided extensive, graphic descriptions of sexual encounters he allegedly engaged in with petitioner during their affair while they were both employed by the Law Department. These encounters allegedly occurred in the offices of the Law Department and at other locations during work hours. Additionally, respondent alleged that petitioner used her work email accounts to send each other hundreds of emails to facilitate their affair. Respondent contended that these allegations, which he had ultimately made to a number of Law Department employees, reflected: (1) petitioner was subject to termination; (2) petitioner was certainly not entitled to the two promotions and salary increases that she had received since 2013; and (3) that a number of employees of the Law Department were engaging in misconduct with respect to their failure to properly investigate respondent's allegations against petitioner. In his emails, respondent threatened to provide the same information to yet more employees of the Law Department, the City of Chicago's inspector general's office, and members of the local media if: (1) petitioner was made aware of respondent's emails; (2) a thorough investigation of petitioner was not completed; or (3) respondent's current employment was threatened or he was subjected to any legal action by petitioner or the City of Chicago. After petitioner filed the petition for a second order of protection on March 1, 2016, respondent sent three additional emails containing similar allegations and threats to petitioner's direct supervisor at the Law Department, the corporation counsel and first assistant corporation counsel, and the Law Department's director of public affairs.

¶ 12 In addition, respondent filed FOIA requests with the City of Chicago in February, 2016, seeking copies of a host of emails sent or received by petitioner, respondent, and petitioner's direct supervisor. The FOIA request also sought information regarding employment policies, petitioner's two promotions and any investigation into respondent's allegations.

¶ 13 At the hearing, petitioner testified while she did not personally read the emails sent by respondent, her supervisors in the Law Department had done so and had generally described their content to her and described them as "unhinged." Petitioner also testified that respondent's actions were a clear threat to her livelihood and caused her a great deal of emotional distress, such that she sought counseling and took anti-anxiety medication.

¶ 14 For his part, respondent admitted in his testimony that he was angry that the affair led to his firing from the Law Department while petitioner kept her job and was promoted twice, and that seeking reconsideration of petitioner's promotions motivated his actions. However, he contended that he was primarily motivated by his belief that the public at large was not served by allowing petitioner to maintain her current role at the Law Department in light of her own unprofessional conduct and the insufficient investigation into respondent's allegations. In support of this contention, respondent noted that some of his emails made reference to other, unrelated instances of official misconduct and statements that were made in response thereto by both the mayor of the City of Chicago and a spokesman for the Law Department, indicating that all Law Department employees would be held to the highest ethical and professional standards. Respondent also indicated that his actions were motivated by his understanding that petitioner was involved in what respondent described as the City of Chicago's efforts to suppress release of a video of the police-related shooting of 19-year old Laquan McDonald.

¶ 15 At the conclusion of the hearing, the trial court took the matter under advisement. In a written order entered on March 15, 2017, later corrected on March 31, 2017, the trial court concluded that petitioner had established that she and respondent had a prior dating relationship, and that the emails respondent had sent to petitioner's employer both constituted harassment and caused petitioner emotional distress. In making this determination, the trial court specifically found respondent's testimony that he "sent the emails because the City of Chicago discussed a zero tolerance policy for unprofessional behavior and the Laquan McDonald case are not believable."

¶ 16 The trial court entered a two-year plenary order of protection requiring respondent to: (1) refrain from physically abusing, harassing or stalking petitioner; (2) stay away from petitioner, including refraining from entering or remaining at her place of employment; (3) surrender any and all firearms and firearm owner's identification card; (4) undergo counseling for the duration of the order; and (5) pay petitioner's attorney fees in the amount of $19,335. Respondent timely appealed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, respondent contends that the order of protection entered by the trial court: (1) was not supported by sufficient evidence of harassment; and (2) resulted from a violation of his right to free speech. We address each argument in turn, and we therefore begin by addressing respondent's challenge to the sufficiency of the evidence of harassment.

¶ 19 A. Evidence of Harassment

¶ 20 The Act was designed, *inter alia*, to "[r]ecognize domestic violence as a serious crime against the individual and society" and to "[s]upport the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders which prohibit

abuse and, when necessary, reduce the abuser's access to the victim and address any related issues." 750 ILCS 60/102(1), 102(2) (West 2016). Those protected by the Act include "any person abused by a family or household member" (750 ILCS 60/201(a)(1) (West 2016)), with "family or household member" defined by the Act to include "persons who have or have had a dating or engagement relationship" (750 ILCS 60/103(6) (West 2016)).

¶ 21 Abuse under the Act is defined to include "harassment" (750 ILCS 60/103(1) (West 2016)), which in turn is defined to mean "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" (750 ILCS 60/103(7) (West 2016)). "If the court finds that petitioner has been abused by a family or household member *** an order of protection prohibiting the abuse, neglect, or exploitation shall issue." 750 ILCS 60/214(a) (West 2016). The standard of proof in a proceeding under the Act is "proof by a preponderance of the evidence." 750 ILCS 60/205(a) (West 2016).

¶ 22 When a trial court makes a finding by a preponderance of the evidence, on appeal this court will reverse that finding only if it is against the manifest weight of the evidence. *Best v. Best*, 223 Ill. 2d 342, 348-49 (2006). "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. [Citation.] Under the manifest weight standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses. [Citation.] A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Id*. at 350-51.

¶ 23 On appeal, there is no dispute that petitioner and respondent had a dating relationship such that, if petitioner was abused by respondent, she is entitled to protection under the Act. Furthermore, respondent does not challenge the trial court's conclusion that his conduct would cause a reasonable person emotional distress and did in fact cause emotional distress to the petitioner. 750 ILCS 60/103(7) (West 2016). Rather, he contends that the trial court improperly found that his actions were "not necessary to accomplish a purpose that is reasonable under the circumstances." *Id*.

¶ 24 Specifically, respondent contends that the public statements regarding the City's lack of tolerance for unprofessional conduct in the Law Department and petitioner's alleged involvement with the Laquan McDonald video provided him with "ample motivation to expose Ms. Ritter's unmistakably unprofessional conduct, regardless of whatever actions he may have taken in the past concerning her." Respondent therefore contends that it was against the manifest weight of the evidence for the trial court to find incredible his proffered explanation for why his conduct was in fact necessary to accomplish a purpose that was reasonable under the circumstances. We disagree.

¶ 25 To begin with, respondent is essentially asking this court to substitute its own judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn, which we are simply not permitted to do. *Best*, 223 Ill. 2d at 350-51. That point aside, we conclude that there is sufficient evidence to support the trial court's findings.

¶ 26 The trial court's finding that respondent had harassed petitioner was specifically made with reference to respondent's prior conduct, all of which appeared to be motivated by respondent's admitted consternation that petitioner did not leave her employment with the Law

Department after the affair ended. That evidence included the fact that, when respondent was confronted with petitioner's complaints to her supervisors in 2010, he threatened to seek her termination if he was fired from his job. Respondent continued to harass petitioner, ultimately resulting in his resignation from the Law Department and the issuance of the prior order of protection. He thereafter obtained website domain names containing variations on petitioner's name, an act he later admitted constituted harassment.

¶ 27 Then, in 2015, well before the statements regarding the City's lack of tolerance for unprofessional conduct in the Law Department and respondent becoming aware of petitioner's alleged involvement with the Laquan McDonald video, respondent contacted petitioner's supervisors to make assertions that petitioner acted improperly with respect to the affair.[2] Therein, respondent also threatened to provide the same information to yet more employees of the Law Department and the City of Chicago's inspector general's office, if: (1) petitioner was made aware of respondent's emails; (2) a thorough investigation of petitioner was not completed; or (3) respondent's current employment was threatened or he was subjected to any legal action by petitioner or the City. Additional emails containing similar allegations and threats followed in 2016.

¶ 28 In light of all this evidence, the trial court concluded that while respondent's concern about personal conduct in the Law Department might be plausible with respect to "other employees," with respect to petitioner his actions were not necessary to accomplish a purpose that is reasonable under the circumstances, represented "escalating conduct," and constituted

[2] Respondent contends that the 2015 email did not include both the graphic descriptions of sexual encounters he allegedly engaged in with petitioner during their affair and allegations that petitioner improperly used her work email account to send emails to facilitate the affair, giving him a reason to send the later emails containing all of this information. This contention is refuted by the record, as both allegations are contained in the 2015 email.

harassment. On this record, we cannot say that the opposite conclusion is clearly evident or that the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Best*, 223 Ill. 2d at 350-51.

¶ 29 B. Constitutional Violation

¶ 30 We next consider respondent's contention that the order of protection entered by the trial court resulted from a violation of his right to free speech. Our analysis of this question is guided by the following general principles:

> "In general, statutes are presumed constitutional, and the party challenging the constitutionality of a statute carries the burden of proving that the statute is unconstitutional. The primary objective in construing a statute is to ascertain and give effect to the legislature's intent in enacting the statute. This court has a duty to construe the statute in a manner that upholds the statute's validity and constitutionality if reasonably possible. The determination of whether a statute is constitutional is a question of law to be reviewed *de novo*.
>
> The first amendment, which applies to the states through the fourteenth amendment, precludes the enactment of laws abridging the freedom of speech. Under this amendment, a government as no power to restrict expression because of its message, its ideas, its subject matter, or its content. Therefore, [t]he Constitution gives significant protection from overbroad laws that chill speech within the First Amendment's vast and privileged sphere.
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> Content-based laws, which target speech based on its communicative content, are presumed to be invalid. In addition to restrictions that are facially content based, the United States Supreme Court has recognized a separate and additional category of laws

> that, though facially content neutral, will be considered content-based regulations of speech" because they cannot be justified without reference to the content of the regulated speech.
>
> However, the United States Supreme Court has recognized that certain historic and traditional categories of expression do not fall within the protections of the first amendment, and content-based restrictions with regard to those recognized categories of speech have been upheld. Those accepted categories of unprotected speech include true threats and speech integral to criminal conduct. (Citations and internal quotation marks omitted.) *People v. Relerford*, 2017 IL 121094, ¶¶ 30-32.

¶ 31 Furthermore, "[w]hen analyzing challenges to a regulation's constitutionality based on the first amendment, courts differentiate between an as-applied challenge and an overbreadth challenge. An as-applied challenge asserts that the particular acts which gave rise to the litigation fall outside what a properly drawn regulation could cover. An overbreadth challenge, on the other hand, attacks a regulation's facial validity, enabling persons to whom a statute may constitutionally be applied to challenge the statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the court." *Vuagniaux v. Department of Professional Regulation*, 208 Ill. 2d 173, 190-91 (2003).

¶ 32 We begin by making three preliminary observations. First, while respondent has largely framed his argument as a constitutional challenge to the order of protection, he essentially contends that section 103(7) of the Act is unconstitutional. We will therefore analyze this issue from that perspective.

¶ 33 Second, while respondent argues that section 103(7) of the Act is a content-based law that does not merely preclude categories of expression that do not fall within the protections of

the first amendment, we would still have to consider the ultimate argument that the statute is unconstitutionally overbroad even if we accept respondent's arguments in this regard. *Relerford*, 2017 IL 121094, ¶ 48. Thus, we may simply move to that analysis.

¶ 34 Finally, and as discussed above, constitutional challenges to statutes are either facial or as-applied (*supra* ¶ 31), and the overbreadth doctrine is clearly a type of facial challenge (*Relerford*, 2017 IL 121094, ¶ 50). Respondent may argue that the particular acts which he actually undertook cannot be constitutionally regulated by section 103(7) of the Act, or he can attack that section's facial validity "on the ground that it may conceivably be applied unconstitutionally to others in situations not before the court." *Vuagniaux*, 208 Ill. 2d at 190-91. He cannot, as he often does in his brief, combine these two avenues and argue that section 103(7) of the Act is unconstitutional "as applied" to him. See *People v. Sucic*, 401 Ill. App. 3d 492, 502 (2010) (noting that "defendant's 'as applied' argument does not present a viable facial challenge").

¶ 35 Thus, we now consider the argument—which is at least obliquely raised in respondent's brief—that section 103(7) of the Act is facially unconstitutionally overbroad. We find that it is not.

¶ 36 Under the overbreadth doctrine:

> "a party being prosecuted for speech or expressive conduct may challenge the law on its face if it reaches protected expression, even when that person's own activities are not protected by the first amendment. The reason for this special rule in first amendment cases is apparent: an overbroad statute might serve to chill protected speech. A person contemplating protected activity might be deterred by the fear of prosecution. The doctrine reflects the conclusion that the possible harm to society in permitting some

unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted.

The doctrine's tolerance is not unbounded. [T]here comes a point at which the chilling effect of an overbroad law, significant though it may be, cannot justify prohibiting all enforcement of that law—particularly a law that reflects legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct. Like most exceptions to established principles, the doctrine must be carefully tied to the circumstances in which facial invalidation of a statute is truly warranted. Its concern with chilling protected speech attenuates as the otherwise unprotected behavior that it forbids the state to sanction moves from pure speech toward conduct and that conduct, even if expressive, falls within the scope of otherwise valid laws.

Because of the wide-reaching effects of striking down a statute on its face at the request of one whose own conduct would otherwise be punishable despite the first amendment, the Court has characterized the overbreadth doctrine as strong medicine and employed it with hesitation, and only as a last resort. Where, as here, conduct and not merely speech is involved, the overbreadth of the statute must be not only real, but substantial as well, judged in relation to the statute's plainly legitimate sweep. We will not topple a statute, the United States Supreme Court has held, merely because we can conceive of a few impermissible applications. The claimant challenging the law as being unconstitutionally overbroad bears the burden of demonstrating, from the text of [the law] and from actual fact, that substantial overbreadth exists." (Citations and internal

quotation marks omitted.) *City of Chicago v. Pooh Bah Enterprises, Inc*., 224 Ill. 2d 390, 435-37 (2006).

¶ 37 Overbreadth challenges to the Act—including specific challenges to section 103(7)—have been previously raised and rejected twice. *People v. Blackwood*, 131 Ill. App. 3d 1018, 1023-24 (1985); *People v. Reynolds*, 302 Ill. App. 3d 722, 727–28 (1999). Nevertheless, respondent specifically contends that the legal landscape with respect to the constitutionality of section 103(7) of the Act was altered significantly by our supreme court's recent decision in *Relerford*, 2017 IL 121094.

¶ 38 In that case, our supreme court considered an overbreadth challenge to a portion of subsection (a) of the stalking statute that precluded one person from communicating " 'to or about' " another such that—as the court summarized—the stalking statute "defines the offense of stalking to include a course of conduct evidenced by two or more nonconsensual communications to or about a person that the defendant knows or should know would cause a reasonable person to suffer emotional distress." *Id*. ¶ 52 (citing 720 ILCS 5/12–7.3(a)(2), (c) (West 2012)).[3] In finding this provision unconstitutionally overbroad, our supreme court reasoned:

> "that provision, therefore, imposes a content-based restriction on speech and criminalizes communications to or about a person that negligently would cause a reasonable person to suffer emotional distress [and] embraces a vast array of circumstances that limit speech far beyond the generally understood meaning of stalking. Indeed, the amended provision criminalizes any number of commonplace situations in which an individual engages in expressive activity that he or she should

[3] While the court ultimately found substantially similar provisions of both the stalking and cyberstalking statutes unconstitutional, for brevity we refer only to the former.

> know will cause another person to suffer emotional distress. The broad sweep of subsection (a) reaches a host of social interactions that a person would find distressing but are clearly understood to fall within the protections of the first amendment.
>
> For example, subsection (a) prohibits a person from attending town meetings at which he or she repeatedly complains about pollution caused by a local business owner and advocates for a boycott of the business. Such a person could be prosecuted under subsection (a) if he or she persists in complaining after being told to stop by the owner of the business and the person knows or should know that the complaints will cause the business owner to suffer emotional distress due to the economic impact of a possible boycott.
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> The communications described above would be criminal even though they constitute speech in a public forum about a matter of public concern—a quintessential example of the type of speech that is protected by the first amendment.
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> * * *
>
> Given the wide range of constitutionally protected activity covered by subsection (a), we conclude that a substantial number of its applications are unconstitutional when judged in relation to its legitimate sweep. Accordingly, the degree of overbreadth is substantial, rendering subsection (a) overbroad on its face." *Id*. ¶¶ 52-55, 63.

¶ 39 The concerns motivating our supreme court with respect to the language of the stalking statute are simply not present here.

¶ 40 First, the portion of the statutory language at issue in *Relerford* was specifically a restriction on *speech*. Here, section 103(7) much more broadly applies to "knowing *conduct.*" (Emphasis added.) (750 ILCS 60/103(7) (West 2016)). Furthermore, unlike the specific language at issue in *Relerford*, section 103(7) of the Act regulates only that conduct "which is not necessary to accomplish a purpose that is reasonable under the circumstances." *Id*. The Act itself then identifies a host of examples of the types of *conduct* that "shall be presumed" to constitute harassment causing emotional distress. *Id*. As discussed above, there "comes a point at which the chilling effect of an overbroad law, significant though it may be, cannot justify prohibiting all enforcement of that law—particularly a law that reflects 'legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct.' " [The overbreadth doctrine's] concern with 'chilling' protected speech attenuates as the otherwise unprotected behavior that it forbids the state to sanction moves from pure speech toward conduct and that conduct, even if expressive, falls within the scope of otherwise valid laws." (Citations omitted.) *Pooh Bah Enterprises*, 224 Ill. 2d at 435-37.

¶ 41 Furthermore, the specific portion of the statute at issue in *Relerford*, 2017 IL 121094, ¶ 52, made no distinction as to who was doing the speaking and thus clearly reached "a host of social interactions that a person would find distressing but are clearly understood to fall within the protections of the first amendment." In part, it was that "broad sweep" that led our supreme court to invalidate that statutory language. *Id*. In contrast, here the Act could only apply to harassing speech by one family or household member directed at or about another family or household member, as defined by the Act. *Supra* ¶¶ 20-21.

¶ 42 Finally, the decision in *Relerford* was founded upon the court's conclusion that the high standards applicable with respect to the overbreadth doctrine were met, because a *substantial*

number of the applications of subsection (a) of the stalking statute are unconstitutional when judged in relation to its legitimate sweep, such that the *degree of overbreadth is substantial*. *Relerford*, 2017 IL 121094, ¶ 63. It is respondent's burden to demonstrate that the same high standard is met here, and we will not find a statute unconstitutionally overbroad merely because one can conceive of a few impermissible applications. *Pooh Bah Enterprises*, 224 Ill. 2d at 435-37.

¶ 43 Here, respondent cites merely *two* possible examples of how section 103(7) of the Act would be unconstitutionally overbroad, contending it would deter him from: (1) testifying about the conduct of petitioner, and petitioner only, at a hypothetical public hearing regarding misconduct of City employees; and (2) speaking to a local newspaper regarding the allegedly unprofessional behavior of petitioner, and petitioner only. Even if we accepted these as two examples of the impermissible scope of section 103(7) of the Act, respondent has simply failed to meet his burden of demonstrating that, judged in relation to the statute's plainly legitimate sweep, these two such examples represent such a substantial overbreadth that the last-resort, strong medicine of the overbreadth doctrine should be employed to find section 103(7) of the Act unconstitutional. *Pooh Bah Enterprises*, 224 Ill. 2d at 435-37.

¶ 44 Finally, we reject one additional specific argument raised by respondent on appeal. Citing to *Snyder v. Phelps*, 562 U.S. 443, 451-52 (2011), respondent contends that section 103(7) of the Act is unconstitutional because it interferes with his ability to speak regarding the misconduct of City employees, which he contends is a matter of public concern occupying the highest rung of the hierarchy of first amendment values, and is thus entitled to special protection. However, as that case itself recognizes, "restricting speech on purely private matters does not implicate the same constitutional concerns as limiting speech on matters of public interest." *Id.* at 452.

Deciding whether speech is of public or private concern requires us to examine the content, form, and context of that speech, as it is revealed by the whole record. *Id*. at 454.

¶ 45 As we discussed above, the trial court found that respondent's contention that he spoke out about petitioner's alleged actions due to some sort of civic duty—as opposed to a means to harass her—was not credible. We have already affirmed that decision in the context of finding sufficient evidence of harassment, and we come to the same conclusion here. In this context and on the whole record, respondent's speech represents a private matter that is not entitled to special protection under the first amendment.

¶ 46 III. CONCLUSION

¶ 47 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 48 Affirmed.