2018 IL App (1st) 172401-U
No. 1-17-2401

SECOND DIVISION
March 27, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE THE MARRIAGE OF:	)	Appeal from the Circuit Court
JULIE C.,	)	of Cook County.
	)	
Petitioner-Appellant,	)	
	)	No. 17 D 7718
and	)	
	)	
WILLIAM C.,	)	The Honorable
	)	David Haracz,
Respondent-Appellee.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Neville and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* circuit court order vacating wife's emergency order of protection against her husband affirmed where the court's evidentiary rulings did not amount to an abuse of discretion and where its conclusion that the wife failed to establish that her husband engaged in abuse was not against the manifest weight of the evidence.

¶ 2 After filing for divorce, petitioner Julie C. (petitioner or Julie)[1] filed and obtained an emergency order of protection against her husband, respondent, William C., (respondent or

[1] To better preserve the privacy of the minor children and the family involved in this appeal, this court has elected not to refer to any of the adult parties involved in this appeal by their full names

William) following an *ex parte* hearing in accordance with the provisions set forth in the Illinois Domestic Violence Act of 1986 (Domestic Violence Act or Act) (750 ILCS 60/101 *et seq*. (West 2014)). Upon receiving notice of the order, William filed an emergency petition for a rehearing on Julie's petition for an emergency order of protection. Following a hearing in which both parties testified, the circuit court concluded that Julie failed to establish that William had engaged in "abuse" as that term is defined in the Act, and vacated the emergency order of protection. Julie appeals the circuit court's ruling. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Julie and William were married on September 7, 2002. The couple had four biological children during their union: T.C., born June 30, 2009; B.C., born February 27, 2011; M.K.C., born May 17, 2013; and M.C., born December 26, 2014. During the course of the parties' marriage, Julie was employed outside of the home and was the primary breadwinner and William stayed home to care for the children. On September 6, 2017, Julie filed a Petition for Dissolution of Marriage in accordance with the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq*.) (West 2014). The couple continued to reside together after Julie initiated divorce proceedings. On the evening of September 18, 2017, the couple had an argument after Julie returned home from work. That argument ultimately led both parties to seek orders of protection against the other pursuant to the Domestic Violence Act.

¶ 5 Julie filed her petition seeking an order of protection against William on behalf of herself and the couple's four minor children on September 20, 2017. Attached to the petition was an affidavit completed by Julie, in which she delineated William's purported efforts to "bully,

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and instead will use their first names, initials, or their party designations, *i.e.*, petitioner or respondent. This court has also changed the caption of this case to reflect this decision.

harass, intimidate, and coerce [her] since she filed [her] Petition for Dissolution of Marriage." As evidence of the "abuse" she suffered at the hands of William, Julie cited the following conduct: discussing the parties' divorce with their minor children; demanding money from her so that he could retain a divorce attorney; intentionally "blasting" country music, which Julie "hate[s]," on September 18, 2017, after she "began the children's normal bedtime routines" and "aggressively kissing and hugging the children to say goodnight;" and interfering with the children's morning routines the following day.

¶ 6 On September 20, 2017, the circuit court presided over an *ex parte*, no notice hearing on Julie's motion, wherein Julie testified about the September 18, 2017, argument involving William playing country music loudly and disrupting the children's bedtime routine. She also detailed the acrimony that developed in the household after William was served with divorce papers. At the conclusion of the brief *ex parte* hearing, the court found that based on Julie's testimony, there was evidence that William had engaged in "harassment," which constitutes "abuse" under the Domestic Violence Act. Accordingly, the court entered a temporary emergency order of protection, which named Julie and the couple's four minor children as protected parties. In accordance with the terms of the order, Julie was awarded "exclusive possession" of the marital residence and custody of the children for a period of 22 days.

¶ 7 William filed his own petition for an order of protection on the same date. In the affidavit he affixed to the petition, William averred that the September 18, 2017, argument ensued after Julie informed him that she was "not giving [him] any f****** money for a retainer" to obtain a lawyer. She subsequently continued to yell at him in the presence of their eight-year-old son, T.C., who became "visibly scared." When William asked her repeatedly to leave and warned her that he would call the police, Julie threw threw a cup at him, striking him

in the shoulder, and "ripped" his phone from his hand, causing a "scrape" on his wrist. William further averred that Julie had a history of "being verbally and physically abusive" during the course of the parties' marriage. She also had a history of exhibiting "erratic behavior."

¶ 8 William's petition for an order of protection was denied and he did not pursue it further.[2] He did, however, file an "Emergency Petition to Re-Hear [Julie's] Emergency Petition for Order of Protection" on September 22, 2017, after he received notice that an order had been entered against him.

¶ 9 Several days later, the circuit court presided over a two-day hearing on William's emergency rehearing petition. At the hearing, William was called upon by Julie's attorney to testify as an adverse witness. He testified that he has been primarily a stay-at-home dad since 2009, the year that their first child was born. He and Julie had agreed that he would "stay home with the children and also be able to coach sports [on a part-time basis] while she worked." In accordance with their agreement, he worked part-time as an assistant high school wrestling coach for one season in 2011. In addition, he worked part-time as an assistant high-school football coach for the past two years. His coaching hours have been approximately 2:30 to 6 p.m. Monday through Wednesday. In addition, he attends the games, which are held on either Fridays or Saturdays. Although he has been primarily responsible for staying home and caring for the children on a daily basis, William testified that Julie's mother, Mary, has also been involved in caring for the couple's four children over the years. He explained that Mary has watched the children on occasions where William was coaching and Julie was at work. In addition, Mary babysits the children whenever William needs "down time" to "decompress" or when he is simply "tired." More recently, Julie's niece, Brittany, has also babysat their children. He

[2] William's attorney informed the court at the hearing on William's rehearing petition, that William was no longer pursuing an order of protection against Julie.

explained that after the birth of their youngest child, Brittany started babysitting the children on Thursdays and Fridays during "nonsport seasons." On those occasions, William would use that time to run errands, respond to e-mails for the children's school activities, and schedule the children's dentist and doctor visits. In addition, William would sometimes use those occasions to go to the movies or meet a friend for lunch. The couple has also employed Krassia, a nanny, to help out the family on various occasions, including Saturdays.

¶ 10 As a stay-at-home dad, William testified that he assumed responsibility for cooking breakfast and lunch. As for dinner, William testified that Julie's mother, Mary, regularly cooked meals for the family or he purchased premade meals. In addition to cooking the children breakfast, William also helped the older children dress and get ready for school. Julie, in turn, was responsible for driving the kids to school. The two older children, T.C. and B.C., currently begin school at 8:30 a.m. and "stay [at school] anywhere between 3:15 and 5:30 or 6:00 depending on the day and what activities *** are going on." M.K.C. and M.C. currently attend school from 8 a.m. until 12 p.m. William is responsible for picking up the children from school.

¶ 11 William acknowledged filing a petition seeking an order of protection against Julie and further acknowledged that his petition was denied and that he was no longer pursuing it. William explained that he filed the petition two days after the parties' September 18, 2017, argument. During the course of that argument, Julie "struck" him in his right shoulder with a plastic cup, and "ripped [his] phone out of [his] hand," which "caus[ed] an abrasion to [his] wrist." He testified that he discovered that Julie had filed her own petition for an emergency order of protection when he appeared in court to obtain the order against her. At that point, he was told that he could not obtain an order of protection because one had already been entered against him. William acknowledged that Julie's actions in striking him with the plastic cup and

twisting his wrist did not cause him serious pain or injury and that he did not seek any medical attention following their argument. He did, however, file a police report against her the following morning because he "thought that was the thing to do after [what] had happened" and he wanted to "know what [his] options were." While he was at the police department, he was informed that he could get an order of protection, which prompted him to initiate his filing.

¶ 12 When asked to provide additional details about the September 18, 2017, argument, William testified that it began sometime after 8 p.m. after the children had all been put to bed in the master bedroom, something Julie had been doing since filing for divorce. At that point, Julie approached him and informed him that she was "not giving [him] any f****** money for a retainer" to hire a divorce attorney. A verbal argument ensued. William acknowledged that he "probably" raised his voice and yelled at her, but could not remember if he used any profanity. Sometime during the argument, he noticed his oldest son, T.C., was present. T.C. looked "visibly shaken" and "scared" and William tried to comfort him. As he was tending to his son, William asked Julie to leave. In response, she threw a sippy cup at him, which struck him in his right shoulder. He subsequently threatened to call the police if she did not calm down. At that point, Julie twisted his wrist to gain control of the telephone. Later on, after "things had calmed down," William "walked out" of the couple's apartment and sat in the hallway for approximately 15 to 20 minutes. Julie then approached him and said, "by the way, I told the [two eldest] kids we were getting a divorce," and informed him that T.C. was looking for him. William testified that the children had not yet been informed of the divorce prior to Julie unilaterally doing so that night. He explained that although the kids had started to notice that he and Julie were having issues, he had made efforts to "deflect" their questions and "shield" them from the situation until

he and Julie talked to their children together. William expressly denied that he had been playing country music and singing loudly that evening.

¶ 13 William, did however, acknowledge that he has had anxiety issues and that he has seen a psychiatrist, who prescribed anti-anxiety medication. He denied, however, that he had any anger issues. Although he admitted that he has yelled at his children and has raised his voice in their presence, he denied that he ever cursed at his children. He acknowledged removing $26,500 from the couple's bank accounts on September 20, 2017, after he had learned Julie had obtained an order of protection against him and had threatened not to provide him with any money to hire a divorce attorney. He explained he needed the money to retain an attorney and for living expenses. Ever since Julie obtained the order of protection against him, William has been "rotat[ing]" between staying at a hotel and at his sister's house.

¶ 14 Mary Ann Roti testified that she is the family's long-time neighbor. Given that her apartment is located approximately 71 feet away from the family's apartment, she has "regularly" interacted with both Julie and William and has gotten together with them socially on many occasions. She was also "very familiar" with their four children, explaining that she visits with them once or twice a week. Sometimes the kids visit her at her apartment and other times she interacts with them at their apartment. She has observed William parent his kids "often" and described him as being "a little scattered" and "short fused." As an example, Roti cited William's behavior on T.C.'s most recent birthday. She explained that William was "frazzled" as he attempted to get the children ready to celebrate T.C.'s birthday at a local restaurant. She overheard him repeatedly yell "F***" in front of the children and observed T.C. "hunch over" in response to his father's behavior. She categorized T.C. as being "beside himself" and testified that she has observed T.C. respond in that manner "numerous times" as a result of William's

behavior. She has also observed William swear and act inappropriately in front of his children on other occasions. For example, she recalled that sometime in June 2017, as she waited for the elevator, she heard William scream at his kids and repeatedly yell "f***." Roti testified that she talked to Julie about William's behavior several days before Julie filed for divorce. She explained that she felt William's behavior was "escalating" and she was "very concerned for the wellbeing of the children and the safety of the children." Julie responded that she had the same concerns and that she had to get "him out of the house."

¶ 15 On cross-examination, Roti acknowledged that she considered Julie a "good friend" and admitted that Julie would confide in her about marital issues. Roti also confirmed, however, that Julie never claimed that William ever physically abused her or their children. In addition, she admitted that she also has heard Julie yell at her children and use profanity in their presence. Finally, Roti acknowledged that she had met with Julie's attorney for 45 minutes the previous day to review her testimony.

¶ 16 Julie testified that she is a certified financial planner and business owner and that she works Monday through Thursday every week. She is typically home by 6:30 p.m. on Mondays and Wednesdays and 8 p.m. on Tuesdays. She usually concludes work by 3 p.m. or 4 p.m. on Thursdays. Julie confirmed that her mother has helped watch the kids and that she and William officially "hired" her after the birth of their fourth child. Currently, her mother helps to watch the kids Monday through Wednesday from 2 p.m. to 6 or 6:30 p.m. and fills in on other occasions as needed. In addition to her mother, Julie's niece, Brittany, has assisted with the childcare on Fridays, while their nanny Krassia generally helps out on Saturdays. Julie testified that William was responsible for driving the older kids to their events, and picking the kids up from school. He also cleaned the house and would "periodically" bathe the children. Julie

explained that William has been less involved with the children's baths because "bath time was extremely frustrating for him."

¶ 17 Julie described her relationship with William as "toxic" and "extremely unhealthy." She explained that they got married because she "like[d] to mother people" and William "liked to be taken care of," and that she no longer had the "strength" to continue to care for William after they had children. When asked about the events of September 18, 2017, Julie recalled that she arrived home at approximately 6:40 p.m. and learned that their nanny, Krassia, "had been sent home." At that point, she started "physically shaking" and crying. After eating her dinner, she went to her bedroom and changed into her pajamas. Her three youngest children accompanied her to the bedroom and she read to them. By approximately 7:30 p.m., two of the kids had fallen asleep. William then walked into the bedroom with his cell phone, which was playing country music "really loud[ly]." Julie asked him to turn the music down because she was trying to get all of the kids to sleep. In response, William "looked right at [her]," removed something from the dresser, and then left the room. Shortly thereafter, her oldest son, T.C., came into the bedroom. William, who was "still making a bunch of noise," accompanied his son. He then said: "Since you force our children to sleep with you, I am going to give them a proper hug and kiss the way I want to." He then did so in a "playful manner" that caused their two daughters to wake up and then exited the room. Once her youngest three children fell back to asleep, Julie left the bedroom to confront William, who was in the living room playing with his cell phone. She accused him of being "passive aggressive" and "poking at [her]," and requested that he stop. William responded that he was "not doing anything" and Julie, in turn, replied that she was "not doing this anymore" and instructed him that that any further communications between them should "go[] through [his] attorney to [her] attorney." When she turned around to walk back to

the bedroom, William began following her, and urged her to continue to "be crazy" so that he could record her on his cell phone. In response, Julie "stomp[ed] [her] foot on the floor" and "snatched the phone out of [William's] hand." She then urged William to be "nice" and attempted to return the phone to him, but it fell to the floor.

¶ 18 Thereafter, Julie returned to her bedroom to gather some dishes and cups that had been left in her bedroom and brought the dishes to the kitchen. T.C. was also in the kitchen. William, who had followed her, then grabbed his hand and told T.C. that his mother had "cut" him. When T.C. repeated what William had said, Julie denied cutting William and threw the sippy cup at him, striking him in his shoulder. Julie subsequently went to console T.C. who was upset and "shaking like a leaf."

¶ 19 Julie denied that she informed T.C. and the other children about the divorce that night and testified that they already knew prior to that evening. She further testified that William suffers from anxiety, which causes him to "erupt," approximately "every other day." She cited William's behavior on the evening of September 18, 2017, in which he falsely accused her of cutting him in front of their son as an example of one of William's eruptions. As another example, Julie testified that William was anxious after an airplane trip that the family took in May 2016, which caused him to tell their daughter, B.C., to "shut the f*** up" and threaten to "beat the living sh** out of" her if she did not behave. When asked about William's relationship with their oldest son, T.C., Julie acknowledged that William loved his son, but classified their relationship as "an old male archetype relationship *** where the adult male tries to squash the spirit of the younger male and just keeps, like, emotionally beating him down." Julie again cited William's conduct on September 18, 2017, as an example of William emotionally beating T.C.

down. As another example, Julie recalled an instance in which William insisted that T.C. complete his homework "now," which upset their son.

¶ 20 Julie testified that she sought the order of protection because William's behavior was causing her to become "super stressed constantly." She has had issues sleeping and testified that her health is declining. Moreover, William's behavior has had a negative impact on their children. She categorized T.C. as a "squashed soul," and testified that their other children either "shake" and "quiver[]" or "explode[] back at" William when he erupts.

¶ 21 Upon the conclusion of Julie's testimony, Julie rested her case and William's attorney moved for a judgment in favor of his client, arguing that Julie failed to meet her burden of establishing abuse. After hearing arguments from the parties, the circuit court granted William's motion. The court explained its ruling in open court as follows:

> "All right. Thank you. After observing the—after listening to the testimony of the witnesses, the adverse testimony of [William], the testimony of Mrs. Roti, the explicit testimony of [Julie], and observing their demeanor while testifying, taking under consideration the handful—the three exhibits that have been admitted into evidence, despite the arguments of counsel, the petitioner has not proven by a preponderance of the evidence that abuse has occurred as defined by the statute. Therefore, I am going to vacate the emergency order of protection."

¶ 22 ANALYSIS

¶ 23 On appeal, Julie challenges the circuit's decision to vacate her emergency order of protection. She argues that the court made a number of improper rulings during the hearing and erred in concluding that she failed to meet her burden of establishing that William engaged in "abuse," as that term is defined in the statute.

¶ 24 William responds that the circuit court properly "acted within its considerable discretion by limiting the scope of the evidence to the allegations in Julie's petition" and in ultimately vacating Julie's emergency order of protection.[3]

¶ 25 The primary purpose of the Domestic Violence Act is to aid the victims of domestic violence to prevent the perpetuation of future violence. *Radke ex rel. Radke v. Radke*, 347 Ill. App. 3d 264, 268 (2004). It "reflects a comprehensive statutory scheme for reform of the legal system's historically inadequate response to domestic violence" and "is an omnibus source for rules regarding such cases." *Moore v. Green*, 219 Ill. 2d 470, 488-89 (2006). Accordingly, the Act protects "any person abused by a family or household member" as well as any minor children in the care of an abuse victim. 750 ILCS 60/201(a) (West 2014); *Moore*, 219 Ill. 2d at 481. To effectuate its overarching purpose, the Act "streamlines the procedures" available to abuse victims to obtain orders of protection and "details a broad panoply of remedies that orders of protection may contain." *Moore*, 219 Ill. 2d at 481 (citing 750 ILCS 60/202 (West 2014); 750 ILCS 60/214 (West 2014)). The Act authorizes three different types of orders of protection, including emergency, interim, and plenary, with the length of time the orders are in effect dependent upon the specific type of order of protection entered. 750 ILCS 60/103(12) (identifying the three types of orders of protection); 750 ILCS 60/220(a) (West 2014) (providing that emergency orders of protection "shall be effective for not less than 14 nor more than 21 days); 750 ILCS 60/220(b) (West 2014) (specifying that interim orders of protection "shall be

[3] We note that William also raises an argument concerning jurisdiction. Importantly, William acknowledges that this court has jurisdiction to review this appeal; however, he identifies Illinois Supreme Court Rule 304(a) as the source of this court's jurisdiction as opposed to Rule 307(a), the rule cited by Julie. This court, however, has already resolved this issue in a previous order entered on October 25, 2017. Specifically, we found that "S.C.R. 307(a)(1) confers jurisdiction over the instant appeal." William fails to acknowledge this order and we decline to revisit the issue.

effective for up to 30 days"); 750 ILCS 60/220(b) (West 2014) (providing that plenary orders of protection "shall be valid for a fixed period of time, not to exceed two years"). When entering an order of protection, the circuit court is afforded the discretion to tailor the order "to address individual circumstances and needs, improve victim safety and hold the perpetrator accountable for his or her actions." *Sanchez v. Torres*, 2016 IL App (1st) 151189, ¶ 22; 750 ILCS 60/214(b) (West 2014) (delineating different types of remedies that may be included in an order of protection).

¶ 26 In any order of protection proceeding, the central inquiry is whether or not the petitioner has been abused. *Best v. Best*, 223 Ill. 2d 342, 348 (2006). Whether a petitioner seeking an order of protection has been abused is a question of fact that must be proven by the preponderance of the evidence. 750 ILCS 60/205(a) (West 2014); *Best*, 223, Ill. 2d at 348. The circuit court's finding regarding the presence or absence of abuse will not be disturbed unless it is against the manifest weight of the evidence. *Best*, 223 Ill. 2d at 350; *In re Marriage of Holtorf*, 391 Ill. App. 3d 805, 807 (2010). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if it is unreasonable, arbitrary, or not based on the evidence presented. *Best*, 223 Ill. 2d at 350; *Tamraz v. Tamraz*, 2016 IL App (1st) 151854, ¶ 19. Under the manifest weight of the evidence standard, the reviewing court affords discretion to the circuit court and its findings of fact because it is in the best place to observe the conduct and demeanor of the parties and witnesses. *Best*, 223 Ill. 2d at 350. As such, a reviewing court will not substitute its judgment for that of the trier of fact with respect to determinations regarding the credibility of witnesses, the weight to afford the evidence, or the inferences to be drawn from that evidence. *Id.* at 350-51. Keeping the aforementioned statutory

provisions and applicable standards in mind, we turn now to address the specific arguments that Julie raises on appeal.

¶ 27 Julie first argues that the court erred in ruling that "each incident of abuse must be pled in a separate petition for an order of protection." We disagree. Julie cites a single isolated exchange between her attorney and the circuit court during the contentious hearing as evidence that the court made a "one-abuse-per-petition rule." A fair and comprehensive review of the record, however, reveals that the court made no such ruling. The record does, however, reveal that during the course of Julie's attorney's questioning of Mary Ann Roti, he sought to inquire about several instances that occurred approximately two years prior to the hearing, in which she heard William yell at his children. In response to those questions, William's attorney objected, arguing that the questions called for testimony that was beyond the scope of Julie's petition, the focus of which centered on the September 18, 2017, argument. The circuit court sustained the objections, finding the testimony Julie's attorney sought to elicit to be beyond the scope of Julie's petition and irrelevant. The court, however, permitted Julie's attorney to make an offer of proof. We note that it is well-established that the relevance and admissibility of evidence is left within the sound discretion of the circuit court and that the court's decisions concerning the admissibility of evidence will not be disturbed absent an abuse of discretion. *Neade v. Portes*, 193 Ill. 2d 433, 450 (2000); *Smith v. Silver Cross Hospital*, 339 Ill. App. 3d 67, 74 (2003). Importantly, "[t]he threshold for finding an abuse of discretion is high" and a "court will not be found to have abused its discretion with respect to an evidentiary hearing unless it can be said that no reasonable man would take the view adopted by the court." *In re Leona W.*, 228 Ill. 2d 439, 460 (2008). Here, we do not find that the court's evidentiary rulings barring Julie from eliciting testimony from Roti about instances in which she observed William yell at his children

several years ago constituted an abuse of discretion. Even if the court's rulings could be so construed, we do not find that Julie was prejudiced by the rulings especially since William acknowledged that during the course of parenting his children, he has yelled at them. *Id*. (recognizing that even where a circuit court's evidentiary ruling does amount to an abuse of discretion, reversal of the court's judgment is not automatically warranted; rather, reversal is only appropriate where the record establishes that the court's ruling resulted in substantial prejudice and affected the outcome at the circuit court).

¶ 28 In a related claim, Julie argues that the court should have afforded her an opportunity to amend her petition to conform with the proofs and that the court erred in failing to allow her to do so. We find Julie's argument entirely disingenuous given that she never sought leave to amend her petition. In fact, during the course of the hearing, in response to Julie's counsel's continued vocal disagreements with the court's evidentiary rulings, the court specifically asked Julie's counsel if he wanted "to withdraw the petition and amend it." Although counsel responded that he could "always amend it," and could "amend it now," counsel never evidenced any intent or desire to do so. The record affirmatively rebuts Julie's argument that the circuit court improperly infringed on her right and ability to plead.

¶ 29 Finally, Julie challenges the circuit court's ultimate decision to vacate her emergency order of protection. She argues that she proved by "overwhelming evidence" that William "committed multiple forms of 'abuse' against [her] and the children," including harassment, interference with personal liberty, and physical abuse.

¶ 30 The Act mandates that an order of protection be issued if the court finds that the petitioner has been "abused" by a family or household member. 750 ILCS 60/214(a) (West 2014). The term "abuse" is defined in the Act as "physical abuse, harassment, intimidation of a

dependent, interference with personal liberty or willful deprivation." 750 ILCS 60/103(1) (West 2014). Physical abuse, in turn, encompasses a range of behaviors including engaging in "knowing, repeated and unnecessary sleep deprivation." 750 ILCS 60/103(14)(ii) (West 2014). "Harassment," another type of abuse, is defined as "knowing conduct which is not necessary to accomplish a purpose that is reasonable under the circumstances" that "would cause a reasonable person emotional distress" and "does cause emotional distress to the petitioner." 750 ILCS 60/103(7) (West 2014). Finally, "interference with personal liberty" includes "committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage." 750 ILCS 60/103(9) (West 2014). As set forth above, it is the burden of the party alleging abuse and seeking an order of protection to establish that abuse has occurred by a preponderance of the evidence and the circuit court's determination as to whether the petitioner has met her burden will not be disturbed unless is it against the manifest weight of the evidence. *Best*, 223 Ill. 2d at 348, 350.

¶ 31 Julie first argues that she conclusively established that William engaged in numerous and repeated instances of harassment. She points to Roti's testimony detailing instances in which William swore at or in front of their children and her own testimony wherein she detailed William's conduct during the course of their September 18, 2017, argument, including the fact that William played his music loudly and falsely accused her of cutting him in front of their son, T.C.

¶ 32 Initially, we note that William denied swearing at or in the presence of the children, and we reiterate that the circuit court is in the best position to make credibility determinations and resolve conflicts in witness testimony. *Best*, 223 Ill. 2d at 350-51. Moreover, assuming

arguendo that William did swear in the presence of the children on isolated occasions, that is insufficient evidence to warrant a finding of abuse and the entry of an order of protection. See, *e.g.*, *In re Marriage of Healy*, 263 Ill. App. 3d 596, 597, 600 (1994) (wife's allegation that husband "spoke 'verbal cuss words' in the presence of their children on one occasion was insufficient evidence to support the entry of a plenary order of protection). As to William's conduct during the parties' September 18, 2017, argument, William denied playing country music loudly and lying to T.C. Faced with different accounts of the events that occurred on the evening of September 18, 2017, it was within the province of the circuit court to resolve the inconsistencies and make credibility determinations and a reviewing court will not substitute its judgment for that of the trier of fact. *Best*, 223 Ill. 2d at 350-51. Based on our review of the record, we are unable to agree with Julie that she conclusively established that William engaged in repeated instances of harassment, which amounted to abuse under the Act, and that the circuit court's findings to the contrary are against the manifest weight of the evidence.

¶ 33 We are similarly unpersuaded by Julie's arguments that she conclusively established that William committed abuse by interfering with her children's personal liberty. In support, she relies on her own testimony at the hearing, wherein she testified that William once upset their son when he insisted he complete his homework "now" and threatened their daughter by telling her that he would "beat the s*** out of her" if she did not "shut up." Again, we note that although William admitted yelling at his children on occasion, he denied swearing at them. The circuit court considered the discrepant testimony when rendering its decision and this court will not substitute its judgment for that of the circuit court. *Id*. Although William was not asked any questions about the homework incident, we do not find that Julie's account of William's behavior during that incident meets the criteria for abuse under the Act. Notably, the Act

specifically excludes "reasonable direction of a minor child by a parent" from the definition of abuse. 750 ILCS 60/103(1) (West 2014). William's actions in directing his son to complete his homework "now" could be construed as a reasonable direction even if his instruction upset his son. See, *e.g.*, *Radke*, 349 Ill. App. 3d at 268 (rejecting the mother's contention that the father's actions in preventing their daughter from using the phone constituted abuse under the Act because his actions were "justifiable as 'reasonable direction' of a child"). We do not find that Julie's testimony conclusively established that William engaged in abuse by interfering with the children's personal liberty.

¶ 34 We further find that Julie adduced insufficient evidence that William engaged in physical abuse. As set forth above, the term "physical abuse" as used in the Act includes conduct that results in "knowing, repeated and unnecessary sleep deprivation." 750 ILCS 60/103(14)(ii) (West 2014). At the hearing, Julie testified that William played country music loudly on the evening of September 18, 2017, which woke up their children; William, however, denied doing so. Even if William did wake up the children on that single occasion, it did not constitute "knowing, *repeated* and unnecessary sleep deprivation." Similarly, Julie's testimony that William's behavior resulted in her becoming "super stressed" and having sleeping issues, is insufficient to meet the aforementioned definition of physical abuse. See, e.g., *Healy*, 263 Ill. App. at 599 (finding that the wife's testimony that her husband woke their children on one occasion and that his behavior resulted in her being unable to sleep or eat well was "hardly adequate evidence of 'knowing, repeated and unnecessary sleep deprivation' " warranting an order of protection on the ground of physical abuse).

¶ 35 Although Julie is correct that the Act is to be liberally construed to protect domestic violence victims, we emphasize that there must be some evidence in the record to support the

relief requested. *Id.* at 601. Following our review of the record, we are not persuaded that the circuit court's conclusion that Julie failed to meet her burden of establishing that William engaged in abuse, as defined in the Act, is against the manifest weight of the evidence. We reiterate that the court heard different accounts of the events that transpired during the evening of September 18, 2017, and different events that occurred throughout their marriage, and found that there was insufficient evidence of abuse. This court will not substitute its judgment for that of the trier of fact. *Best*, 223 Ill. 2d at 350-51. Accordingly, we affirm the circuit court's order vacating the emergency order of protection.

¶ 36 CONCLUSION

¶ 37 Affirmed.