THIRD DIVISION
September 28, 2018

No. 1-18-0398

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHRISTOPER HALL, on behalf of himself and on behalf of BLAKE LAUREN HALL,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 17 OP 76240
DOUG MYERS,	)	Honorable Rossana P. Fernandez,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the circuit court of Cook County denying the petition for a stalking no contact order is affirmed; petitioner failed to prove by a preponderance of the evidence that respondent's actions would cause a reasonable person as defined by the statute to experience significant mental suffering, anxiety, or alarm.

¶ 2 Petitioner, Christopher Hall (Hall), for himself and on behalf of his minor daughter, Blake Lauren Hall (Blake), filed a petition and later an amended petition for a stalking/no contact order against respondent, Doug Myers (Myers), pursuant to the Stalking No Contact Order Act

(Act) (740 ILCS 21/1 *et seq.* (West 2016)). Following an evidentiary hearing on the petition, the circuit court of Cook County denied the petition.

¶ 3 For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 Hall and Myers reside in the same building. In September 2017 Hall, for himself and his then eight-year-old daughter Blake, filed a petition, supported by Hall's declaration, for a stalking no contact order against Myers based on encounters occurring on three separate dates. The petition alleged that on July 17, 2017, Myers "directed verbal abuse" at Hall and Blake on the back deck of their condominium building. Myers allegedly called Hall a deadbeat, "made negative remarks about Blake's mother's Polish origin," and made a remark that ended with "a**hole." Hall's declaration explained the deck at the condo building is "one continuous deck with a partial railing dividing the deck into two deeded portions, one for Unit 1 and the other for Unit 2." Hall stated that Myers' calling Hall a deadbeat was in reference to disputed work on the condo building. Myers allegedly "crossed to his portion of the deck and continued to verbally abuse Blake" and Hall as they ate dinner on the deck. At one point, Myers allegedly stated to Hall: "This is not your husband's Polish culture." The declaration states that "at this point [Myers] was still seated and took no physical action in furtherance, but seemed emotionally agitated and malign." Hall stated Myers continued with "verbal abuse" then made an unintelligible remark that ended with the word "a**hole." At that point Hall called police then sent Blake back inside.

¶ 6 On July 29, 2017, Myers allegedly "attempted to initiate a verbal confrontation" with Hall three separate times over the course of four and a half hours. Hall's declaration states this occurred at a block party he attended with Blake. Myers allegedly made a comment in Hall's vicinity to the effect of "if it isn't the great attorney." (Hall is a licensed attorney representing

himself in these proceedings.) The declaration states the comment was in reference to an ongoing dispute within the condominium association. The declaration states that within an hour "Myers again, and more loudly made a remark to the same effect again." The declaration does not state to whom Myers made the second comment. Hall turned his attention to Myers and made eye contact with him but did not say anything, then moved away. Later, Blake allegedly indicated to Hall that Myers was pointing at them and saying something to someone standing next to Myers, but Hall did not hear what was being said. Near the end of the block party, Myers was returning to his table, stopped, turned toward Hall, and again made a remark to the effect of "if it isn't the great attorney."

¶ 7 The petition alleges that on August 6, 2017, Myers allegedly stared at Hall's wife as she exited her car and approached the building then slammed the gate shut abruptly in front of her. The petition also makes reference to a "parking spot incident" on August 7, 2017. Hall's declaration states that on August 7, 2017, he and Blake used blue tape to mark the three individual parking spaces deeded to each unit in the building's garage. Hall did this because the residents sometimes park too far into Hall's center space. When Hall and Blake later returned to the building, they found the tape had been ripped up and Myers was in the garage. The petition also states that Hall made three police reports, one regarding the July 17 incident.

¶ 8 The trial court entered an order finding Hall's petition for an emergency stalking/no contact order presented insufficient evidence and denying the petition for an emergency order. The court ordered that the petition for a plenary order of protection would remain pending. The court continued the petition for plenary order of protection for a hearing after service on Myers. After he was served, Myers filed an appearance and a motion to dismiss the petition or, in the alternative, for a continuance of the hearing on the petition. Myers' motion to dismiss argued the alleged acts by Myers, even if true, do not amount to stalking because Hall alleges only that

Myers made disparaging comments in front of Blake and a reasonable person would not suffer emotional distress, and, alternatively, the alleged conduct amounts to protected speech and is therefore excluded from the definition of stalking in the Act.

¶ 9 At a subsequent status hearing the trial court continued Myers' motion and granted Hall's oral motion to amend his petition. On October 5, 2017, Hall filed his amended petition and "Second Declaration of Christopher S. Hall In Support of Petition For A No Contact Order," which alleged there had been further incidents since the filing of the original petition. The amended petition alleged incidents on September 7 and 23, 2017. Hall alleged that on September 7, he was home with Blake when someone began to ring his doorbell "urgently." Hall went to the door to find Myers, who "immediately began to loudly exclaim" that Hall was parked "too far over." Hall turned to retrieve shoes whereupon Myers "loudly yelled up the stairs 'You're being a f*ck-head.' " Hall alleged Myers' exclamation was audible to Blake. Hall closed and locked the door, and Myers allegedly "immediately began to press and hold down continuously the buzzer for [Hall's] unit." Hall alleged this incident was "hostile and loaded and disturbing to both [Hall] and Blake." Hall called police and Myers left. Hall went to move his car after measuring the location of his designated parking spot and realizing his car was 3/4 inches into Myers' spot. Hall further alleged he encountered Myers in the garage and Myers claimed Hall was measuring wrong because Myers spot should be larger because of a pole in the alley obstructing Myers' access to the garage. Hall's allegations dispute Myers' assertion regarding the pole. The amended petition alleges Myers "destroyed personal property" of Hall by again removing blue tape Hall applied to delineate the parking spaces. Hall also alleged that on September 23, 2017, Hall returned to the garage to discover Myers had parked his car eight inches into Hall's parking spot and, moreover, Myers so parked while travelling to Europe.

¶ 10 On October 11, 2017, Myers filed a motion to dismiss the amended petition pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)). Myers' motion to dismiss the amended petition argued, in part, that Hall merely alleges that Myers made "disparaging comments" to Hall in front of Blake. Myers argued these alleged disparaging remarks "and other minor acts" do not rise to the level of stalking as defined in the Act because a reasonable person would not suffer emotional distress as defined by the Act. Myers further argued that the alleged comments amount to protected speech and are therefore excluded from the definition of stalking. Hall filed a memorandum in opposition to Myers' motion to dismiss.

¶ 11 On October 27, 2017 the trial court referred the parties to the Center for Conflict Resolution. In the same order the court entered and continued Myers' motion to dismiss to January 23, 2018. The court set the matter for a hearing on all issues on that date. On January 18, 2018, Hall filed a second memorandum in opposition to Myers' motion to dismiss the amended petition. The second memorandum asserted that Hall wished to bring two additional incidents to the court's attention. The "additional incidents" both allegedly occurred on January 6, 2018, when Hall and Blake went to the garage to find that an "industrial mop bucket" had been placed on top of Blake's bicycle in the garage. Hall removed the bucket, left with Blake, and when he returned, the bucket was back on top of the bike.

¶ 12 On January 23, 2018, the trial court held a hearing on all issues. The court asked the parties if there had been a partial agreement from the Center for Conflict Resolution. Hall said there was a "very limited" agreement. The court asked Hall what were the remaining issues that he wished to proceed with in the hearing and Hall responded "All of the petition. None of the matters in the petition were solved." The court remarked "And that was the purpose for me to send you at [*sic*] the Center for Conflict Resolution." Hall said "Yes," and tried to comment further, but the trial court continued with the proceeding. The court asked Myers' attorney about

the motion to dismiss. The court stated it would allow Myers to argue the motion and Hall to respond. Myers' attorney proceeded to argue the motion. During that argument, Myers' attorney stated that after the partial agreement from the mediation at the Center for Conflict Resolution, Myers "walked out of there thinking that this matter was disposed of." Myers' attorney stated they intended to approach Hall about a joint motion to voluntarily dismiss the petition but then received another filing (Hall's second memorandum in opposition to Myers' motion to dismiss the amended petition). The trial court sated it did not have that filing and questioned Hall about it. Myers' attorney noted that the incidents alleged in the second memorandum occurred prior to the mediation, the parties had no interactions since the mediation, and the mediation resolved the parking dispute which Myers' believed was at the root of the parties' dispute. Myers' attorney stated it was their impression the issue was resolved, but if it was not the court should dismiss the petition for failing to state any actions that constitute stalking under the Act. The trial court asked Myers' attorney if Hall would be allowed to replead if the motion were granted. Myers' attorney agreed Hall might be able to replead if new allegations were to come up but he "could not simply regurgitate [the same] allegations in a new petition." The court asked Myers' attorney if he wanted to proceed with the motion to dismiss or go on with a hearing after which the court would rule on the substance of the petition that was filed. After conferring with Myers, Myers' attorney informed the court Myers would withdraw his motion to dismiss the amended petition and proceed with a hearing on the merits of the petition.

¶ 13 The trial court proceeded to conduct a hearing. The court began by informing the parties that anything not referenced in the petition may not be allowed during the hearing. Hall made an oral motion to amend the petition instanter to allege the incidents on January 6 involving the mop bucket. The court denied Hall's oral motion and granted Myers' motion to strike Hall's

testimony regarding the bucket. At that point in the proceedings, the following exchange occurred:

> "THE PETITIONER [Hall]: Okay. Yes, the first incident was on July 17th.
>
> THE COURT: Okay. Mr. Hall, you cannot read directly from any documents. I'm going to ask you to turn your documents over. You're sworn under penalties of perjury. And you're testifying at this time.
>
> If, of course, at any time you need to refresh your memory, you may review your documents, but you may not read directly from any documents.
>
> THE PETITIONER: That's fine.
>
> THE COURT: So I am going to ask you to turn them over. All right. If you can stay behind the bench facing forward, kindly, I'm going to ask both of you to face forward rather than facing toward each [other]. That may lower some of the potential animosity during the hearing. I ask everyone to do that so please don't feel offended that I'm asking you. Everyone in my courtroom, I ask the same thing."

The court asked Hall if he was proceeding on all four dates alleged in the petition. Hall said the allegation concerning Myers allegedly staring at his wife on August 6, 2017 was hearsay, so Hall withdrew that allegation.

¶ 14 The trial court questioned Hall. Hall testified that on July 17, 2017, Myers came onto the shared back deck, and said "pay your bill, deadbeat" to Hall with Blake present. Hall testified Myers "then continued on to say this isn't your wife's Polish culture *** referring again, to *** this dispute [at the condo.] And then, proceeded to say something that ended in a**hole." The court informed Hall they would address the allegations concerning Blake separately. Hall

testified Myers did not do anything else to him on July 17. The court asked Hall what he was claiming Myers said or did to Blake on July 17. Hall responded Myers did not speak to her directly, but she was witness to everything that went on, and the fact that Myers commented as he did when Blake was present was intentional because, Hall believed, Blake was the target of Myers' conduct. Hall also testified that Blake asked him questions about the incident and continued to do so for a week afterwards.

¶ 15 The court then asked Hall what he claims Myers said or did to Hall on July 29, 2017. Hall initially stated that on July 29 Myers attempted to get Hall into a verbal confrontation at the block party. Myers' attorney objected to Hall's characterization of Myers' intent. The court admonished Hall that if he was alleging Myers was attempting to draw him into a verbal confrontation Hall would have to present evidence to support that allegation. Hall proceeded to testify that in the first instance at the block party Myers, said "there goes the great attorney" as Hall was walking past Myers. The second time, Myers said the same thing "a bit more loudly." Hall made eye contact so that Myers would know that Hall heard him then looked away so that Myers would know Hall did not wish to speak to him. The trial court reminded Hall it was addressing the allegations concerning Hall and the allegations concerning Blake separately. Hall, addressing the claims as to himself, testified Myers said the same thing ("there goes the great attorney") a third time. Hall testified he did not respond. The court then asked Hall what Hall claims Myers did to Blake on July 29. Hall stated: "I can only---I did not witness this---of my child said to me---." The court sustained Myers' objection. The court asked Hall if there was anything he wanted to testify to that he observed that he was claiming Myers said or did to Blake. Hall stated: "I did not observe it."

¶ 16 The trial court next asked Hall what he was claiming Myers said or did to Hall on August 7, 2017. Hall testified he was cooking dinner and Blake was doing her homework when the

"doorbell rings rather urgently." Hall testified he did not have any knowledge whether or not Myers rang the bell but when he went to the door Myers was the person standing there at the bottom of the stairs. The court asked what Myers said and Hall testified Myers "was objecting to a way that [Hall] was parked." Hall testified that he responded to Myers by saying that if Myers had not removed the blue tape Hall applied there would not have been any issue as to where the cars were parked. Hall explained that on a prior date he and Blake had marked the parking spots with blue tape, they left to go to the beach, and when they returned the blue tape had been pulled up. Hall testified he went inside his apartment to get shoes and Myers yelled up the stairs "you're being a f*ckhead" loud enough for Blake to hear. Hall testified he closed the door and "Myers then began to hold the doorbell continuously so that a loud buzzing was produced in the house *** disturbing my daughter as she was trying to do her homework." Hall testified he measured the parking spaces again and moved his car, then left a couple of pieces of blue tape to show where the line was. Hall also testified "there was a heated verbal exchange with Mr. Myers in the garage." The court asked Hall what he was claiming Myers did specifically to Blake on August 7. Hall testified he was "alleging that [Myers] used [Blake] as an audience for his remarks intentionally."

¶ 17 The court also allowed Hall to testify about the mop bucket being placed on Blake's bicycle on January 6, 2018. Hall testified he did not see who placed the bucket on Blake's bicycle and that Myers did not expressly admit to placing the bucket on the bicycle, but from a text message exchange with Hall about the bucket, Hall surmised it was Myers who placed the bucket there because of Myers' statement in that text message exchange. On cross-examination, Hall agreed that the parties reached a partial agreement in mediation on January 10, 2018, four days after the mop bucket incident on January 6.

¶ 18 Hall rested his case-in-chief. Myers did not present any evidence and the trial proceeded to the parties' closing arguments. While Hall was giving his closing argument, the trial court asked Myers, "Can you face forward please?" Hall continued with his closing argument, then Myers' attorney argued. During Hall's rebuttal argument, the court interrupted Hall, and the following exchange occurred:

> "THE COURT: Sir, can you look forward?
>
> THE RESPONDENT: Sorry.
>
> THE PETITIONER: To begin—to begin a---
>
> THE COURT: Just a second. Can you move your body to face forward, please?
>
> MR COTTER [Respondent's attorney]: Just move forward like that. Let's do that.
>
> THE COURT: I've asked—I've asked during the whole hearing not to stare at each other because I find that inappropriate in a courtroom.
>
> THE RESPONDENT: Okay. I'm sorry.
>
> THE COURT: You may finish."

¶ 19 After closing arguments the trial court gave its ruling. The court began with the allegations that there was a form of stalking against Blake. The court found: "Simply because the child is present during a time in which certain comments are made, does not in and of itself constitute stalking. It's not stalking. That's not stalking whatsoever, not as defined by the Act." The court continued, stating it had to address the issues "based on what a reasonable person would view the situation as." The court stated that the "testimony that was provided, however insulting or impolite or offensive as some of these comments were, it's not necessarily stalking," but the court found it was close. The court concluded: "This is not stalking." The court held Hall failed to prove the petition by a preponderance of the evidence.

¶ 20 This appeal followed.

¶ 21 ANALYSIS

¶ 22 Hall appeals from the trial court's judgment which denied Hall's petition for a stalking/no contact order on the grounds Hall failed to prove by a preponderance of the evidence that the conduct alleged in the petition constituted stalking under the Act. The Act defines stalking as follows:

> " 'Stalking' means engaging in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress. Stalking does not include an exercise of the right to free speech or assembly that is otherwise lawful ***." 740 ILCS 21/10 (West 2016).

¶ 23 The party seeking an order under the Act "bears the burden of proving by a preponderance of the evidence that the conduct constitutes stalking." *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 10. "A trial court's determination that a preponderance of the evidence shows a violation of the Act will not be overturned unless such a determination is against the manifest weight of the evidence. [Citation.]" (Internal quotation marks omitted.) *Id.*, ¶ 12 (citing *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶ 22). "The manifest weight of the evidence is the clearly evident, plain and indisputable weight of the evidence. [Citation.]" *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415 (2002). Hall argues for a *de novo* standard of review based on his claim the facts are undisputed and all that remains is a determination of the meaning of the Act in light of the United States Supreme Court's "fighting words" doctrine. Hall also claims *de novo* review is required because the trial court's ruling lacked specificity, and therefore "we simply have no specific findings of fact or law to proceed on in anything other than a *de novo* basis." We disagree.

¶ 24 We reject Hall's argument we can only engage in *de novo* review because the trial court did not state specifically what elements of the Act Hall failed to prove by a preponderance of the evidence; that is, the court did not specifically state whether it believed Myers' speech was "otherwise lawful" or whether Myers' conduct would not cause a reasonable person to fear for his safety or the safety of another, or to suffer emotional distress as defined in the Act. The trial court found that simply because a child is present when comments are made that "does not in and of itself constitute stalking." The court also found that "based on what a reasonable person would view the situation as," the conduct alleged "is not stalking."

¶ 25 We find that the trial court's oral judgment is sufficient to convey its decision that the conduct alleged, even if true, does not rise to stalking as defined in the Act. "[A] reviewing court generally considers the propriety of the decision, not the reasoning." *Bekele v. Ngo*, 236 Ill. App. 3d 330, 332 (1992). In applying the "manifest weight of the evidence" standard, "we are not bound to accept the reasons given by the trial court for its judgment, and the judgment may be sustained upon any ground warranted, regardless of whether it was relied on by the trial court and regardless of whether the reason given by the trial court was correct." See *Maywood-Proviso State Bank v. Village. of Lisle*, 234 Ill. App. 3d 206, 218 (1992). See also *In re Marriage of Tworek*, 2017 IL App (3d) 160188, ¶ 14; *Wilder v. Finnegan*, 267 Ill. App. 3d 422, 426 (1994). Moreover, "[a] reviewing court may not reverse a judgment merely because different conclusions could be drawn or because the reviewing court disagrees, so long as there is evidence to support the judgment." *Yugoslav-Am. Cultural Center, Inc. v. Parkway Bank & Trust Co.*, 289 Ill. App. 3d 728, 734 (1997). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented. [Citations.]" *McNally*, 2015 IL App (1st) 134048, ¶ 12.

¶ 26 In support of his argument the trial court erred in denying his petition, Hall first asserts the trial court erred in finding Myers' conduct did not constitute stalking under the Act because Myers' speech and conduct was "designed to harass and intimidate and cause emotional distress both to [Hall] and his daughter." Hall argues Myers' "intent to intimidate may be inferred both by the outrageous nature of his actions, but also by his words" on July 17, 2017. Hall further argues Myers' speech on July 29, 2017 "was also intended to intimidate, as engaging in a verbal confrontation in front of [Hall's] daughter would have exposed her to more emotional distress." Finally, Hall asserts that Myers' words and conduct on September 7, 2017 "were intimidating and caused emotional distress to both [Hall] and his daughter." Hall asserts, without citation to the record, that he testified that he fears for his daughter's safety because of Myers and that he testified that both he and his daughter have experienced emotional distress over these incidents.

¶ 27 Hall has focused on Myers' alleged intent to harass and intimidate. Hall, as the petitioner did not have to prove, and the trial court did not have to find, that Myers acted with the intent (which is not the mental state required for stalking under the Act) to harass or intimidate or with the intent to cause Hall to fear for his safety or Blake's safety or to cause Hall or Blake emotional distress. "The Act's focus is properly on whether the stalker '*knows or should know* that [the] 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.' [Citation.]" (Emphasis added and emphasis in original.) *McNally*, 2015 IL App (1st) 134048, ¶ 14 (citing 740 ILCS 21/10 (West 2016)). This court has construed similar language to that in the Act found in section 12-7.3 of the Criminal Code of 2012, the criminal provision for stalking. That statute similarly defined stalking, in part, as a course of conduct that he or she knows or should know would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer other emotional distress. 720 ILCS 5/12-7.3 (West 2016), held unconstitutional by *People v. Releford*,

2017 IL 121094.[1] This court, in construing the statute, found that "criminality under [the language at issue] turns entirely on whether the defendant 'knows or should know' how a 'reasonable person' would react to the defendant's conduct, *without regard to the defendant's subjective intentions*." (Emphasis added.) *People v. Releford*, 2016 IL App (1st) 132531, ¶ 31. Hall's arguments concerning Myers' alleged intent are misplaced.

¶ 28 If we construe Hall to argue that the fact Myers intended to cause Hall to fear for his or Blake's safety or to cause either of them to suffer emotional distress proves that Myers knew or should have known that his conduct would have that effect, Hall still fails to demonstrate that the trial court's judgment is against the manifest weight of the evidence. The question for this court is whether the conclusion that Myers' conduct as Hall described would not cause a reasonable person to fear for his or her safety or the safety of another or to suffer emotional distress is "itself is unreasonable, arbitrary, or not based on the evidence presented. [Citations.]" *McNally*, 2015 IL App (1st) 134048, ¶ 12. Alternatively, the question for this court is whether a finding that Myers' speech was "otherwise lawful" (740 ILCS 21/10 (West 2016)) is unreasonable, arbitrary, or not based on the evidence presented. We answer the former question in the negative, therefore, the trial court's judgment must be affirmed; and we do not reach and make no conclusions about the second question.

¶ 29 In this case, Hall asserts, without citation to the record, that he "testified that he fears for his daughter's emotional and physical safety because of [Myers]" and that he "testified that both he and his daughter have experienced emotional distress over these incidents." Myers argues Hall "failed to provide testimony under oath indicating that any of the *** incidents caused him

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[1] Our supreme court found the quoted portion of the statute unconstitutional as violative of the first amendment because it is overbroad in that it impermissibly infringes on the right to free speech. *Releford*, 2017 IL 121094, ¶ 78.

or Blake to suffer emotional distress, or significant mental suffering, anxiety, or alarm required by the Act for conduct to constitute stalking." Myers states "Hall did argue in closing argument that he and Blake suffered emotional distress as a result of Myers' actions, [but] he did not present evidence of that emotional distress while under oath." In replying to Myers' argument, Hall did not direct this court to his alleged testimony that "he fears for his daughter's emotional and physical safety because of [Myers]" or that "both he and his daughter have experienced emotional distress over these incidents." Nor could he. Our careful review of Hall's testimony reveals that Hall testified that Blake asked him questions for a week after the first incident; that during the third incident Myers' alleged continuous ringing of the doorbell disturbed Blake as she was trying to do her homework; and that, with regard to the fourth incident when Myers' allegedly placed a mop buck on Blake's bicycle, Hall "view[ed] that as a trespass against her property with the intent to cause her emotional distress, and therefore, to cause me emotional distress."

¶ 30 Instead, in reply, Hall argues that Myers' argument is an attempt "to introduce a standard, not present in the statute, that [Hall] must also prove emotional distress in order to succeed under the Act." Hall argues the Act only requires him to prove that the conduct would cause a reasonable person (as defined in the Act) to fear for his or her safety or the safety of another or suffer emotional distress (also as defined in the Act). Hall then proceeds to argue, without citation to the record or authority[2], that "[a]ny reasonable" child in Blake's position "would experience emotional distress," and "[a]ny reasonable parent would experience both emotional

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[2] "It is well established that '[r]eviewing courts are entitled to have the issues clearly defined, to be cited pertinent authorities and are not a depository in which an appellant is to dump *** argument and research as it were, upon the court' ([citation]) and failure to cite to authority may result in forfeiture of the issue on appeal. [Citation.]" *Northwestern Memorial Hospital v. Sharif*, 2014 IL App (1st) 133008, ¶ 20.

distress and fears for the emotional and physical safety of their child" from Myers' alleged conduct, particularly the fact that the alleged conduct "graduated" from profane comments to "physical trespass against Blake's property."

¶ 31 Whether a party has suffered emotional distress is generally a question of fact. See *Corgan v. Muehling*, 143 Ill. 2d 296, 312 (1991) ("In the 30 years since *Knierim*, this court has not lost its faith in the ability of jurors to fairly determine what is, and is not, emotional distress.") (citing *Knierim v. Izzo*, 22 Ill. 2d 73, 85 (1961)[3]). "The Act provides that a 'reasonable person' is 'a person in the petitioner's circumstances' who has 'the petitioner's knowledge of the respondent and the respondent's prior acts.' [Citation.]" *Nicholson*, 2013 IL App (3d) ¶ 15. In *Nicholson*, the court found that the respondent "engaged in conduct which, from an objective standpoint, would cause a reasonable person to have some fear for his or her safety or cause that person emotional distress." *Id.* The respondent in *Nicholson* argued the Act is unconstitutionally vague because no reasonably intelligent person can determine what conduct the Act prohibits. *Id.* ¶ 13. In that case, the respondent placed a tracking device on the petitioner's car for the purpose of surreptitiously tracking her and focused a hidden video camera on her desk to secretly record her activities. *Id.* ¶ 15. The court concluded that "[i]t cannot be seriously argued that such conduct would not cause fear and emotional distress for a reasonable person in [the petitioner's] position" and therefore rejected the respondent's vagueness challenge to the Act. *Id.* The respondent in *Nicholson* also argued the trial court's judgment issuing a stalking no contact order was against the manifest weight of the evidence. *Id.* ¶ 22.

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[3] "In addition, *jurors from their own experience will be able to determine whether outrageous conduct results in severe emotional disturbance*." (Emphasis added.) *Knierim*, 22 Ill. 2d at 85.

¶ 32 The *Nicholson* court first found that the evidence clearly established that the respondent had engaged in at least two actions prohibited by the Act. *Id.* ¶ 23. Turning to whether the respondent "knew or should have known that his activities were likely to cause a reasonable person to fear for her safety or suffer emotional distress" (*id*. ¶ 24 (Emphasis omitted.)), the court held "the record supports the conclusion that [the petitioner] would likely suffer emotional distress" (*id*. ¶ 24). The court noted that the petitioner "indicated that she was very upset about the [first] incident" in which she believed [the respondent] was videotaping her in the workplace, regardless of whether the respondent was proven to have done so. *Id.* ¶ 24. We also note that in *Nicholson*, the petitioner "testified at the hearing that she felt victimized, betrayed, and angry that [the respondent] videotaped her" a second time, after previously having been ordered not to do so by his superiors after the first incident. *Id.* ¶ 5. Therefore, the *Nicholson* court concluded, the trial court's finding, that the respondent's actions were covered by the Act was not against the manifest weight of the evidence. *Id.* ¶ 24.

¶ 33 Hall is correct that the Act does not require him to prove he or Blake suffered emotional distress or that he feared for his or Blake's safety. However, we would still have to find that the trial court's conclusion is against the manifest weight of the evidence before we could reverse its judgment. Initially, we note that Hall testified he did not see who put the bucket on the bicycle. At trial, Hall admitted Myers did not say in the text messages that he placed the bucket on top of the bicycle. Hall testified at trial he surmised Myers placed the bucket and argues on appeal that the text messages constitute a tacit admission by Myers that he placed the bucket on Blake's bike because when Hall texted Myers about the bucket Myers' response did not include a denial of placing it on top of Blake's bicycle. Myers does not challenge the admissibility of Hall's testimony as to what he speculates the text message implies. Regardless, the evidence in this case stands in stark contrast to the evidence in *Nicholson*, where the petitioner described the

emotional distress she felt as a result of the respondent's actions. Similarly, in *McNally*, the petitioner "testified she did in fact suffer [fear for her safety and emotional distress] and changed her daily routine because of the harassment" by the respondent. *McNally*, 2015 IL App (1st) 134048, ¶ 16. Regarding the mop bucket incident (evidentiary infirmities aside) or any other testimony as to Myers' conduct, Hall did not testify that he feared for his safety or for Blake's safety. Hall did not testify as to the nature of Blake's questions regarding one incident. Hall did not testify that he experienced "significant mental suffering, anxiety, or alarm." 740 ILCS 24/10 (West 2016) (defining emotional distress). Hall did not testify that he observed signs of fear, "significant mental suffering, anxiety, or alarm" in Blake. On appeal Hall offers only a conclusory assertion that reasonable persons in his and Blake's position would suffer fear and emotional distress without any legal or evidentiary support. The evidence in this case does not approach the type of conduct this court has found would "reasonably cause a person to fear for [his or] her safety or suffer emotional distress." See, *e.g.*, *McNally*, 2015 IL App (1st) ¶¶ 13-16. The evidence in this case was that Myers used profanity and goaded Hall in front of his child and possibly put a bucket on top of her bicycle. Assuming, *arguendo*, that was upsetting to Hall and Blake, the trial court's judgment that the conduct Hall testified to would not result in fear or "significant mental suffering, anxiety, or alarm" in a reasonable person with knowledge of the circumstances is not against the manifest weight of the evidence. Compare *Henby v. White*, 2016 IL App (5^{th}) 140407, ¶ 27 (in affirming order dismissing petition under the Act for failure to state a claim, court noted lack of allegations of "threats of violence, intimidation, or harassment that might cause a reasonable person to fear for his personal safety or to experience significant mental suffering, anxiety, or alarm," and lack of allegations that the petitioner "altered his schedule or routine in order to avoid" the respondent).

¶ 34 In this case there is no direct evidence of Hall's or Blake's fear or emotional distress; thus, they would have to be inferred from the circumstances. Triers of fact are "not confined to the facts directly established by the evidence, but may also make inferences, fairly deducible from facts directly established, a basis of their verdict." *Western Stone Co. v. Earnshaw*, 98 Ill. App. 538, 542 (1991). But, "where the proven facts demonstrate that the nonexistence of the fact to be inferred appears to be just as probable as its existence, then the conclusion is a matter of speculation, conjecture, and guess and the trier of fact cannot be permitted to make that inference. [Citation.]" *Berke v. Manilow*, 2016 IL App (1st) 150397, ¶ 35. To the extent Hall's argument can be construed to ask us to infer that a reasonable person in his or Blake's circumstances with knowledge of Myers and Myers' alleged prior acts would fear for their safety or suffer emotional distress, in spite of the trial court's judgment to the contrary, we decline to do so. "[I]t is not our role on appeal to reweigh the evidence." *Jarke v. Jackson Products, Inc.*, 282 Ill. App. 3d 292, 300 (1996). "If divergent inferences can be drawn from undisputed facts, the reviewing court will defer to the inference the trier of fact drew ([citation]), provided that the inference is reasonable ([citation]) or, in other words, not against the manifest weight of the evidence ([citation]). *In re Estate of Koester v. First Mid-Illinois Bank & Trust, N.A.*, 2012 IL App (4th) 110879, ¶ 45. "The manifest weight of the evidence is the clearly evident, plain and indisputable weight of the evidence. [Citation.]" *Navistar International Transportation Corp.*, 331 Ill. App. 3d at 415. Thus, "[a] reviewing court will not substitute its judgment for that of the fact finder 'on *** the inferences drawn from the evidence' unless the opposite conclusion is evident from the record." *Northwestern Memorial Hospital*, 2014 IL App (1st) 133008, ¶ 26. In this case we cannot say the trial court's judgment that Myers' alleged conduct would not cause a reasonable person fear or emotional distress within the meaning of the Act is not reasonable because, as previously demonstrated, the record evidence does not demonstrate that the opposite

conclusion to that reached by the trial court is evident. *Supra*, ¶ 34. Accordingly, the trial court's judgment must be affirmed.

¶ 35 Hall goes on to argue that Myers' speech was not "otherwise lawful speech" under the meaning of the Act because his speech constitutes "fighting words" under the United States Supreme Court's decisions in *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) and *Hess v. Indiana*, 414 U.S. 105 (1973). Hall argues Myers' words rise to the level of "fighting words" under *Chaplinsky* and *Hess* because his "speech in yelling profanity and making offensive and defamatory comments was directed at [Hall] and his daughter." Our courts have clearly held that "[w]hen words are a component of the stalking behavior, then the speech does not fall within constitutional protections. [Citations.]" *Henby*, 2016 IL App (5th) 140407, ¶ 26 (citing *Piester v. Escobar*, 2015 IL App (3d) 140457, ¶ 18; *McNally*, 2015 IL App (1st) 134048, ¶ 17). Regardless, we have no need to address Hall's "fighting words" argument because whether or not Myers' speech was protected by the first amendment the finding that it would not cause a reasonable person to fear for his or her safety or the safety of another or to suffer emotional distress as defined in the Act is not against the manifest weight of the evidence. See *Maywood-Proviso State Bank*, 234 Ill. App. 3d at 218 ("the judgment may be sustained upon any ground warranted, regardless of whether it was relied on by the trial court and regardless of whether the reason given by the trial court was correct"). Finally, we observe that there is nothing telling as to whether Hall proved Myers' conduct constituted stalking by a preponderance of the evidence from the trial court's request the parties face forward in the record before this court. Hall's assertions about Myers' ability to "control himself" during the hearing are only that---assertions---but the record reveals nothing to change this court's analysis.

¶ 36 CONCLUSION

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

¶ 38 Affirmed.