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2018 IL App (3d) 170203-U

Order filed October 10, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

MAY S. YAZEJI,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Petitioner-Appellee/)	Rock Island County, Illinois,
Cross-Appellant,)	
)	Appeal No. 3-17-0203
v.)	Circuit No. 17-OP-27
)	
BASSAM A. ASSAF,)	Honorable
)	William S. McNeal,
Respondent-Appellant/)	Judge, Presiding.
Cross-Appellee.)	

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Wright concurred in the judgment.
Justice Schmidt concurred in part and dissented in part.

ORDER

¶ 1 *Held:* (1) The trial court’s finding that respondent father abused his minor son by imposing corporal punishment that was excessive, reckless, and unreasonable under the circumstances and its entry of a plenary order of protection against the father on that basis pursuant to the Illinois Domestic Violence Act was not against the manifest weight of the evidence; (2) the trial court’s finding that the petitioner failed to prove that the defendant “harassed” her, and its denial of a protective order against the respondent on the petitioner’s behalf, was not against the manifest weight of the evidence.

¶ 2 Petitioner-Appellee/Cross Appellant, May S. Yazeji (Yazeji), filed petitions in the circuit court of Rock Island County seeking two orders of protection under the Illinois Domestic Violence Act, 750 ILCS 60/102 (Act) (West 2016) against her former husband, Respondent-Appellant/Cross-Appellee, Bassam A. Assaf (Assaf). Yazeji filed one petition on her own behalf and another on behalf of her 12-year-old son, John Assaf (John). Yazeji and Assaf were separated at the time and were parties to a pending dissolution of marriage proceeding. In her petitions, Yazeji alleged that Assaf had abused John while attempting to discipline him during Assaf’s designated “parenting time” with John. Yazeji also alleged that Assaf had harassed Yazeji by repeatedly showing up unexpectedly and without invitation at public places where Yazeji was and interfering with Yazeji’s parenting time with the children.

¶ 3 After conducting a hearing, Circuit Judge Kathleen Mesich granted a temporary emergency order of protection as to John and the parties’ other children. A hearing on plenary orders of protection was conducted nine days later before Circuit Judge William S. McNeal (hereinafter, “the trial court”). The trial court granted the petition filed on John’s behalf and entered a plenary order of protection prohibiting Assaf from committing any “further acts or threats of abuse” against his children and ordering Assaf to abide by all orders entered in the dissolution of marriage action. The plenary order, which was to remain in effect for two years, did not restrict or modify Assaf’s parenting time with the children.

¶ 4 Assaf appeals the trial court’s finding that he abused John and the entry of a plenary order of protection against him. Yazeji appeals the denial of her petition for a protective order against Assaf based on Assaf’s alleged harassment of Yazeji and interference with Yazeji’s parenting time.

¶ 5 FACTS

¶ 6 Yazeji and Assaf were previously married. They have four children together; Joseph (age 13), John (age 12), Natalie (age 7), and Jack (age 6). At all times relevant to this case, Yazeji and Assaf were separated and were parties to a dissolution of marriage proceeding that has been pending since October of 2013. Pursuant to an order entered in the dissolution proceeding, Yazeji and Assaf were to begin a schedule of shared “parenting time” on January 9, 2017. Under the court-ordered schedule, each parent would have parenting time with the children on alternating weeks.

¶ 7 On January 10, 2017, Yazeji filed a verified petition for order of protection on behalf of herself and the children. In the petition, Yazeji alleged that, on January 10, 2017, she received a recording and text messages from her son, Joseph. In these messages, Joseph told Yazeji that Assaf had “strangled” and “hit” John, blocked John’s face with a pillow, and threw John on the ground while trying to enforce a “time out.” Yazeji stated that it sounded like Assaf was “out of control” during this incident and that Assaf had pushed his elderly mother onto the floor when she tried to intervene during the incident. Yazeji further alleged that John had texted her that morning complaining of pain in his head, neck, and back due to the incident.

¶ 8 Although the emergency petition was filed *ex parte*, Assaf received notice of the petition because he was at the courthouse when it was filed. Judge Mesich conducted a five and one-half hour hearing on the emergency petition during which both parents testified and the judge interviewed three of the four children. After the hearing, Judge Mesich granted the petition. Judge Mesich stated that she did not believe that the punishment Assaf had inflicted on John was “at all proportionate to the claimed offense.” She ruled that Assaf should still have “reasonable supervised visitation” with the children in a public place for four to six hours per week during weekends.

¶ 9 On January 19, 2017, a hearing on plenary orders of protection was held before the trial court. Assaf moved to limit the evidence admissible at the hearing to events that occurred after November 28, 2016 (the date of a prior hearing in the marriage dissolution proceeding). The trial court granted Assaf's motion.

¶ 10 John testified that, on January 9, 2017, he, Joseph, and Assaf went to CVS to get some medicine. While there, John asked Assaf if he could buy a jar of protein. John took the jar off the shelf and "accidentally" touched Assaf with the jar in Assaf's shoulder and chest area. John described this touching as a "light tap" that did not hurt Assaf. John and Assaf then began to argue about John's "weight issue." Thereafter, while driving back to Assaf's house, John and Assaf continued to argue. During the argument, Assaf criticized Yazeji and said that she was turning the children against him.

¶ 11 When John, Joseph, and Assaf arrived at Assaf's house, Assaf told John to go do a "time out" "for hitting [Assaf]." John testified that, by ordering John to do a "time out," Assaf was ordering him to lie on the floor face down on the carpet. John "refused to go to timeout." According to John, Assaf then grabbed John by the arm and neck and "threw" him off the couch, causing John to hit his head on the floor. Assaf then "dragged" John to the timeout, "slammed" John's head on the ground (causing his nose to hit the ground), and then "slammed" John's head onto the side edge of the television, causing John to feel pain in his left temple.

¶ 12 John then got up and ran to the phone to try to call 911. Assaf put John in a "choke hold," squeezed his neck with one arm, and took the phone away. Assaf then put one hand on John's chin and the other hand on the top of John's head and twisted John's head until John "spun and fell on the ground" and "did a flip." Assaf then forced John into the timeout position, held a pillow to the back of John's head, and pushed John's face into the carpet. Assaf then sat

on John, holding the pillow against him for approximately five or ten minutes. John was “fighting with” Assaf when Assaf applied the pillow to his back. Assaf ordered John to apologize for hitting him and John did so because he “[didn’t] want to get hurt again.”

¶ 13 John testified that, while Assaf was “attack[ing]” him, Joseph and Assaf’s mother (John and Joseph’s grandmother) were trying to stop Assaf, but Assaf pushed his mother and she fell to the ground. Joseph was criticizing Assaf and trying to pull him off of John. John claimed that Assaf was “hitting” him [John] at that time.

¶ 14 Later that night, John texted his mother about the incident. John testified that his neck hurt for two or three days afterwards. However, John admitted that he did not request or receive any medical treatment after the incident. According to John, the incident lasted only 15 minutes, and John had no further altercations with Assaf afterwards. John further testified that Assaf screamed at Natalie the morning following the incident because Natalie had made all the children late for school. According to John, Assaf scared Natalie during this incident and made her cry.

¶ 15 During cross-examination, John stated that he “hates it” at his dad’s house and that he did not like taking direction from his father. John also admitted telling his mother that he did not like the trial judge’s order of switching visitation each week.

¶ 16 Joseph also testified at the hearing. Joseph stated that, when he, John, and Assaf were at CVS that night, John had “barely touched” Assaf with the jar of protein. The jar had slipped out of John’s hand because John was carrying other items and was holding the jar with only one hand. The jar touched Assaf’s chest “very lightly,” and John did not intentionally hit Assaf with it. John “politely” asked Assaf to buy the protein. According to Joseph, Assaf angrily refused John’s request because Assaf claimed that John had hit him in the chest with the protein jar. Assaf complained of experiencing pain in his chest as a result. Assaf asked John to apologize,

but John initially refused. Assaf and John continued to argue about the incident in the pharmacy and in the car on the way back to Assaf's house. On the way to Assaf's house, Assaf told John he would be disciplined. When John asked why, Assaf told John to listen to Assaf and "stop listening to his mom's teachings."

¶ 17 Joseph testified that, when they got home, Assaf told John to go into a time out. John refused. John remained sitting on the couch and said he "wanted to know why" first. Assaf then grabbed John and "put him to the ground." John got up and Assaf put him down again. He grabbed John with one hand on his back and the other hand on John's neck, and then grabbed John's leg. Assaf then grabbed a "Thomas the Train" foam cushion chair and put it over the back of John's head, forcing his head into the carpet. Assaf was sitting on John's lower back. John kept resisting, telling Assaf to get off, and trying to punch him off, but he could not. When John finally got up, Assaf threw him back on the ground. Assaf's brother then came in the room and said that he had never seen Assaf this angry. Assaf yelled at his brother. John got up and said he was going to call the police. Assaf twisted the cell phone out of John's hand, grabbed John, and "threw him to the ground." Joseph testified that he saw John's head hit the side of the television and John started crying. Assaf grabbed the foam cushion and again sat on John's back. Assaf's 70-year-old mother tried to lift Assaf off John and told him in Arabic to "get off." Assaf pushed her and she fell to the ground. At that point, Joseph told John to do what Assaf said. John then went back to the timeout.

¶ 18 Joseph stated that, at some point during the struggle, he tried to push his father away from John. For a couple of seconds, John was "suffocating" and "letting out little screams." According to Joseph, Assaf never hit John at any time. John eventually apologized to Assaf for the protein jar incident, both before he started the time out and afterwards.

¶ 19 Joseph further testified that, the next morning, Assaf yelled loudly at Natalie because he wanted her to do more with her hair before school. Natalie was crying and hugged Joseph.

Assaf grabbed Natalie by the arm and told her to hurry. Natalie kept crying and hugging Joseph.

¶ 20 Yazeji testified that she felt that Assaf had physically abused John. Yazeji stated that she was not claiming that any form of corporal punishment of a child is a form of abuse. However, Yazeji testified that John was “traumatized” and had suffered emotional injuries as a result of Assaf’s conduct. Yazeji stated that, as a physician, she believed that John was suffering from post-traumatic stress syndrome.

¶ 21 Yazeji introduced text messages that John and Joseph sent her the morning after Assaf had allegedly abused John. In one of those text messages, John told Yazeji, “yesterday at CVS dad thought I hit him when I didn’t,” and “when we got home *** [Assaf] started hitting me because I refused to go to time out for nothing.” John further stated that Assaf: (1) “threw” John off the couch and John hit his head; (2) “dragged” John into a time out, and then “threw [John] into a wall and slammed [his] nose into the ground and slammed [his] head onto the edge of the wall”; (3) sat on John and put a pillow on his face so he could not breathe for eight seconds; (4) “choked” John and twisted his head so hard that he “did a side flip onto the ground” after John tried to call the police. John told his Yazeji that he was still experiencing pain in his head, neck, and back following the assault. He stated that he couldn’t concentrate at school and that he “can’t stop hurting and thinking what might happen next.”

¶ 22 Joseph also texted his Yazeji that morning stating that Assaf had “hit” John and that John’s head had hit the side of the TV when Assaf was forcing him to the ground. Joseph further stated that John was “resist[ing]” and “fighting” Assaf at the time. Joseph also texted Yazeji that Assaf

had pushed Joseph's grandmother to the ground during the incident because she told Assaf to "relax." Joseph asked Yazeji not to "say anything."

¶ 23 Jane Barret, the principal of the elementary school that the children attended, also testified. Barret stated that she spoke with John on January 10, 2017. Later that day, Barret told Yazeji that, as a mandatory reporter, she had no choice but to report Assaf to the Illinois Department of Children and Family Services (DCFS). The next day, Barret spoke with all four of the children and with a representative of DCFS. She met separately with each child. According to Barret, each child was very upset during these conversations.

¶ 24 Assaf called Nathan Byrd, the CVS pharmacist who witnessed Assaf's altercation with John at the pharmacy. Byrd testified that John was "unhappy" during Assaf's discussion about why the protein powder was not a good supplement for him. John disagreed with Assaf and was insistent upon the buying the protein powder. John became argumentative. He was "talking loud" and could be heard from several aisles away. The argument did not stop with the protein powder incident. Byrd testified that Assaf was "diplomatic and fair" while interacting with John.

¶ 25 Assaf testified that John was disrespectful toward him at the pharmacy. Assaf stated that John hit him on the chest with the protein can forcefully, causing Assaf to feel pain at a rating of 8/10. Assaf asked John to apologize both at the pharmacy and during the car ride home. Both times, John refused. John and Joseph continued to argue with Assaf in the car. Assaf told John that he would be getting a "time out" for hitting him with the can and for refusing to apologize.

¶ 26 Assaf testified that, when they arrived home, Assaf asked John to do the time out in the family room. John resisted and began striking at Assaf. At that point, Assaf attempted to physically enforce the time out. Joseph intervened and pushed Assaf twice. Assaf stated that Joseph and John were both "completely out of control" at the time and that, if Assaf's brother

had not been present, he believed the two boys would have attacked him. Assaf used his hands and a small sponge cushion from a chair to enforce the time out against John while John was lying on his side on the floor. Assaf testified that he did not hit or strike John. Moreover, Assaf stated that John did not “fall” to the floor because Assaf was holding him as he took him down to the floor. Assaf placed the cushion between himself and John’s back and shoulders as John was lying on his side on the carpet. Assaf admitted that he held John down on the floor, but he denied “throwing” him to the floor or sitting on him. Assaf testified that he used the cushion as they went to the floor and kept using it as he enforced the time out in order to prevent injuries to John and himself because John was kicking and resisting. Assaf continued to apply “mild” force with both hands using the cushion until John complied, apologized, completed his time out, and calmed down from his agitated state. Assaf also took away John’s cell phone.

¶ 27 According to Assaf, John was not injured during the incident. Assaf stated that he made John spend 15 minutes in a time out to put a stop to his defiant, disrespectful, and belligerent behavior. Assaf testified that the only reason he used mild physical force to enforce the time out was because John was refusing and striking back.

¶ 28 Assaf’s sister and niece each presented an offer of proof stating that, if called to testify, she would testify that Assaf was a good father who would not intentionally harm his children.

¶ 29 Yazeji also testified as to certain alleged incidents of harassment by Assaf against her. Yazeji stated that Assaf would contact the children while Yazeji was parenting them and show up at church or a store where Yazeji and the children were in an attempt to interfere with Yazeji’s parenting time. For example, Yazeji testified that, on January 7, 2017, at approximately 7:00 p.m., Assaf appeared at the OfficeMax where Yazeji was shopping with Joseph, John, and

Natalie. Assaf hugged Natalie and John and began talking with Natalie. Joseph “ran away.” Yazeji claimed that she tried to stay away from Assaf, but he “harassed” her.

¶ 30 Yazeji further testified that, in June 2016, Assaf showed up unannounced at a Toys ‘R Us on a Sunday when Yazeji and the children were there. He had previously called one of the children and asked where they were. After learning that they were at Toys ‘R Us, Assaf appeared there approximately 10 minutes later and said that he needed to talk to the children about a future vacation. Yazeji also claimed that, throughout “almost all of 2016,” on the two Sundays each month that Yazeji took the children to church, Assaf regularly appeared in the church lobby or church parking lot even though Assaf did not belong to that church.

¶ 31 Yazeji also testified that Assaf showed up at the surgeon’s lounge at Trinity Hospital in 2016 while Yazeji was there. The surgeon’s lounge is for surgeons and anesthesiologists to use between surgeries. Assaf is not a surgeon, and Yazeji did not expect him to be there. Assaf told another physician that he came there to obtain food because there was no food in the physician’s lounge. Yazeji also stated that Assaf sent her five lengthy, multi-page accusatory e-mails on January 8, 2017.

¶ 32 Yazeji further testified that she had moved out of the house she shared with Assaf in 2013 because Assaf was “scary” and had physically abused her. Yazeji filed a petition for an order of protection against Assaf in October 2013 because, after she moved out of the house, Assaf went to Yazeji’s office and kicked out all of her staff when she had 40 new patients scheduled for appointments that week.

¶ 33 Yazeji testified that she now needed a two-year order of protection against Assaf to stop him from sending her harassing communications and to prevent him from showing up and interfering with her parenting time with the children. She claimed that she always tried to

convince the children to listen to their father and to have a good relationship with him, but she feared that the children would run away if they are required to see Assaf.

¶ 34 Assaf admitted showing up at both OfficeMax and Toys ‘R Us during Yazeji’s parenting time. He claimed that Yazeji had consented for him to come meet with the children at Toys ‘R Us. Regarding the OfficeMax incident, Assaf testified that, before he came to the store, he called Natalie, who “checked with [Yazeji] for him to come to the store.” Assaf also admitted that he went to the surgeon’s lounge and saw Yazeji there on one occasion, even though he is a neurologist and not a surgeon. Assaf claimed that Yazeji laughed at him sarcastically, and he did not speak with her during that incident. Assaf denied going to the church to see the children after November of 2016.¹ Assaf denied ever harassing Yazeji on “Our Family Wizard” (a website used by divorced parents and divorce courts which is designed to facilitate communications between divorced or separated parents and to help them manage all of the details that come with shared parenting).

¶ 35 Assaf testified that he wanted to take the children away from Yazeji because she is a “continuing bad influence” and a “big manipulator.”

¶ 36 The trial court denied Yazeji’s petition for an order of protection on her own behalf. The court stated that it could not find by a preponderance of the evidence that the Assaf had committed “harassment” against Yazeji, as defined by the Act. Although the court noted that it “sure [was] suspicious” that Assaf “show[ed] up in the store in December” and that Assaf showed up in the surgeon’s lounge merely to get food when he “didn’t have a consultation going on,” it found that Yazeji had failed to meet her burden in regard to the harassment issue.

¹ Yazeji claimed that Assaf came to church when she was there with the children between 12 and 24 times in 2016. As noted, however, the trial court had ruled that the evidence at the hearing would be limited to the time period after the last hearing was held in the dissolution case on November 28, 2016.

¶ 37 However, the trial court found that Assaf had abused John during the “time out” incident and it entered a two-year plenary order of protection against John and in favor of the children. Relying upon a page from the “transparenting toolbox,”² which Assaf had introduced into evidence, the trial court ruled that a time out should be a “last-resort technique” that should be used only when the child is in danger of harming himself or others and should be administered “in a very matter-of-fact way without a great deal of attention.” The court found that “that didn’t take place” in this case. It noted that the Act defines “abuse” as the “[k]nowing or reckless use of physical force.” The court held that Assaf’s use of physical force to enforce the time out in this case satisfied that definition. Although the court acknowledged a parent’s right to use corporal punishment within certain limits of reasonableness, it stated that, on the evidence presented, it could not find that Assaf’s use of physical force because John refused to apologize was reasonable. The court found that there were other things Assaf could have done to make John “chill out,” such as taking away his cell phone. The court stated that, even taking Assaf’s version of events as being absolutely true, it could not find that Assaf’s physically forcing his son to the ground under those circumstances was reasonable.

¶ 38 The trial court ordered Assaf to comply with the orders entered in the marriage dissolution case. The court also ordered, *inter alia*, that: (1) time outs would be limited to sending the misbehaving child to his or her room without electronics or a cell phone, and Assaf could not require a child to get on the ground; (2) neither parent shall appear at any place to meet the children when it is the other parent’s time with the children; (3) each party is prohibited from going to the other party’s medical offices; (4) in all communications other than an emergency, Yazeji shall communicate with the children only by text, but Assaf is allowed to talk to the

² The trial court noted that the “transparenting toolbox” was a document that provided guidelines for how and when parents should impose “time outs” on their children.

children by cell phone; (5) Yazeji is to encourage the children to speak with Assaf when he calls and, if any child refuses, Yazeji shall take the child's cell phone away; and (6) each of the children shall begin individual counseling.

¶ 39 Both parties filed motions to reconsider, which the trial court denied. These appeals followed.

¶ 40 ANALYSIS

¶ 41 1. Assaf's appeal

¶ 42 Assaf appeals the trial court's finding that he abused John and its entry of a plenary order of protection against him. He argues that the trial court erred as a matter of law by entering a protective order even though it found that John suffered no harm during the allegedly abusive incident in question. In the alternative, Assaf contends that the trial court's entry of a protective order was against the manifest weight of the evidence because it was "undisputed" that the incident that triggered the protective order was an objectively reasonable attempt by Assaf to discipline, teach, and direct his son, who had behaved in an unruly and disrespectful manner. In addition, Assaf maintains that the trial court abused its discretion and "interfered with Assaf's constitutional right to privacy in governing his parent-child relationship" by substituting its own judgment regarding the "proportionality" of the method Assaf used to discipline his child for disrespectful behavior.

¶ 43 The dispositive issue raised by Assaf's appeal is whether the trial court properly found that Assaf "abused" John under the Act. If that finding was proper, then all of John's remaining arguments fail, and we must affirm the trial court's judgment. We review the trial court's finding of abuse and its entry of a protective order under the Act under the manifest weight of the evidence standard. *Best v. Best*, 223 Ill. App. 3d 342, 349-50 (2006). A finding is against the

manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding is unreasonable, arbitrary, or not based on the evidence presented. *Id.* at 350. Under a manifest weight of the evidence 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 the witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain. *In re D.F., et al.*, 201 Ill. 2d 476, 498-99 (2002). “A reviewing court, therefore, must 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 499.

¶ 44 The Act defines “abuse” as “physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation.” 750 ILCS 60/103(1) (West 2016). “Physical abuse” includes, inter alia, “knowing or reckless use of physical force, confinement, or restraint,” and “knowing or reckless conduct which creates an immediate risk of physical harm.” 750 ILCS 60/103(14) (West 2016). “Abuse” “does not include reasonable direction of a minor child by a parent or person in loco parentis.” 750 ILCS 60/103(1) (West 2016).

¶ 45 The trial court found that Assaf’s use of physical force against John in enforcing the time out was knowing and reckless, and that it could not be considered to be reasonable under the circumstances. Thus, the trial court found that Yazeji had proven by a preponderance of the evidence that Assaf had abused John under the Act, and it entered a plenary order of protection on that basis. We cannot say that the trial court’s finding of abuse or its entry of a protective order was against the manifest weight of the evidence. John testified that Assaf dragged him across the room, “threw” him down to the floor, “slammed” his head to the ground, put him in a chokehold, and sat on him. Joseph also testified that Assaf threw John to the ground, causing John to hit his head on the TV, and that Assaf was extremely angry at the time (angry enough to

push his own elderly mother to the ground when she tried to intervene). The trial court could have reasonably credited this testimony and found that John's use of physical force was reckless, unreasonable, and created a risk of immediate physical harm to John.

¶ 46 Relying upon cases brought under the Illinois Juvenile Court Act, 705 ILCS 405/2-3(2) (West 2016) and the Illinois Abused and Neglected Child Reporting Act), 325 ILCS 5/3 (West 2016)), Assaf argues that Yazeji failed to show that Assaf abused John as a matter of law because she presented no evidence that John suffered any injury as a result of the incident. However, the statutes at issue in those cases prescribe standards for proving "abuse" of a child that are different from, and more onerous than, the standards for proving abuse under the Act. To prove "abuse" of a child under the Illinois Abused and Neglected Child Reporting Act or the Illinois Juvenile Court Act, plaintiff must prove that the defendant family member inflicted "a physical injury * * * which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function," "creates a substantial risk of [such] physical injury," or inflicts "excessive corporal punishment" upon a child. 325 ILCS 5/3(a), (b), (e) (West 2016); 705 ILCS 405/2-3(2) (i), (ii), (v) (West 2016); see also *Korunka v. Department of Children and Family Services*, 259 Ill. App. 3d 527, 531 (1994). In determining whether corporal punishment is "excessive" under the Juvenile Court Act, the degree of physical injury inflicted upon a child is not the exclusive or the sole determinative factor in evaluating the reasonableness of the parental conduct" (*In re F. W.*, 261 Ill. App. 3d 894, 903 (1994)); however, most of the cases finding unreasonable or excessive corporal punishment "involve[] disciplinary acts which left the children with injuries." 389 Ill. App. 3d 316, 319 (collecting cases). By contrast, to prove physical abuse under the Act, the petitioner must merely establish either "knowing or reckless use of physical force, confinement, or restraint" or "knowing or reckless

conduct which creates an immediate risk of physical harm.” 750 ILCS 60/103(14) (West 2016). Unlike the other statutes relied upon by Assaf, the Act does not require that the defendant’s conduct create a “substantial” risk of a physical injury “which causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function.” Thus, contrary to Assaf’s argument, a petitioner may prove physical abuse under the Act without proving a tangible physical injury, and the petitioner need not show that the defendant created a substantial risk of an injury causing death, disfigurement, or impairment of physical or emotional health. Thus, cases applying the other statutes referenced by Assaf are inapposite.³

¶ 47 In any event, contrary to Assaf’s argument, there was evidence in the record suggesting that John suffered at least some harm from the attack. John testified that he had pain in his head, neck, and back after the incident. This testimony was corroborated by the text message that John sent to Yazeji the morning after the incident. In addition, Yazeji testified that John was traumatized by the abuse and continues to suffer emotional injuries as a result.

¶ 48 Assaf also contends that the trial court’s finding of abuse was against the manifest weight of the evidence because his actions constituted “reasonable direction of a minor child by a parent.” Assaf argues that, given John’s defiance and his unruly and belligerent behavior (including kicking and punching at Assaf while resisting the time out), Assaf’s use of mild corporal punishment was neither excessive nor unreasonable under the circumstances.

¶ 49 If we were to rely only on Assaf’s account of the incident, we might be inclined to agree with Assaf on this point. However, Assaf’s account was contradicted by the sworn testimony of

³ In *Best v. Best*, 223 Ill. 2d 342, 348 (2006), a case brought under the Act, our supreme found its prior decision in *In re A.P.*, 179 Ill.2d 184, 204 (1997), a case brought under the Juvenile Court Act, to be “squarely on point” and “highly instructive” for purposes of determining the standard of review governing findings of “abuse” under the Act. Contrary to Assaf’s suggestion, however, the *Best* court found *A.P.* instructive as to the applicable standard of review only, not as to the substantive standards for proving abuse under the Act.

other witnesses and by other evidence presented at the hearing. John’s and Joseph’s accounts of the incident, which were corroborated in some respects by Yazeji’s testimony and by the e-mails John and Joseph sent Yazeji the day after the incident, differ from Assaf’s account in several material respects and recount a much more violent attack by Assaf. The trial court was entitled to credit John’s, Joseph’s, and Yazeji’s testimony over Assaf’s testimony. Thus, the trial court’s finding that Assaf’s corporal punishment was excessive and unreasonable under the circumstances was not against the manifest weight of the evidence.

¶ 50 Because we hold that the evidence presented was sufficient to support a finding of abuse under the Act, we need not address Yazeji’s alternative arguments that Assaf’s conduct towards John also constituted “harassment,” “intimidation of a dependent,” or “interference with personal liberty” under the Act. We also decline to address Yazeji’s alternative argument that Assaf’s alleged failure to file an answer to Yazeji’s verified petition for an order of protection resulted in Assaf’s admission of all factual allegations of abuse in the petition.⁴

¶ 51 2. Yazeji’s cross-appeal

¶ 52 Yazeji cross appeals the denial of her petition for a protective order against Assaf based on Assaf’s alleged harassment of her. Yazeji contends that the trial court’s finding that she failed to prove harassment under the Act was against the manifest weight of the evidence. She argues that the trial court erred by refusing to consider evidence of certain acts of harassment that Assaf allegedly committed against her (and certain acts of abuse that Assaf allegedly committed

⁴ Yazeji has apparently abandoned this argument, with good reason. Assaf correctly notes that he did, in fact, file an answer to Yazeji’s petition, as the trial court acknowledged from the bench. Assaf’s filing of an answer was not reflected on the trial court’s docket, apparently because the circuit clerk had erroneously filed Assaf’s answer in the dissolution case rather than the order of protection case. In any event, the Act required Assaf to file an answer “or to appear” in court to oppose the petition within 7 days. 750 ILCS 60/210(a) (West 2016). Assaf appeared in court to oppose the petition in a timely manner. Accordingly, even if Assaf had not filed an answer, he would not have been precluded from challenging the factual allegations contained in Yazeji’s petition. Therefore, even if we were to address Yazeji’s argument on this issue, we would reject it.

against the children) prior to November 28, 2016. In addition, Yazeji challenges the remedies that the trial court ordered pursuant to the order of protection it granted in favor of the children. Specifically, Yazeji maintains that the trial court: (1) erred by failing to order supervised visitation for Assaf (as Judge Mesich had done when she granted the emergency *ex parte* petition for a protective order); and (2) abused its discretion by allowing Assaf to communicate with the children by phone during their time with Yazeji while restricting Yazeji's communications with the children to text messages during their visits with Assaf. We address each of these arguments below.

¶ 53 As an initial matter, Yazeji has forfeited her argument that the trial court erred by limiting the scope of the hearing to acts of abuse and harassment that allegedly occurred after November 28, 2016. On that date, the trial court had held a hearing on the temporary allocation of the parties' parental responsibilities in the marriage dissolution action. In her subsequent *ex parte* petitions for emergency protective orders, Yazeji alleged that Assaf had physically abused the children on two occasions in 2016 (before he abused John in January 2017) and that Assaf had harassed and physically abused Yazeji on various occasions in 2013 and 2016.⁵ Prior to the hearing on Yazeji's subsequent petitions for plenary protective orders, Assaf moved to strike evidence of any incidents occurring prior to the November 28, 2016, hearing date. The trial court granted Assaf's motion.

¶ 54 On appeal, Yazeji argues that the trial court abused its discretion by restricting the evidence in this manner. However, Yazeji did not properly raise this argument before the trial court or preserve it for appeal. She did not move for the admission of the evidence at issue or renew any objection to the trial court's ruling during her case-in-chief. Nor did she present an

⁵ The alleged 2013 incidents were the subject of a previous motion for protective order that Yazeji filed against Assaf.

offer of proof (either through her own testimony or through the children’s testimony) outlining specifically what each witness would testify to regarding the alleged prior abuse or harassment and revealing why such evidence was relevant, admissible, and probative of the issues raised in her petitions. Nor did she argue before the trial court that the court’s refusal to consider such evidence constituted prejudicial error. Accordingly, Yazeji effectively acquiesced in the trial court’s preliminary ruling restricting the scope of the trial, and she has forfeited the right to challenge that ruling on appeal.

¶ 55 “It is well recognized that the key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court.” *People v. Andrews*, 146 Ill. 2d 413, 420–21 (1992); see also *People v. Burgess*, 2015 IL App (1st) 130657, ¶ 147; *Pyramid Development, LLC v. Dukane Precast, Inc.*, 2014 IL App (2d) 13113140, ¶ 41. “The purpose of an offer of proof is to disclose to the trial judge and opposing counsel the nature of the offered evidence and to enable a reviewing court to determine whether exclusion of the evidence was proper.” *Andrews*, 146 Ill.2d at 421. In making the offer of proof, counsel must “explicitly state what the excluded testimony would reveal” (*i.e.*, counsel must reveal to the trial court, “with particularity, the substance of the witness’ anticipated answer”), and “may not merely allude to what might be divulged by the testimony” (*id.*); an offer of proof that merely summarizes the witness’ testimony in a conclusory manner is inadequate (*id.*). Moreover, a proper offer of proof must “demonstrate, both to the trial court and to reviewing courts, the admissibility of the testimony.” *Id.* The failure to make an adequate offer of proof forfeits the issue on appeal. *Id.*; see also *Pyramid Development, LLC*, 2014 IL App (2d) 13113140, ¶ 41; *Cundiff v. Patel*, 2012 IL App (4th) 120031, ¶ 20 (failure to make an offer of proof at trial forfeits review of the trial court’s granting a motion *in limine* excluding the evidence at issue). Moreover, as a general

matter, arguments not raised in the trial court are forfeited and may be presented for the first time on appeal. *In re Estate of Chaney*, 2013 IL App (3d) 1205651, ¶ 8. Yazeji apparently did not argue before the trial court that the evidence at issue was admissible or that the exclusion of the evidence would be prejudicial error. Because Yazeji did not properly frame her evidentiary objections before the trial court, we will not address them now.⁶

¶ 56 Yazeji also argues that the trial court’s finding that she failed to prove that Assaf harassed her was against the manifest weight of the evidence. The Act defines “harassment” as “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). The Act lists several categories of conduct which are rebuttably presumed to cause emotional distress, including “repeatedly following petitioner about in a public place or places.” 750 ILCS 60/103(7)(iii) (West 2016).

¶ 57 Although Yazeji testified that Assaf “harassed” her on multiple occasions beginning in 2013, she identified only a few acts of alleged harassment occurring after November 28, 2016. Specifically, Yazeji testified that: (1) Assaf showed up at OfficeMax on January 7, 2017, while Yazeji was there with the children and interfered with Yazeji’s parenting time; (2) Assaf sent Yazeji five lengthy, accusatory e-mails on January 8, 2017; (3) Assaf showed up unannounced at church while Yazeji was there with the children “one or twice per month” throughout 2016;⁷ and (4) Assaf showed up at Trinity Hospital’s surgeon’s lounge on one occasion in 2016 while

⁶ In the alternative, Yazeji argues that the trial court should have considered evidence of Assaf’s harassment of Yazeji that was presented in the prior order of protection hearing. However, Yazeji does not allege that she ever asked the trial court to do this. Thus, Yazeji has forfeited this argument as well.

⁷ Although Yazeji did not explicitly testify that any of these church visits occurred after November 28, 2016, her testimony arguably implies that one or two such incidents occurred in December 2016.

Yazeji was there despite the fact that Assaf is not a surgeon.⁸ Assaf denied showing up at church after November 2016. Assaf further testified also testified that, before he went to OfficeMax on January 7, 2017, he called Natalie, who asked Yazeji whether Assaf could come to the store and visit the family. According to Assaf, Yazeji answered in the affirmative, thereby consenting to Assaf's OfficeMax visit. Assaf testified that he did not speak to Yazeji at OfficeMax; he merely hugged Natalie and Jack and then left. Assaf further stated that he did not talk to Yazeji on the single occasion that he went to the surgeon's lounge at Trinity Hospital.

¶ 58 Given Assaf's testimony on these matters, which the trial court was entitled to credit over Yazeji's contrary testimony, and given the paucity of incidents of alleged harassment during the relevant time period, the trial court could have reasonably found that Yazeji failed to prove that Assaf repeatedly followed her around in public places or that Assaf's alleged acts of harassment during the relevant period would have caused a reasonable person emotional distress. Accordingly, the trial court's finding that Yazeji had failed to carry her burden of proving harassment was not against the manifest weight of the evidence.

¶ 59 Yazeji argues that the trial court improperly granted a "directed verdict" to Assaf on Yazeji's claim of harassment. That is not accurate. Although Assaf moved for a directed verdict at the close of Yazeji's case, Assaf's motion was directed exclusively to Yazeji's claim that Assaf had abused John, not her claim that Assaf had harassed her. That is the only motion for a directed verdict that Yazeji identifies, and the only such motion we found recorded in the hearing transcript. The trial court denied Assaf's motion for a directed verdict and directed the parties to proceed to "arguments whether [Yazeji] has proved by a preponderance of the evidence the basis

⁸ Yazeji does not specify when in 2016 this incident occurred. The trial court considered the incident in ruling on Yazeji's harassment claim. Thus, the trial court apparently assumed that it occurred within the relevant time period, *i.e.*, after November 28, 2016. Assaf does not argue otherwise. Accordingly, we will make the same assumption for purposes of this appeal.

and justification for the order of protection.” In its final ruling from the bench (after all the evidence had been presented), the trial court stated, “I cannot find by a preponderance of the evidence that [Assaf] engaged in harassment [against Yazeji],” and “I cannot find that [Yazeji] has met her burden in regard to the harassment issue.” Accordingly, our review of the record confirms that the trial court did not grant a directed verdict on this issue but rather found, at the close of all the evidence presented by both parties, that Yazeji had failed to carry her burden of proof. As noted above, that finding was not against the manifest weight of the evidence.

¶ 60 Yazeji also asserts that the trial court abused its discretion by failing to order supervised visitation for Assaf. When a circuit court crafts an order of protection after finding abuse, it “ ‘acts as a shaper of remedies’ and, in that capacity, the court has ‘true discretion.’ ” *Frank v. Hawkins*, 383 Ill. App. 3d 799, 816 (2008) (quoting *Best v. Best*, 358 Ill. App. 3d 1046, 1053 (2005)). Therefore, we review the court's granting of remedies in the order of protection under an abuse of discretion standard. *Frank*, 383 Ill. App. 3d at 816. “The threshold for finding an abuse of discretion is a high one and will not be overcome unless it can be said that the trial court's ruling was arbitrary, fanciful, or unreasonable, or that no reasonable person would have taken the view adopted by the trial court.” *Carolina Casualty Insurance Co. v. Estate of Sperl*, 2015 IL App (3d) 130294, ¶ 18; see also *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009).

¶ 61 The Act provides a nonexclusive list of factors that the trial court must consider when determining whether to grant specific remedies other than payment of support. They include, in pertinent part: “(i) the nature, frequency, severity, pattern[,] and consequences of respondent's past abuse, neglect[,] or exploitation of the petitioner or any family or household member *** and the likelihood of danger of future abuse, neglect, or exploitation to petitioner or any member of petitioner's or respondent's family or household; and (ii) the danger that any minor child will

be abused or neglected or improperly removed from the jurisdiction, improperly concealed within the State or improperly separated from the child's primary caretaker.” 750 ILCS 60/214(c)(1) (West 2016); see also *Frank*, 383 Ill. App. 3d at 816-17.

¶ 62 Yazeji does not address these factors in her briefs on appeal. Nor does she make any argument as to why the trial court’s failure to order supervised visitation amounted to an abuse of the trial court’s considerable discretion to craft an appropriate remedy. Instead, she merely asserts that the trial court should have continued Judge Mesich’s order of supervised visitation. In her opening brief on appeal, Yazeji cited no authority in support of her “argument” regarding supervised visitation. In response to arguments raised in Assaf’s cross-appellee’s brief, Yazeji cited authorities in her reply brief. However, the authorities cited by Yazeji on reply merely address the trial and appellate court’s authority to order supervised visitation; they do not provide any support for Yazeji’s assertion that the trial court’s failure to order supervised visitation in this case was an abuse of discretion.

¶ 63 Illinois Supreme Court Rule 341(h)(7) provides, *inter alia*, that an appellant's brief shall contain “[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on.” Ill. S. Ct. R. 341(h)(7) (eff. Feb.6, 2013). “[T]he appellate court is not a repository into which an appellant may foist the burden of argument and research.” *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37. “A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented[.]” *Obert v. Saville*, 253 Ill. App. 3d 677, 682 (1993). By failing to support her claim regarding supervised visitation with proper argument and citations to authority, Yazeji has forfeited this issue on appeal. *Sexton v. City of Chicago*, 2012 Ill App (1st) 100010, ¶ 79 (holding that plaintiff waived an issue on appeal by “failing to develop

her argument properly”); see also *Ramos*, 2013 IL App (3d) 120001, ¶ 37; *CE Design, Ltd. v. Speedway Crane, LLC*, 2015 IL App (1st) 132572, ¶ 18 (holding that the failure to provide an argument and to cite to authority in violation of Rule 341 “results in the party forfeiting consideration of the issue”).

¶ 64 However, even if we were to consider Yazeji’s argument, we would reject it. After reviewing the evidence presented regarding the nature of the abuse at issue (and the evidence of all other pertinent conduct by Assaf during the relevant time period), we cannot say that the remedies ordered by the trial court were arbitrary, fanciful, unreasonable, or otherwise beyond the scope of the trial court’s discretion.

¶ 65 Yazeji also argues that the trial court abused its discretion by allowing Assaf to phone the children when they were with Yazeji while requiring Yazeji to communicate with the children solely by text messaging when they were with Assaf (other than in an emergency). Yazeji argues that “there absolutely was no rationale or basis for” this ruling, which Yazeji claims penalizes the non-abusive parent and benefits the abuser. We do not find this argument persuasive.

¶ 66 As an initial matter, Yazeji waived any objection to the trial court’s order on this issue by expressly agreeing to the order at trial. When the trial court made its ruling from the bench ordering Yazeji to communicate with the children by text messages in nonemergency situations, Yazeji’s counsel stated, “[m]y client says that’s how it currently is, so that’s fine.” After the trial court explained its reasons for this order, Yazeji’s counsel repeated, “[t]hat’s fine, Your Honor.” Thus, Yazeji’s counsel affirmatively waived any objection to the trial court’s ruling on this issue. See generally *People v. Blair*, 215 Ill. 2d 427, 444 n. 2 (1995), quoting *United States v. Olano*, 507 U.S. 725, 733 (1993) (distinguishing forfeiture from waiver and noting that “forfeiture is the

failure to make the timely assertion of the right,” whereas “waiver is the ‘intentional relinquishment or abandonment of a known right’ ”); *People v. Phipps*, 238 Ill. 2d 54, 62 (2010). Accordingly, the issue is not subject to appellate review because there is no error to correct. See, e.g., *United States v. Collins*, 223 F.3d 502, 509 (7th Cir. 2000).⁹

¶ 67 In any event, even if Yazeji had preserved her argument on this issue, the argument would fail. Contrary to Yazeji’s assertion on appeal, there was a sound rationale for the trial court’s order. As the trial court noted in issuing the order: (1) Assaf testified that Yazeji was attempting to sabotage his relationship with the children; and (2) when problems arose, Yazeji, Assaf, and the children each had differing accounts of what Yazeji was saying to the children when she communicated with them by phone. Accordingly, should further problems arise in the future, the trial court wanted to be able to see “exactly what [was] being said” in Yazeji’s communications with the children during their visits with Assaf. The trial court stressed that its order was temporary and that it applied only to nonemergency communications from Yazeji. We cannot say that the trial court’s order was arbitrary, unreasonable, or an abuse of the trial court’s discretion.

¶ 68 CONCLUSION

¶ 69 For the foregoing reasons, we affirm the judgment of the circuit court of Rock Island County.

¶ 70 Affirmed.

¶ 71 JUSTICE SCHMIDT, concurring in part and dissenting in part:

⁹ Assaf does not raise this argument in his cross-appellee’s brief. However, we may affirm the trial court’s judgment on any basis supported by the record. *Mutual Management Services, Inc. v. Swalve*, 2011 IL App (2d) 100778, ¶ 11; *Kubichcheck v. Traina*, 2013 IL App (3d) 110157, ¶ 28, n.3.

¶ 72 I dissent only as to the majority’s decision to affirm the trial court’s order issuing a plenary order of protection as to John. The trial court must make a finding of (1) abuse and (2) need to protect from further abuse before issuing a plenary order of protection. 750 ILCS 60/219(2) (West 2016). Here, the evidence supported neither.

¶ 73 To find abuse, the moving party must show “knowing or reckless use of physical force, confinement or restraint” and “conduct which creates an immediate risk of physical harm.” 750 ILCS 60/103(14) (West 2016). Although the Act broadly defines abuse, it excludes “reasonable direction of a minor child by a parent” from its definition of abuse. *Id.* § 103(1). Even taking John, Joseph, and Yazeji’s testimony as true, the evidence does not support a finding of abuse. All accounts suggest Assaf disciplined his son. Assaf gave John the opportunity to apologize for his actions. He also gave John the opportunity to enter a “time-out” on his own. John repeatedly refused. He met Assaf’s demands with defiance. He and his brother both testified that John resisted and fought as Assaf attempted to put him in the time-out.

¶ 74 Even assuming that this one incident did constitute abuse, evidence established that it was an isolated incident. Nothing similar occurred before or since. An isolated incident with a child (who admits that he resisted and fought his father at the time) does not support the notion that a plenary order of protection is “necessary *** to prevent further abuse.” *Id.* § 102(6).

¶ 75 The majority’s decision removes a parent’s constitutional right to reasonably parent his child. See *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (holding “[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the State can neither supply nor hinder.”). The findings that Assaf “abused” his son, and that the plenary order was necessary to prevent further abuse, are both against the manifest weight of the evidence. The record simply does not contain

evidence that Assaf is or was an abusive parent. The issuance of a plenary order of protection is no small thing. Declaring anyone, let alone a physician, as an abusive parent should not be taken lightly. Assaf told his son to assume the family time-out position. John refused. Assaf then physically placed John there as John resisted and fought. John suffered no real injury. I would reverse and vacate the plenary order of protection.