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2018 IL App (3d) 170411-U

Order filed October 1, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

KYLE E. SMITH,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
Petitioner-Appellee,)	Warren County, Illinois
)	
v.)	Appeal No. 3-17-0411
)	Circuit No. 17-OP-06
)	
KOREY R. FISHER,)	Honorable
)	James R. Standard
Respondent-Appellant.)	Judge, Presiding

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Schmidt and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's grant of a plenary order of protection was not against the manifest weight of the evidence where the court found credible evidence that the respondent's actions constituted abuse and harassment.

¶ 2 The respondent, Korey R. Fisher, appeals from the judgment of the circuit court of Warren County finding that she abused and harassed the minor, M.E.F-S, and entering a two-

year plenary order of protection. Because the finding of abuse and harassment was not against the manifest weight of the evidence, we affirm.

¶ 3

BACKGROUND

¶ 4

The petitioner, Kyle E. Smith, the father of two-year old M.E.F-S, filed a verified petition for an order of protection on behalf of the minor. The petition alleged that the respondent mother and her paramour, Pierce Reeves, abused the minor.

¶ 5

At the hearing on the plenary order of protection, Sarah Gibbs testified that she lived in the apartment next door to the respondent's apartment, sharing a common wall with the respondent. Gibbs testified to daily instances of both the respondent and Reeves yelling and screaming obscenities at the minor several times per day, almost daily, for at least two months. On several occasions, the yelling occurred during the early morning hours, including as early as 3 a.m. Gibbs testified that the child reacted by continued and prolonged crying. If the child had been crying prior to the yelling, the crying intensified afterwards, according to Gibbs. Gibbs also testified that she knew the respondent, Reeves, and the minor and could tell it was them in the apartment. Gibbs testified that the yelling and screaming at the child was so constant and pervasive that she would on occasion yell through the wall to tell the respondent and Reeves to stop yelling at the child. Gibbs testified that she reported the disturbance to the Warren County Housing Authority (the rental agent for the complex) on more than one occasion. Gibbs also testified that she contacted the petitioner and the petitioner's mother, with whom she was friends, to inform them of the yelling and screaming.

¶ 6

The respondent testified that neither she nor Reeves ever yelled at the minor or screamed obscenities at her as Gibbs had testified. Reeves did not testify. The respondent also provided the testimony of Jayme Fisher, the respondent's cousin. Jayme testified that she visited the

respondent on several occasions and never once observed either the respondent or Reeves yell, curse at the child, or yell any obscenities at the child.

¶ 7 In granting the plenary order of protection, the trial court noted that harassment required proof that the respondent engaged in knowing conduct that would cause a reasonable person to undergo emotional distress, and that did in fact cause this person's emotional distress. The court found that the preponderance of the evidence established that the respondent and Reeves subjected the minor child to verbal abuse and harassment in the form of yelling and screaming at the child at all hours of the day and night, including the yelling of obscenities at the child far beyond any degree that could be reasonably attributed to parental care. In reaching this conclusion, the court credited Gibbs' testimony and discounted the testimony brought forth by the respondent. The court found that, under the facts of this case, the petitioner established by a preponderance of the evidence that the minor child actually suffered emotional distress as a result of the verbal abuse and harassment. The court entered a plenary order of protection. The respondent filed this appeal.

¶ 8 ANALYSIS

¶ 9 On appeal, the respondent maintains that the trial court's finding of abuse was against the manifest weight of the evidence, because there was insufficient evidence of conduct that constituted abuse and harassment, and there was insufficient evidence that the minor child actually suffered emotional distress as a result of any conduct attributable to the respondent.

¶ 10 In any proceeding to obtain an order of protection under the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West 2016)), the focus is on whether the petitioner or the protected party has been abused. *Sanchez v. Torres*, 2016 IL App (1st) 151189, ¶ 19. Abuse includes harassment. 750 ILCS 60/103(1) (West 2016). Harassment is conduct that 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 protected party. 750 ILCS 60/103(7) (West 2016); *In re Marriage of Young*, 2013 IL App (2d) 121196, ¶ 25. Once the trial court finds that the respondent abused or harassed a protected party, it must issue an order of protection. *See id.*

¶ 11 The standard of proof for a finding of abuse is by a preponderance of the evidence. *Sanchez*, 2016 IL App (1st) 151189, ¶ 20. A reviewing court may reverse a trial court's finding of abuse only where the finding is against the manifest weight of the evidence. *Id.* A finding is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent or if the finding is unreasonable, arbitrary, or not based on the evidence. *Best v. Best*, 223 Ill. 2d 342, 350 (2006).

¶ 12 In this case, the trial court found that Gibbs' testimony regarding the respondent's treatment of the minor to be credible. Although the respondent takes issue with the trial court's finding that Gibbs was more credible than her evidence to the contrary, we must defer to the trial court's credibility determination unless it is against the manifest weight of the evidence. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002). Here, we cannot say that the trial court's credibility finding was against the manifest weight of the evidence. The record established that Gibbs contacted third parties at points close in time to when the incidents occurred. Moreover, although the record indicated that Gibbs knew the petitioner and his family, there was nothing in the record to establish that she had a reason or motive to fabricate her story. Given the record before us, we cannot say that the trial court's finding that the respondent and Reeves engaged in a pervasive pattern of yelling and screaming at the minor, including the use of obscenities on a frequent basis, was against the manifest weight of the evidence.

¶ 13 Turning to the question of whether the trial court's finding that the conduct at issue constituted harassment, we find that the court's determination is supported by the manifest weight of the evidence. The trial court's finding that the conduct described by Gibbs was beyond that necessary to accomplish a parental purpose was not supported by expert opinion. However, a reviewing court will give the trial court wide latitude when determining whether parental conduct exceeds the bounds of reasonable parental discipline. See *In re B.H.*, 389 Ill. App. 3d 316, 320 (2009). Here, the trial court's finding that yelling and screaming at a two-year-old child at all hours of the day and night, including the frequent use of obscenities, went beyond any necessities of reasonable parental purposes. See *Peck v. Otten*, 329 Ill. App. 3d 266, 271-72 (2002) (Holdridge, J. dissenting) (the breaking of a pool cue in the child's presence was not harassment where it was reasonably meant to provide an object lesson to the child about the value of homework over recreation). Here, there appears to be no reasonable parental purpose for the conduct at issue. The court's finding was not against the manifest weight of the evidence.

¶ 14 Moreover, the court's finding that the conduct perpetrated by the respondent and Reeves was likely to cause a reasonable person emotional distress, and that it did in fact cause the protected person emotional distress, was not against the manifest weight of the evidence. The evidence established that the conduct was of an excessive, loud, verbally abusive and continual nature. The fact that the respondent and Reeves could clearly be heard by Gibbs in the apartment next door is further evidence in support of the trial court's findings. Given the totality of the record, the trial court's determination that the child was subjected to the type of conduct that would cause a reasonable person to experience emotional distress was not arbitrary or capricious. Similarly, the court's inference that even a two-year old child would suffer emotional distress under these circumstances was not against the manifest weight of the evidence. Gibbs testified

that she could hear the child reacting to the near constant with increasing crying and manifestations of fear or trepidation. This testimony permits an inference that the child was frightened and emotionally distressed by the conduct of the respondent and Reeves. Such an inference is permissible under the Act. *Frank v. Hawkins*, 383 Ill. App. 3d 799, 813 (2008).

¶ 15

CONCLUSION

¶ 16

For the foregoing reasons, the judgment of the circuit court of Warren County is affirmed.

¶ 17

Affirmed.