2019 IL App (1st) 182502-U
No. 1-18-2502
Order filed May 21, 2019

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

In re THE PARENTAGE OF O.A., a Minor	)	
	)	
(Lauren C.,	)	Appeal from the Circuit Court
	)	of Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 15 D 79279
	)	
Michael M.,	)	
	)	The Honorable
Respondent-Appellant).	)	Pamela E. Loza,
	)	Judge, presiding.
	)	

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court erred in entering plenary order of protection without making the specific findings of fact required by section 214(c)(3) of the Illinois Domestic Violence Act of 1986. The order is vacated and the case is remanded so the trial court can make findings of fact under the statute.

¶ 2 Petitioner Lauren C. sought an order or protection against respondent, Michael M. on behalf of herself and their minor child, O.A. After a hearing at which both parties testified, the trial court found Michael had abused Lauren and entered a one year plenary order of protection that, in part, requires Michael to participate in 40 hours of domestic violence counseling and begin and end his parenting time with O.A. in front of a police station.

¶ 3 Michael argues the trial court exceeded its authority by entering a plenary order of protection after a hearing on an emergency motion for an order of protection. Michael also contends the trial court erred by: (i) failing to make the findings of fact required by section 214(c) (3) of the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/214(c) (3) (West 2016), and (ii) finding evidence of abuse sufficient to support entry of an order of protection. We find the trial court did not exceed its authority by entering a plenary order of protection. But the trial court erred in failing to make findings of fact mandated by section 214(c) of the Act. Thus, we vacate and remand so the trial court can comply with the statutory requirements.

¶ 4 Background

¶ 5 Lauren and Michael were never married but have one minor child together, O.A., who was born in July 2014. On October 30, 2018, Lauren filed a *pro se*, *ex parte* petition in DuPage County for an emergency order of protection under section 214 of the Act (750 ILCS 60/214 (West 2016)). Lauren alleged that nearly three years earlier, in October 2015, Michael arrived early for a scheduled visit with O.A. When she and O.A. arrived home, Michael "ran out of his car towards me within inches of me at my car trying to get [O.A.]. [He was] agressively [sic] speaking and harassing me." Lauren also alleged that on October 29, 2018, Michael arrived early to pick up O.A. "When O.A. saw him, she ran back to the front door and he chased after her. He picked her up and she started crying immediately. He put her down and she ran to me and hid

behind me, saying she didn't want to go. Mike took her and proceeded to verbally harrass [sic] me, changing in demeanor becoming irratic [sic] and aggressive towards me. He put [O.A.] in the car and sped off, [continuing] to harrass [sic] me via text message, while driving with [O.A.] in the car." She also alleged Michael "is a PRO GUN advocate and owns firearms at his residence." (Emphasis in original.)

¶ 6 The DuPage court denied Lauren's request for an emergency order and dismissed the petition, finding it failed to present credible evidence to meet the burden of proof under the Act.

¶ 7 On November 1, 2018, Lauren, through counsel, again petitioned the DuPage circuit court for an emergency order of protection against Michael. By agreed order, the court transferred the petition to Cook County for consolidation with the parentage case. The Cook County trial court entered an agreed order, which granted Lauren leave to file an emergency petition for an order of protection and set the matter for a hearing on November 9.

¶ 8 Lauren filed a "petition for an order of protection" in Cook County and served notice on Michael's attorney. The petition did not request emergency relief and the emergency relief sections of the petition were not completed. Lauren did not raise any new allegations but instead attached her November 1, DuPage County emergency petition as an exhibit. In the petition Lauren described an incident that allegedly occurred on October 31, 2018, when Michael picked up O.A. to take her trick or treating. Lauren alleged Michael arrived early, as she and O.A. were leaving the apartment. Michael angrily charged at them, grabbed O.A. and held her to his chest. When Lauren reached for O.A., Michael pushed her away with his left hand, shoving her right elbow and forcing her stumble backward. Lauren screamed, "Don't touch me" several times. Michael put O.A. down. Lauren picked up O.A., put her in her car, and left.

¶ 9 When Lauren returned to the apartment, Michael got out of his car, grabbed O.A., and left. Lauren went to the Lombard police department to report the incident. Michael returned O.A. at 2:30 p.m., a half hour late. Lauren's petition alleged Michael was becoming increasingly angry toward her, and she was concerned about the emotional effect he may have on O.A.

¶ 10 On November 9, the parties appeared for a hearing on what Lauren's attorney and the trial court described as an "emergency petition." According to text messages, which the trial court admitted into evidence, Michael had not been scheduled to be with O.A. on Halloween, but after a series of text messages, Lauren agreed he could take O.A. trick or treating from 11:00 a.m. to 2:00 p.m.

¶ 11 The night before Halloween, Michael texted Lauren saying he would pick O.A. up at 10:00 a.m. Lauren did not reply. The next morning, Michael texted her "Hey, I didn't hear anything back? Also, I'll be there at 10 a.m." A few minutes later he texted, "Can you confirm you will have her ready at 10 please?" About 20 minutes later Michael texted, "Since I didn't hear anything, I'm leaving now to get her at 10." Two minutes later Lauren texted, "10:30 will work." Michael replied, "I'm in the car heading down. Come on just please have her ready." Lauren replied, "10:30." Michael texted, "I'll be there waiting at 10. I'm not off today so it would help me to have her a little earlier." Lauren replied, "I won't be here till 10:30." Michael texted, "Why is it you refuse to answer questions I ask you, texts, or calls? I've been messaging you since yesterday." Lauren replied, "Didn't get messages yesterday." Michael responded, "Can you act your age for just once."

¶ 12 Lauren testified that Michael arrived at about 9:20 a.m., as Lauren and O.A. were leaving the house. (Text messages indicate he arrived about 9:41 a.m., when he texted Lauren, "Just to document I'm here.") Lauren repeated the allegations from her petition that Michael ran toward

them picked up O.A. and pushed Lauren away with his arm. She said she stumbled back at least two steps but did not fall down. Lauren shouted, "Don't touch me" three or four times. Michael put O.A. down. Lauren put O.A. in her car, and left. Lauren said when she and O.A. returned at about 10:25 a.m., Michael backed up his car, blocking her car in. Michael got out of his car, came up behind her, and grabbed O.A and put her in his car. He mumbled something she could not understand and left. Lauren said she was afraid of Michael and concerned for her safety and reported the incident to the police. Lauren said Michael returned with O.A. at 2:30 p.m., a half hour later than scheduled. Text messages show Michael texted Lauren at 2:16 p.m. saying he was running late, and arrived at her apartment at 2:23 p.m.

¶ 13 After Lauren testified, the trial court denied Michael's motion for a judgment in his favor under section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2016).

¶ 14 Michael called his friend, Heather Brucker, as a witness. On October 31, Michael asked Brucker to meet him at Lauren's apartment, which was about a five-minute drive from her home. She arrived at about 9:15 a.m. Michael arrived around 9:35 a.m. Michael got out of his car and stood next to her car talking to her. Brucker saw Lauren come outside with O.A. Michael walked toward them at a normal pace, said "Hi" to O.A., and picked her up. Brucker saw Lauren try to grab O.A., and Michael put O.A. down. She did not see Michael extend his arm or push Lauren or see Lauren stumble. Brucker's car window was closed and she did not hear Lauren shout anything. After seeing Michael and Lauren walk to their cars, Brucker left.

¶ 15 Michael testified he arrived at Lauren's apartment at about 9:36 a.m. He was standing next to Brucker's car talking to her when he saw Lauren and O.A. walking out of the apartment. He was surprised to see them because Lauren told him she had plans that morning. He said "Hi," to O.A. and started toward them. He picked up O.A. and hugged her. Lauren grabbed for O.A.

and said, “You can’t touch her, it’s not your time.” He turned away from Lauren but did not push her. He heard Lauren say, “Don’t touch me,” three times and was confused by that.

¶ 16 Michael got back in his car and waited. When Lauren and O.A. returned, he backed up his car in front of Lauren’s car because of traffic and he wanted a safe space for O.A. He walked over, picked up O.A. and left. Michael learned about Lauren’s allegations later that day, and said he did not think there had been a physical altercation.

¶ 17 Following the hearing, the court summarized the text messages between Michael and Lauren on October 31 and said, “it appears that he was angry and upset when he arrived.” The court stated, “taking the testimony and the credibility of both, I find that he did hit her, that he did abuse her. I find that her testimony and her demeanor today were clear and unequivocal.” The trial court entered a one-year plenary order of protection and ordered Michael to undergo 40 hours of domestic violence counseling. The court entered a written order naming Lauren and O.A. as protected parties. The order prohibits Michael from communicating with Lauren except through the Our Family Wizard app and requires that he begin and end his parenting time in front of a police station. The order remains in effect until November 8, 2019.

¶ 18 Analysis

¶ 19 Michael contends we should reverse because (i) the trial court exceeded its authority by entering a plenary order of protection after a hearing on Lauren’s emergency order of protection; (ii) the trial court failed to make findings of fact as required by the Act; and (iii) Lauren failed to present any evidence of abuse.

¶ 20 Lauren did not file an appellee brief. It is not our role to serve as an advocate for the appellee or search the record for reasons to sustain the trial court's judgment. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). But, where the

record is straightforward and the claimed errors can be comfortably decided without the aid of an appellee's brief, the court of review should decide the appeal on the merits. *Id.* The record is straightforward, and the issues are not complicated. Accordingly, we will decide on the merits.

¶ 21 Plenary Order of Protection

¶ 22 Michael contends the trial court exceeded its authority under the Act and violated his due process rights by entering a plenary order of protection. He asserts the Act provides for two distinct remedies—an emergency order of protection under section 217 and a plenary order of protection under section 219—with distinct procedural requirements. Michael contends Lauren sought an emergency order of protection, and that the Act does not permit a court to commence a hearing on an emergency order of protection, which could not exceed 21 days and then, after the hearing, enter a plenary order of protection that will be in place for a year. Michael contends the trial court's "*sua sponte*" order violated the Act and his due process rights under the constitution because he did not have proper notice that the court would issue a plenary order.

¶ 23 As this is an issue of statutory construction, our review is *de novo*. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2003).

¶ 24 In construing a statute, our primary objective involves ascertaining and giving effect to the intent of the legislature. *Prazen v. Shoop*, 2013 IL 115035, ¶ 21 The plain language of the statute serves as the most reliable indicator of the legislature's intent. *Lee v. John Deere Insurance Co.*, 208 Ill. 2d 38, 43 (2003). Unambiguous language obviates resorting to aids of statutory construction. *Id*. In addition, by the Act's terms, we liberally construe and promote the Act's underlying purposes, namely, to support and protect victims of domestic abuse and to prevent any further abuse from occurring. 750 ILCS 60/ 102 (West 2016).

¶ 25 The Act permits a petitioner who meets the requirements of section 217 to immediately obtain an *ex parte* emergency order of protection. The order can be issued without notice if the petitioner establishes that "the harm which that [order of protection] is intended to prevent would be likely to occur if the respondent were given any prior notice * * * of the petitioner's efforts to obtain judicial relief." 750 ILCS 60/217(a)(3)(i) (West 2016). The order's duration must be no more than 21 days to protect the due process rights of the respondent to appear and be heard. 750 ILCS 60/220(a)(2) (West 2016)

¶ 26 A trial court may issue a plenary order of protection, which may last up to two years, if the respondent has received proper notice of the proceeding and has had the opportunity to present his or her defense. 750 ILCS 60/219 (West 2016). Under section 219, a trial court may issue a plenary order provided that: (i) the trial court has jurisdiction of the matter; (ii) the petitioner is entitled under section 214 to one or more of the remedies listed there; (iii) the respondent has appeared or has been properly served; and (iv) the respondent has answered or is in default. 750 ILCS 60/219 (West 2016).

¶ 27 Michael contends that, regardless of the notice and full hearing he received, the trial court was not authorized to enter a plenary order of protection because he did not know that was one of the remedies the trial court could consider. We disagree. As an initial matter, neither the documents nor record makes it apparent the type of order of protection Lauren sought. Unlike the DuPage County petitions, the Cook County petition was not identified as an "emergency," but simply titled a "petition for order of protection." Moreover, Lauren did not complete the provisions on the Cook County petition that apply to emergency orders only. Nevertheless, the Cook County trial court order granting Lauren leave to file the petition refers to it as an "emergency" petition and at the hearing both Lauren's attorney and the trial court refer to it as an

"emergency petition." Regardless of how the petition is described, Michael received sufficient notice and had the opportunity to be heard to permit the court to enter a plenary order. Indeed, the trial court held a hearing at which Lauren, Michael, and Michael's friend, Heather Brucker, testified and all three were subject to cross-examination.

¶ 28 An *ex parte* emergency order of protection under section 217 allows the petitioner to obtain temporary relief until the respondent receives notice and an opportunity to be heard. as noted, to protect the due process rights of the respondent, the order is limited in time, and the court cannot order certain types of remedies. Here, Michael had notice and an opportunity to be heard. No logical reason or necessity exists to prohibit the trial court from then entering a plenary order of protection.

¶ 29 Findings of Fact

¶ 30 Alternatively, Michael requests reversal because the trial court failed to make the necessary findings of fact under section 214(c) of the Act. 750 ILCS 60/214(c) (West 2016).

¶ 31 Section 214(c)(3) requires a trial court to make findings in the official record or in writing setting forth that: (i) the court considered the factors listed in sections 214(c)(1) and 214(c)(2) (750 ILCS 60/214(c)(1), (c)(2) (West 2016)); (ii) the respondent's conduct will likely cause continued abuse if not prohibited; and (iii) granting the requested relief would protect the allegedly abused person. 750 ILCS 60/214(c)(3)(i), through (c)(3)(iii) (West 2016); *Mowen v. Holland*, 336 Ill. App. 3d 368, 375-76 (2003). Among the factors the trial court must consider in determining whether to issue a protective order are the nature, frequency, severity, pattern, and consequences of the respondent's past abuse and the likelihood of future abuse, and the danger that the minor will be improperly removed from the jurisdiction, concealed, or separated from the primary caretaker. 750 ILCS 60/214(c)(1)(i), (c)(1)(ii) (West 2016).

¶ 32 Neither the transcript from the hearing nor the written protective order indicates the trial court considered the factors required by sections 214(c)(1)(i) and (ii). Nor does the record show the trial court considered whether Michael's conduct would likely cause irreparable harm or continued abuse or whether it was necessary to grant relief to protect Lauren and O.A. The trial court found that Michael's text messages to Lauren on the morning of October 31 indicate "he was angry and upset when he arrived," and concluded, based on the testimony at the hearing, that Michael "did hit her, that he did abuse her." These comments do not satisfy the statutory requirements. The trial court must abide by its statutory obligation to make specific findings before entering an order of protection under the Act. See *In re Marriage of Henry*, 297 Ill. App. 3d 139, 143 (1998). Thus, we vacate the trial court's plenary order of protection and remand to permit the trial court to set forth the findings mandated by section 214(c)(3).

¶ 33 Evidence of Abuse

¶ 34 Michael contends the trial court's finding that he abused Lauren was against the manifest weight of the evidence. He also contends no evidence showed that he abused O.A., and no basis existed for naming her a "protected person."

¶ 35 On any petition for an order of protection, the central inquiry asks whether a protected person has been abused. *Best v. Best*, 223 Ill. 2d 342, 348 (2006). Physical abuse includes knowing or reckless conduct that creates an immediate risk of physical harm. 750 ILCS 60/103(14) (West 2016). The Act is to be construed liberally, to "promote its underlying purposes," including preventing further abuse of victims of domestic violence. 750 ILCS 60/102 (West 2016); *Moore v. Green*, 219 Ill. 2d 470, 480-81 (2006).

¶ 36 Whether there has been abuse presents a question of fact that must be proved by a preponderance of the evidence. 750 ILCS 60/205(a) (West 2016); *Best*, 223 Ill. 2d at 348. A trial

court's finding regarding abuse will not be disturbed unless shown to be against the manifest weight of the evidence. *Id.* at 350. A finding is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent or the finding is unreasonable, arbitrary, or not based on the evidence. *Id.* Under that standard, the reviewing court affords discretion to the fact finder, as it sits in the best position to observe the conduct and demeanor of the parties and witnesses. *Id.* Accordingly, a reviewing court will not substitute its judgment for that of the trier of fact with respect to determining witness credibility, the weight afforded to the evidence, and the inferences to be drawn from the evidence. *Id.* at 350-51.

¶ 37 This case rests on the credibility of the witnesses. Michael denies pushing Lauren, and his friend, Heather Brucker, supports his version of events. Lauren, however, contends Michael pushed her, causing her to stumble. The court concluded, based on this testimony and text messages, that Michael abused Lauren. As noted, credibility questions are best left to the trier of fact. As we are remanding for the trial court to make the findings required by section 214(c)(3) of the Act, so the trial may explain additional reasons, if any, for its finding that Lauren was abused and that O.A. should be named a protected person.

¶ 38 Order vacated; case remanded.