SIXTH DIVISION
July 12, 2019

No. 1-19-0456

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

M.N.	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
v.	)	No. 18 OP 73128
	)	
S.N.,	)	Honorable
	)	Jeanne Marie Wrenn,
Respondent-Appellee.	)	Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 ***Held*:** The circuit court erred in modifying a plenary civil no contact order without adequate evidence of a change in facts or law. We reverse.

¶ 2 M.N. petitioned the court for an emergency civil no contact order against S.N. In her petition, M.N. alleged that S.N. had sexually assaulted her at a social gathering, in the home of a mutual friend. She further alleged that she and S.N. worked on separate floors of the same building in Chicago. At an *ex parte* hearing on the petition, M.N. testified that she was a concert pianist, and S.N. was an employee at a violin repair shop. She testified that she worked on the

third floor and that S.N.'s shop was on the fifth floor. She also testified that to use the stairs or the nearest bathroom, she had to walk past the violin repair shop. The court found that M.N. was the victim of nonconsensual sexual penetration and that the circumstances supported the entry of an emergency civil no contact order against S.N. The court ordered that S.N. avoid all contact with M.N. and barred him from the third floor of the building where he and M.N. worked.

¶ 3 The court extended the emergency order from time to time until S.N. received service of process. M.N. then filed a motion to modify the emergency order to entirely prohibit S.N. from entering the building in which they both worked. The court entered and continued the motion to be heard at the same time as M.N.'s request for a plenary order.

¶ 4 At the hearing, M.N. testified about the night of the alleged sexual assault.[1] She also testified that since that night, it had been difficult for her to work in the same building as S.N. At work, she felt unsafe and worried about inadvertently coming into contact with him. She testified that she practiced piano in the building approximately six hours per day, in addition to rehearsing and teaching piano lessons in the building. She said that she would occasionally see S.N. at the building, and that seeing him would distract her, cause her fingers to shake, and make it hard for her to practice. M.N. also testified that she was occasionally invited to perform at the violin repair shop where S.N. worked, and that the nearest bathroom to where she regularly practiced was on the same floor as the shop.

¶ 5 S.N. testified that his employer had a shop in Wilmette as well as the one in Chicago. He testified that he had discussed with his employer the possibility of working at the company's Wilmette shop rather than the Chicago location. However, S.N. testified, "[my boss] told me that

[1] The details of the sexual assault are not at issue because S.N.'s postjudgment motion did not challenge the court's finding that M.N. had been a victim of nonconsensual sexual penetration. See 740 ILCS 22/201 (West 2016).

he needs me to be there [in the Chicago shop] because of the specific work I do is more in that shop. The other shop does like, different type of work of what we do in the downtown shop."

¶ 6 The court granted M.N.'s petition and entered a plenary civil no contact order on October 15, 2018. Until November 4, 2018, the plenary order allowed S.N. to enter the building where he and M.N. worked, from 7 a.m. until 12 p.m. only. The court specifically included this two-week period in order to facilitate S.N.'s transition from working in the Chicago shop to working in the Wilmette shop. The court stated that "[S.N.] potentially is going to have the opportunity to work at the other building. If he can't, he's going to have to find another job. I'm giving him two weeks to transition to figure out if he can do that." The plenary order entirely barred S.N. from entering the Chicago building from November 5, 2018 until October 16, 2020.

¶ 7 On November 14, 2018, S.N. filed a "Motion to Reconsider Ruling on the Order of Protection." The motion was signed by S.N.'s attorney, but not by S.N. himself. The only exhibit attached to the motion was a transcript of the *ex parte* hearing on the emergency petition. The motion included no legal citations whatsoever.

¶ 8 S.N. did not contest the court's finding that M.N. was the victim of nonconsensual sexual penetration; he only requested that the court reconsider the provision of the plenary order that barred him from entering the building where M.N. worked. In the motion, he argued that the court had erred in finding that the Chicago building was M.N.'s place of employment, because she had testified that she was a freelance performer, rather than a tenant of the building or an employee of a tenant. The motion also argued that the protective order was an "excessive punishment" that "effectively strips [S.N.] from his job." S.N. requested that the court "structure a remedy that mitigates the casualty of one losing his employment."

¶ 9 On February 7, 2019, the court held a hearing on S.N.'s motion. Although S.N. was present at the hearing, he did not testify. S.N.'s attorney argued that M.N. did not actually work in the Chicago building, and that it was therefore inappropriate for the court to bar S.N. from that building. That was "the one issue we have" with the plenary order, according to the attorney.

¶ 10 Counsel for S.N. also represented to the court that S.N. was working full time at the Wilmette location. However, the attorney stated that his understanding was that the Chicago shop had more work for S.N. than the Wilmette location; "[s]o while there's no danger at this point because [S.N. is] working full time in Wilmette, our fear, obviously, is if that he can't work in the [Chicago] office, then perhaps his employment might be effected [*sic*] at some point by that."

¶ 11 M.N. argued that the court should deny S.N.'s motion because he had not produced any newly discovered evidence in support of reconsideration. Likewise, M.N. argued that the motion did not rely on any changes in the applicable law or any alleged errors in the court's application of existing law. Consequently, she argued, it was an inappropriate motion for reconsideration.

¶ 12 The circuit court found that "there has been [*sic*] new facts. And the new facts also indicated that the volume that is present for the work to be done in Wilmette versus the work to be done in [Chicago] is different." The court further noted that it had previously heard testimony that S.N.'s employer had two shops. M.N. argued that the only source of these "new facts" was the unsworn statements of S.N.'s counsel, which was no evidence at all, and inadmissible hearsay at best.

¶ 13 The court stated that "it was a very, very, very close case," and that the ruling on the plenary order was "a very, very, very close ruling by this Court." The court granted S.N.'s motion in part, and entered an order modifying the plenary order. The modified order allowed

S.N. to access the Chicago violin repair shop on Mondays, Wednesdays, and Fridays from 9:00 a.m. to 5:30 p.m., except on any day that M.N. had a performance at the violin repair shop. This appeal followed.

¶ 14 On M.N.'s motion, this court accelerated this appeal under Supreme Court Rule 311(b) (eff. July 1, 2018). S.N. has not filed an appearance, nor has he filed a brief or memorandum in lieu of brief. Consequently, this court entered an order taking the case on M.N.'s brief only. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131 (1976).

¶ 15 M.N. argues that the court abused its discretion by granting S.N.'s motion for reconsideration because the motion was not a proper motion for reconsideration under section 2-1203(a) of the Code of Civil Procedure (735 ILCS 5/2-1203(a) (West 2016)). She contends that S.N. did not present any newly discovered evidence, change in applicable law, or error in the circuit court's application of existing law.

¶ 16 "The decision to grant or deny a motion for reconsideration lies within the discretion of the circuit court and will not be reversed absent an abuse of that discretion." *Landeros v. Equity Property & Development*, 321 Ill. App. 3d 57, 65 (2001). Such a motion should "bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law." *Id*. In determining whether the trial court abused its discretion, "the question is not whether the reviewing court agrees with the trial court, but whether the trial court acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *In re Marriage of Aud*, 142 Ill. App. 3d 320, 326 (1986).

¶ 17 M.N. argues that the circuit court abused its discretion by granting the motion for reconsideration based on "new facts." She argues that the motion did not contain any new facts

at all. S.N. did not attach any admissible evidence to the motion, such as an affidavit, nor did S.N. or his employer testify at the hearing on the motion. Rather, the court relied on the unsworn assertion by S.N.'s attorney that "if that he can't work in the [Chicago] office, then perhaps his employment might be effected [*sic*] at some point by that." Additionally, M.N. argues, even if such a statement could be considered evidence, it was so speculative that lacked any probative value. Finally, S.N.'s motion did not point to any change in applicable law or any errors in the court's previous application of law. Without any sound basis for reconsideration, M.N. argues, the court erred in modifying the plenary order. We agree with M.N. that the circuit court erred by modifying the plenary order despite the fact that S.N. did not present the court with any change in the relevant law or evidence of new facts. However, there is additional legal authority to reverse the circuit court which M.N. has overlooked.

¶ 18 A plenary civil no contact order is an injunctive order because it directs a person to refrain from doing something, such as entering another's workplace. See *In re Marriage of Fischer*, 228 Ill. App. 3d 482, 486 (1992). After the entry of such an order, the circuit court maintains continuing authority to decide whether to modify or dissolve that order. *Id.* at 489; see also *Benson v. Isaacs*, 22 Ill. 2d 606, 609 (1961) (holding that the trial court maintained authority to modify or dissolve a then 15-year-old permanent injunction). However, "[a]fter 30 days following entry of a plenary civil no contact order, a court may modify that order *only* when a change in the applicable law or facts since that plenary order was entered warrants a modification of its terms." (Emphasis added.) 740 ILCS 22/218.5(b) (West 2016).

¶ 19 "The nature of a motion is determined by its substance rather than its caption." *J.D. Marshall International, Inc. v. First National Bank of Chicago*, 272 Ill. App. 3d 883, 888 (1995). Although S.N. captioned his motion: "Motion to Reconsider Ruling on the Order of Protection,"

it did not cite section 2-1203(a) of the Code of Civil Procedure. It was substantially a motion to modify the plenary civil no contact order. In fact, the motion explicitly did *not* challenge the entry of the plenary order itself, it merely requested that the plenary order be modified to allow S.N. to return to work at the Chicago violin repair shop. And although S.N. filed his motion on the thirtieth day after the entry of the plenary order, he could have filed such a motion any time before the plenary order expired. See *Fischer*, 228 Ill. App. 3d at 486 (holding that a motion to vacate or reconsider the entry of a plenary order of protection is in the nature of a motion to dissolve an injunction, and may therefore be filed at any time). Consequently, this case does not strictly fit the analytical framework for reviewing rulings on motions for reconsideration. Rather, we analyze the court's February 7, 2019 ruling as we would any other order modifying a plenary civil no contempt order. As it happens, the analysis is extremely similar.

¶ 20 The circuit court's authority to enter and modify civil no contact orders comes from the Civil No Contact Order Act (740 ILCS 22/101 *et seq.*) (West 2016)). As noted above, after 30 days, a court may only modify a plenary civil no contact order upon a showing of new facts or a change in the applicable law. 740 ILCS 22/218.5(b) (West 2016). The plenary order in this case was entered on October 15, 2018. The order modifying the plenary order was entered on February 7, 2019, well over 30 days later. Therefore, the court could only modify the plenary order upon a showing of a change in the applicable law or facts. M.N. correctly argues that S.N. made no such showing.

¶ 21 The only exhibit to the motion was a transcript of a hearing that predated the entry of the plenary order, and therefore could not have included any new facts. At the hearing on the motion for modification, neither S.N. nor his employer testified about the comparative workloads at the two locations. S.N.'s attorney made certain representations about S.N.'s work, but statements

made by attorneys during oral argument do not constitute proper evidence. See *People ex rel. Scott v. Aluminum Coil Anodizing Corp.*, 132 Ill. App. 2d 168, 172-73 (1971). And even if the statements of S.N.'s attorney were proper evidence, he only stated that *perhaps* S.N.'s employment *might* be affected at *some point* by the different amounts of available work at the two shops. Without any other competent evidence about possible effect of the plenary order on S.N.'s employment, the attorney's statement was pure conjecture. "Mere surmise or conjecture is never regarded as proof of a fact." *Lyons v. Chicago City Ry. Co.*, 258 Ill. 75, 81 (1913).

¶ 22 Further, even if the attorney's statement had been actual evidence, it did not evince any new fact. S.N. testified at the hearing on M.N.'s petition that the Wilmette shop had less need for "the specific work" he performed at the Chicago shop. As a result, he expressed doubt about whether he might be able to effectively transition from one shop to the other. And before the court entered the plenary order, it stated explicitly that it understood that S.N. may not be able to effectively transition from the Chicago shop to the Wilmette location. If he could not make that transition, the court said that he would simply "have to find another job." There was, therefore, nothing new in the motion or S.N.'s argument.

¶ 23 Clearly, the motion did not rely on any change in applicable law. Indeed, the motion did not include legal citations at all. In the absence of any change in applicable law or admissible evidence of new facts, the court erred in modifying the plenary injunction on February 7, 2019.

¶ 24 CONCLUSION

¶ 25 For the foregoing reasons, we reverse the circuit court's February 7, 2019 order modifying the plenary civil no contact order. The original plenary order remains in effect as entered on October 15, 2018.

¶ 26 Reversed.