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2019 IL App (3d) 180520-U

Order filed April 18, 2019

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2019

JILL M. KODAT,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
Petitioner-Appellee,	)	Grundy County, Illinois,
	)	
v.	)	Appeal No. 3-18-0520
	)	Circuit No. 18-OP-68
	)	
DANIEL M. HOLM,	)	Honorable
	)	Robert C. Marsaglia,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Justices Holdridge and O'Brien concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court's decision granting a plenary stalking no contact order was not against the manifest weight of the evidence.
- ¶ 2 Jill M. Kodat filed a verified petition for stalking no contact order against Daniel M. Holm pursuant to the Stalking No Contact Order Act. Following a hearing on July 27, 2018, the trial court entered a plenary stalking no contact order against Holm, prohibiting Holm from having any contact with Kodat, *inter alia*. Holm appeals and challenges the sufficiency of the evidence presented to the trial court at the hearing.

¶ 3

## I. BACKGROUND

¶ 4

On June 5, 2018, Jill M. Kodat (petitioner) filed a “verified petition for stalking no contact order” (petition) against Daniel M. Holm (respondent) pursuant to the Stalking No Contact Order Act (the Act). 740 ILCS 21 *et seq.* (West 2016). The petition alleged:

“dating back to 2016 [respondent] has repeatedly been harassing and stalking my entire family. September of 2016 he threatened to rape my daughter. On another occasion in September of 2016 he laid in the weeds across from our house and jumped out at her when she was returning home[.] He drives by our home on a regular basis slowing and videoing us and our home. Most recently as of 6/4/18 he attempted to hit my daughter in her car as she was turning from Holderman Rd to Pine Bluff Rd[.]”

¶ 5

Petitioner requested an order prohibiting respondent from threatening to stalk or stalking petitioner, contacting petitioner in any way, and ordering respondent to stay at least 500 feet from the residence located at 3690 Holderman Road, Morris, IL 60450. On June 5, 2018, the trial court granted an “emergency stalking no contact order” against respondent.

¶ 6

On July 27, 2018, the trial court conducted a hearing on the petition seeking a plenary order. Petitioner’s husband, Steven Kodat, testified that he resided with petitioner and their daughter, Jessika, at 3690 Holderman Road. Steven stated that in September 2016, he received a phone call from Jessika reporting that respondent, “was in the ditch and sprung out at her when she was turning into [the Kodat’s] driveway.” On another undisclosed date, according to Steven, respondent told Steven “I’m going to rape your daughter.” Steven testified that every time respondent, or his father, Adam Holm, drive by the Kodat residence they “honk, yell stuff, obscenities, gives us the bird.” These vulgar obscenities are directed toward the Kodats. Steven stated that “they’ll go by the house anywhere from 1 to 15 times a day.” Steven testified the

Holms traveled by and videotaped his family's residence three or four times a week since 2016. Lastly, Steven testified that it is possible for the Holms to reach their residence without driving by the Kodat residence on Holderman Road.

¶ 7 On cross-examination, Steven testified he was present on June 4, 2018, when respondent drove by the family home in a truck between 4 p.m. and 5 p.m. Both Steven and respondent were videotaping the incident. Respondent held his camera up as he drove by the home. The incident lasted 20 seconds.

¶ 8 Petitioner testified she lived at 3690 Holderman Road. Petitioner first interacted with the Holms in early September 2016 at her father-in-law's property on Mazon Creek. The Holms were kayaking and respondent was videotaping petitioner. The same events occurred one week later but petitioner's daughter, Jessika, was also present. However, petitioner could not recall if the Holms were videotaping on the second occasion. After these incidents in September 2016, petitioner testified "[e]very day, daily regular basis [the Holms] drive by. They stop. They honk. They slow down. They scream obscene language, gestures." Occasionally, the Holms are videotaping these incidents according to petitioner. This conduct has been consistent on a daily or weekly basis since 2016. Petitioner testified that she has filed five police reports regarding these incidents. With regard to the incident on June 4, 2018, petitioner stated: "our daughter was headed to town, and she was getting ready to turn onto Pine Bluff. And [respondent] swerved at her vehicle, so Jessika called us to tell us what had happened. And as [respondent] was going by he was videotaping; and then when we called the sheriff's department, from the time we called the sheriff's department to the time that the deputy showed up at our house, both Adam and [respondent] had driven by our house a minimum of five times, and every time they were driving by they were videotaping. That particular day they probably drove by our house at least a dozen

times.” As a result of these incidents, petitioner did not feel safe in her home. During the June 4, 2018, incident, the Holms did not speak to or act out physically against petitioner.

¶ 9            Jessika testified she lived at 3690 Holderman Road with her parents. Jessika stated that her first interaction with respondent was at approximately 9:30 p.m. in early September 2016. As she turned into her driveway, respondent popped out of the ditch with a Razor scooter in one hand and a kayak paddle in the other. She believed respondent had been waiting for her in the ditch because the grass was matted down in the ditch. Jessika immediately called her father out of fear. In mid-September 2016, the Holms kayaked by Jessika and petitioner on the creek. Respondent was recording, he carried a GoPro, or a camera like a GoPro.

¶ 10            Jessika testified her father told her about the rape threat, which made her feel unsafe. Jessika feared seeing the Holms out in public. Jessika testified that in October 2016, Adam swerved his vehicle at her as she was on her way home from school. Adam was driving. Jessika stated that since 2016, on a “daily basis. [The Holms] drive by. And we like to sit outside on our front porch; and if they see any of us, they decide to stop and videotape and yell and have several different like obscene gestures or videotape us. They just do whatever they can.” On June 4, 2018, respondent unnecessarily drove his car within inches of Jessika’s car. Jessika reported the incident.

¶ 11            Adam Holm testified he lived at 3000 North Winterbottom Road with his mother and sons, Nicholas and respondent. Adam explained that issues arose with the Kodat family in 2016. Adam owns property that is only accessible by canoe or kayak up Mazon Creek. Adam fossil hunts on his landlocked property. The Kodats believe the Holms are trespassing when the Holms use Mazon Creek.

¶ 12 On June 4, 2018, Adam admitted to driving by the Kodat residence three times because he was bringing wood back from one of his properties. Adam stated that he could have taken a different route that day. However, he was hauling a large load and did not want slow traffic on the main road. Adam testified that he did not have a cell phone or camera in his vehicle on June 4, 2018. Adam denied stopping and swearing at the Kodat family on that date, and denied engaging in any such behaviors on prior occasions. Adam stated that the Holms do not travel past the Kodat residence together often. On one occasion Adam saw respondent videotape the Kodat residence.

¶ 13 Respondent testified that he lived at 3000 Winterbottom Road. Respondent denied ever hiding in a ditch to startle Jessika. Respondent testified that on September 5, 2016, he told a police detective he was riding his scooter and carrying a canoe paddle but denied ever waiting in a ditch. Respondent clarified he was on his way home from kayaking on the river and merely got off to the side of the road and was not waiting in the ditch. On June 4, 2018, respondent went by the Kodat residence on two occasions, once after coming home from hanging out with friends, and once following Adam in a vehicle as respondent was transporting a load of wood. Respondent denied ever stopping to swear, yell obscenities, or make obscene gestures while driving past the Kodat residence. Respondent denied swerving at petitioner's daughter in his vehicle on June 4, 2018. Respondent did record footage on June 4, 2018, "all of the way back to my driveway" because the Holms have had many confrontations with Steven. Respondent had a new truck he did not want damaged. Respondent began recording that day because he saw Steven out in front of the Kodat residence. At this time, respondent played the recorded video for the court. Respondent testified the video was taken at approximately 5:12 p.m. as he traveled at

approximately 40 to 50 miles per hour past the Kodat residence. Respondent conceded the video was turned on prior to respondent gaining the ability to see Steven in the front yard.

¶ 14 After hearing argument, the trial court found the testimony of petitioner and her family credible and the testimony of respondent and Adam to be incredible, based on the demeanor of the parties. The trial court granted the petition, stating that “when it comes down to the incident of the threat of the rape, the multiple drive-bys, the taping, the obscene gestures, [and] the yelling threats,” “there’s many more than two instances in the record, frankly probably scores.” The trial court entered a plenary stalking no contact order which prohibited respondent from threatening to commit or committing stalking personally or through a third party, prohibited respondent from having any contact with petitioner, ordered respondent to stay at least 500 feet away from petitioner, and prohibited respondent from buying or possessing firearms.<sup>1</sup> Respondent appeals.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent’s *pro se* brief appears to argue the evidence presented at the hearing was insufficient to establish a stalking no contact order under the Act. Petitioner has not submitted a brief for our consideration. However, the record is simple and the claims of error are easily decidable. Therefore, we will decide the merits of the appeal absent appellee’s brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 17 To begin, section 5 of the Act provides “[s]talking generally refers to a course of conduct, not a single act. Stalking behavior includes following a person, conducting surveillance of the person, appearing at the person’s home \*\*\*.” 740 ILCS 21/5 (West 2016). Section 90 of the Act further provides that respondents may be held accountable for the actions of others for purposes

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<sup>1</sup>The court’s order did not order respondent to stay at least 500 feet from petitioner’s residence because the court cited concerns with closing a public road to respondent.

of issuing a stalking no contact order in accordance with Article 5 of the Criminal Code of 2012. 740 ILCS 21/90 (West 2016); 720 ILCS 5/5-2 (West 2016).

¶ 18 Section 10 of the Act defines stalking as “engaging in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to fear for his or her safety or the safety of a third person or suffer emotional distress.” 740 ILCS 21/10 (West 2016). “ ‘Course of conduct’ means 2 or more acts, including but not limited to acts in which a respondent directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other contact, or interferes with or damages a person’s property or pet.” *Id.* “ ‘Emotional distress’ means significant mental suffering, anxiety or alarm.” *Id.*

¶ 19 The standard of proof in stalking no contact order proceedings is proof by a preponderance of the evidence. 740 ILCS 21/30 (West 2016); *Piester v. Escobar*, 2015 IL App (3d) 140457, ¶ 12. If the trial court finds “that the petitioner has been a victim of stalking, a stalking no contact order shall issue,” provided petitioner satisfies the requirements of section 100 of the Act. 740 ILCS 21/80 (West 2016). “Because the trial court is in a much better position to determine the credibility of the witnesses and the weight to be afforded [to] conflicting testimony, the appellate court will not reconsider the evidence or reassess the witnesses’ credibility or demeanor and will not substitute its judgment on such matters unless the trial court’s findings are against the manifest weight of the evidence.” *Reinneck v. Taco Bell Corp.*, 297 Ill. App. 3d 211, 219 (1998). A reviewing court will not reverse the trial court’s decision to issue a stalking no contact order unless it is against the manifest weight of the evidence. *Escobar*, 2015 IL App (3d) 140457, ¶ 12. A trial court’s finding is against the manifest weight of the

evidence where the opposite conclusion is clearly apparent, or if the court's finding is arbitrary, unreasonable, or not based on the evidence presented. *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 12.

¶ 20 At the hearing on the petition, the trial court received ample testimony from which to conclude, by a preponderance of the evidence, that respondent engaged in stalking behavior. Testimony from petitioner, petitioner's husband, and petitioner's daughter established that respondent, and his father, Adam, would drive by the Kodat residence, honk, direct vulgar obscenities at the Kodat family, and videotape the family. Respondent engaged in such conduct every day or, at least, several times per week since September 2016. As an example of one occasion, on June 4, 2018, petitioner's "daughter was headed to town, and she was getting ready to turn onto Pine Bluff. And [respondent] swerved at her vehicle, so Jessika called us to tell us what had happened. And as [respondent] was going by he was videotaping; and then when we called the sheriff's department, from the time we called the sheriff's department to the time that the deputy showed up at our house, both Adam and [respondent] had driven by our house a minimum of five times, and every time they were driving by they were videotaping. That particular day they probably drove by our house at least a dozen times." Respondent also threatened to rape petitioner's daughter, drove within inches of petitioner's daughter's car, and popped out of a ditch, frightening petitioner's daughter.

¶ 21 In addition, petitioner testified respondent was kayaking and videotaping her on Mazon Creek in September 2016. The same events took place a week later while petitioner and her daughter were present at the creek. Petitioner's daughter testified that Adam swerved his vehicle at her as she was on her way home from school. Petitioner did not feel safe in her home due to the conduct of respondent.



¶ 22 The Act additionally provides that a respondent may be held accountable for the actions of others, and that stalking includes a petitioner's fear for the safety of third persons. A considerable portion of the parties' testimony concerns incidents between respondent's father, Adam, and the Kodats. Thus, the incidents between Adam and the Kodats could be properly considered by the trial court.

¶ 23 Quite simply, the trial court was in the best position to assess the demeanor and credibility of the witnesses. The court found petitioner credible and found respondent less than credible. We affirm the trial court's grant of a plenary stalking no contact order.

¶ 24 III. CONCLUSION

¶ 25 The judgment of the circuit court of Grundy County is affirmed.

¶ 26 Affirmed.