2019 IL App (5th) 180031-U

NO. 5-18-0031

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

MELODY R. McGOWAN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellee,	)	St. Clair County.
	)	
v.	)	No. 17-OP-803
	)	
ANDREW J. COOK,	)	Honorable
	)	Walter C. Brandon Jr.,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: Where Melody R. McGowan, the person who sought the stalking no contact order against Andrew Cook, was not "a specific person" as contemplated by the Stalking No Contact Order Act (740 ILCS 21/10 (West 2016)) in that she was not the target of Cook's alleged "stalking" conduct, McGowan is not an appropriate petitioner or victim, and thus the trial court's original plenary order in McGowan's favor was incorrect, and the trial court's order denying Cook's motion for reconsideration must be reversed.

¶ 2 Melody R. McGowan (McGowan) filed a verified petition for a stalking no contact order against Andrew J. Cook (Cook) on September 29, 2017. Three days prior, McGowan's son, Anthony McGowan (Anthony), had sent her screenshots of Facebook messages between his wife, Vanessa McGowan (Vanessa), and Cook. These screenshots appeared to outline a plan by which Cook would follow McGowan in order to attempt to catch her meeting with her son, Anthony. Anthony was not allowed to have any contact with his mother pursuant to the terms of

his parole. The trial court granted the emergency stalking no contact order against Cook on September 29, 2017, and set a hearing for a plenary stalking no contact order for October 18, 2017. Noting that Cook was served with process and notice and was present with his attorney, the trial court entered the plenary stalking no contact order on the basis that McGowan was a victim of two or more acts of "following, monitoring, observing, [and] surveilling" by Cook. The trial court denied Cook's motion for reconsideration. Cook appeals from that order.

¶ 3 BACKGROUND

¶ 4 Anthony and Cook had been friends. During the relationship, Cook loaned Anthony more than $15,000 in order to help him to pay credit card debt and to maintain an apartment. Cook later learned that Anthony was not being truthful about his financial situation, and that he had incurred new charges on credit card accounts that Cook had previously paid off. Thereafter, the friendship ended.

¶ 5 The record on appeal is not entirely clear about the foundation of the criminal charges that resulted in Anthony's original prison sentence and the subsequent parole violations.[1] However, Vanessa and McGowan both testified that they had been victims of domestic assaults and/or batteries by Anthony. Upon release from prison, Anthony was required to comply with numerous conditions of parole, two of which prohibited him from being with McGowan or Vanessa. If Anthony violated any of the conditions of parole, he could be charged with a parole violation and returned to prison.

[1]The record contains no information as to whether Anthony's convictions were misdemeanors or felonies and whether Anthony was sentenced to jail or prison. Thus, we do not know whether the terms Anthony violated after his "release" were classified as probation or parole. In addition, the parties and the attorney representing Cook use the terms "jail" and "prison" as well as "probation" and "parole" interchangeably. Cook's attorney and Anthony's mother state that Anthony committed a felony, but that does not clear up the uncertainty about whether Anthony was sentenced to prison for a set term or was sentenced to a term of probation. In this order, we refer to Anthony's incarceration as "prison," and his terms upon release as "parole," for internal consistency.

¶ 6 On one occasion when Anthony was sent to prison on a parole violation, Cook contacted McGowan about providing her with assistance around the house since Anthony was not able to help her. McGowan developed a friendship with Cook. In June 2017, McGowan concluded that Cook had become demanding and controlling with requests for information about Anthony's financial records. McGowan had the ability to provide Cook with that financial information because she was Anthony's power of attorney while he was incarcerated. However, she refused to provide Cook with Anthony's financial information. McGowan broke off communication with Cook in June 2017.

¶ 7 In 2017, Vanessa reached out to Cook by sending him a message on Facebook because she felt that she was responsible for the demise of Anthony's friendship with Cook. Vanessa and Cook began an exchange of Facebook and text messages that went from mid-June 2017 until mid-July 2017. During that time, Cook and Vanessa spoke to each other about Anthony's childhood history of abuse. Cook testified that Vanessa told him that she was fearful that Anthony would abuse or had been abusing their children. Vanessa testified that she had not told Cook that Anthony had abused their children, but that she was concerned that he could do so due to his drug and alcohol use.

¶ 8 On or about June 30, 2017, Cook and Vanessa engaged in an exchange of messages with the plan of finding Anthony in the presence of his mother, McGowan. The goal was to obtain photographic proof that Anthony was violating a parole condition, turn the proof over to law enforcement, and hopefully have Anthony sent to prison for a parole violation. Vanessa acknowledged that she provided Cook with specific times and places when she knew that McGowan was going to be providing Anthony with transportation. Cook responded that he was "going to be in the area and catch a picture of [Anthony and McGowan] to send to [the] parole

board along with my letter." Later that same date, Cook informed Vanessa that he had a friend drive him there, so that Anthony and McGowan would not recognize the car. Cook went to the location where Anthony was taking a class and saw McGowan drop him off "down the road." The following day, Cook messaged Vanessa that the letter was drafted, and that he planned to meet with a police officer to see if Anthony would be arrested for violating the conditions of his parole.

¶ 9 Whether Cook met with a police officer to provide information about Anthony's parole violation and whether Anthony was sent back to prison for a parole violation related to this June 30, 2017, event are not indicated in the record.

¶ 10 Both Cook and Vanessa testified at the plenary hearing that this was the only time that Cook followed through on the information she provided him. There had been additional opportunities, but June 30, 2017, was the only attempt made to obtain photographic proof that Anthony was violating the terms of his parole by being with his mother, McGowan. Cook further explained that he did not "follow" McGowan, but merely drove to a place where Vanessa told him McGowan would be with her son, and waited for the two to arrive. On two other occasions, Vanessa contacted Cook with information about the time and place when Anthony and McGowan would be together, and Cook called local law enforcement and provided information regarding Anthony's potential parole violation. Whether Anthony and McGowan were together on those other two occasions is not indicated in the record.

¶ 11 Cook and Vanessa both testified about their motivations for attempting to catch Anthony in a parole violation. Cook stated that he tried to document a parole violation because Anthony was a hazard to himself and to his children due to drug and alcohol use. Vanessa testified that she was angry with Anthony and wanted him to return to prison.

¶ 12 McGowan testified at the plenary hearing that she did not know that Cook had followed or watched her and Anthony until Anthony discovered the Facebook messages between Cook and Vanessa in late September 2017. On the basis of those messages, McGowan asked the court to enter an emergency stalking no contact order. The court entered this order on September 29, 2017.

¶ 13 The court set a hearing for a plenary stalking no contact order for October 18, 2017. The record reflects that service was obtained on Cook approximately one week before the hearing. Cook and an attorney appeared in court for the hearing. Cook did not file an answer or other responsive pleading, but participated in the hearing.

¶ 14 At the hearing, McGowan testified that she was aware that being with her son, Anthony, constituted a parole violation. The court asked McGowan if there were any additional incidents, other than June 30, 2017, to which McGowan replied: "Not that I can see through these [Facebook messages]."

¶ 15 McGowan also testified that she had a history of severe post-traumatic stress disorder (PTSD) as a result of sexual trauma that occurred when she served in the military. She said that since she learned that Cook had followed her, her PTSD symptoms had reemerged, and she described her mental status as fearful and emotionally distraught. She also said that during her brief friendship with Cook, she had discussed her history of PTSD with him several times. In response, Cook testified that he had no previous knowledge that McGowan suffered from PTSD.

¶ 16 At the conclusion of the plenary hearing, the trial court stated that it found that McGowan was the victim of two or more acts of monitoring or surveillance and that as a result she had suffered emotional distress. The court further found that Cook would continue to engage in these activities if it did not enter a more permanent order. The court entered the plenary order on

October 18, 2017, barring Cook for two years from in person or third party contact with McGowan that could be construed as stalking or threatening and from coming within 500 feet of McGowan's home.

¶ 17 Counsel for Cook asked the trial judge to specify the particular "two or more acts" of monitoring or surveilling McGowan on which the court based its decision. The trial judge responded as follows:

> "The course of conduct would be those two or more acts not limited to the acts which [Cook] directly or indirectly through the third party—and the third party would be the witness that was involved—the direct contact, the monitoring, not only the one where the picture was taken but also the one concerning the times that [McGowan] was *** dropping her son off at the school. Both of the two acts that the Court noted."

¶ 18 Cook filed a motion to reconsider, arguing that although the trial court stated that there were two acts of Cook monitoring or surveilling McGowan, that information was not consistent with the evidence. Cook explained that there was only one incident on June 30, 2017, as detailed by the Facebook message pages McGowan showed the trial judge, as well as by the testimony of McGowan, Cook, and Vanessa. The trial court denied the motion to reconsider on December 29, 2017.

¶ 19 ANALYSIS

¶ 20 On review of a trial court's determination that the Stalking No Contact Order Act (740 ILCS 21/1 *et seq.* (West 2016)) was violated, we will not overturn that decision unless that conclusion is contrary to the manifest weight of the evidence. *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 12, 30 N.E.3d 557; *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶ 22, 993 N.E.2d 594. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350, 860 N.E.2d 240, 244 (2006).

¶ 21 The purpose of the Stalking No Contact Order Act (Act) is to provide "[a]ll stalking victims *** a civil remedy requiring the offenders [to] stay away from the victims and third parties." 740 ILCS 21/5 (West 2016). Stalking does not happen with a single act, but instead occurs with a "course of conduct." *Id.*

¶ 22 Section 10 of the Act defines several terms used in its provisions. *Id.* § 10. The Act defines stalking as "engaging in a course of conduct directed at a specific person, and [the offender] 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." *Id.* Stalking behavior is described as including: "following a person, conducting surveillance of the person, appearing at the person's home, work or school, making unwanted phone calls, sending unwanted emails or text messages, leaving objects for the person, vandalizing the person's property, or injuring a pet." *Id.* § 5. An exercise of the right to free speech or assembly is expressly excluded as meeting the definition of "stalking." *Id.* Speech or assembly not protected by section 10 of the Act involves threats of violence or intimidation. *Nicholson*, 2013 IL App (3d) 110517, ¶ 20.

¶ 23 The definition of stalking requires a "course of conduct." 740 ILCS 21/5 (West 2016). The term "course of conduct" is defined as follows:

> "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. A course of conduct may include contact via electronic communications." *Id.* § 10.

¶ 24 A victim can seek a stalking no contact order by filing a verified petition against the alleged offender that alleges that he or she has been the victim of stalking activities. *Id.* §§ 20,

25. The Illinois rules of civil procedure apply to all pleadings, and the standard of proof at a hearing is a preponderance of the evidence. *Id.* § 30(a).

¶ 25 On appeal, Cook contends that the trial court erred in finding that he engaged in a course of conduct to stalk McGowan. He alleges that the Act is facially unconstitutional in that it is overbroad and infringes on his first amendment free speech rights; that the Act is unconstitutional as applied to him by punishing him for electronic communications he had with Vanessa; that his "course of conduct" was not directed at McGowan; that the facts as alleged were insufficient to cause a reasonable person to fear for her safety or the safety of a third person or suffer significant mental suffering, anxiety, or alarm; and that Cook was denied his constitutional right to due process throughout the hearing.

¶ 26 We find that the trial court improperly granted the plenary stalking no contact order in this case because McGowan was not the actual or intended victim of the stalking activities. The focus of Cook's attention was Anthony. Cook's monitoring behavior of June 30, 2017, was directed towards Anthony for the purpose of catching him in the act of violating a condition of parole. Cook ascertained information about where and when Anthony would be with his mother. Cook then parked near the location of Anthony's class and waited. As Cook sat in the car waiting, McGowan drove up close to the location of the class and then dropped Anthony off. Cook witnessed this. Although McGowan was necessarily present, Cook's actions were not directed towards her, and as McGowan testified, she was simply "in the middle."

¶ 27 The Stalking No Contact Order Act does not define the term "victim," but there is a provision within the Act involving a specific type of "course of conduct" that provides support for our conclusion that McGowan was not a victim intended to be protected by the Act. The "course of conduct" definition includes various methods of stalking activities, including

monitoring, observing, surveilling, threatening, or communicating to or about a person. 740 ILCS 21/10 (West 2016). "Other contact" can also be considered an act required to establish a stalking course of conduct. The term "contact" is defined as:

> "any contact with the victim, that is initiated or continued without the victim's consent, or that is in disregard of the victim's expressed desire that the contact be avoided or discontinued, including but not limited to being in the physical presence of the victim; appearing within the sight of the victim; approaching or confronting the victim in a public place or on private property; appearing at the workplace or residence of the victim; entering onto or remaining on property owned, leased, or occupied by the victim; or placing an object on, or delivering an object to, property owned, leased, or occupied by the victim." *Id.*

¶ 28 We find that the wording of the "contact" definition implicitly requires a direct relationship or interaction with the offender. In addition, part of being a victim necessitates knowledge of contact with the offender or the offender's presence. "Contact" requires a nexus between the actions of the offender and the victim's knowledge of the offender's behavior. That nexus is not present in this case. Here, Cook did not make "contact" with McGowan. McGowan did not tell Cook to stay away; she did not know he was in the area where she dropped off Anthony on June 30, 2017; he did not approach her in a public place; he did not show up at her home; he did not show up at any property she owned, leased, or occupied; and he did not place or deliver any object to McGowan.

¶ 29 We briefly reference the facts and holdings of the few published opinions involving the Stalking No Contact Order Act to illustrate the types of victims protected. All of the victims from these cases have direct connections to the offenders and are the recipients of or can see or obtain any social or written media that amounts to an act of stalking.

¶ 30 In *Henby v. White*, the victim, Henby, was a retired Illinois State Police officer and the alleged stalker, White, was the victim's former subordinate officer. *Henby v. White*, 2016 IL App (5th) 140407, ¶ 2, 59 N.E.3d 166. White had caused trouble for Henby with the Illinois

Department of Financial and Professional Regulation and the Coles County State's Attorney before Henby retired. *Id.* ¶ 8. White inquired about Henby to a mutual acquaintance who was aware of the problems White had caused Henby. *Id.* ¶¶ 3, 10. The mutual acquaintance contacted Henby to inform him that White was asking questions about him. *Id.* Henby then contacted White's superior at work and asked that White have no further contact with him or his family. *Id.* ¶ 10. Thereafter, at a funeral attended by Henby, White also attended because he knew that Henby would be present; White was asked to leave the funeral but refused; and then White smiled at Henby. *Id.* ¶¶ 3, 11. This court agreed that this funeral interaction satisfied one act of the two required for a stalking course of conduct. *Id.* ¶ 24. However, we found that the purported second act was insufficient. *Id.* That second act occurred when White's wife overheard the mutual acquaintance talking with others at a McDonald's restaurant about whether Henby was going to attend the funeral. *Id.* White's wife provided that information to her husband. *Id.* We concluded that there was no indication that White directed his wife to gather information on Henby or that she intentionally monitored the mutual acquaintance's conversation with others, and overall, the allegations were insufficient to establish a second act of stalking. *Id.*; see also *Nicholson v. Wilson*, 2013 IL App (3d) 110517, 993 N.E.2d 594 (affirming the trial court's entry of the stalking no contact order on behalf of a female Peoria police officer against a male Peoria police officer who had videotaped the female officer and had placed a tracking device on her vehicle); *McNally v. Bredemann*, 2015 IL App (1st) 134048, 30 N.E.3d 557 (2015) (affirming the trial court's entry of the stalking no contact order on behalf of a psychologist against a former patient who sent numerous e-mails to her in his own name blaming her for psychologically "ruining" him, created at least 10 different aliases to contact her by e-mail, criticize her on professional websites, and to communicate with her family and friends, and appeared at her

private residence unannounced); *Piester v. Escobar*, 2015 IL App (3d) 140457, 36 N.E.3d 344 (affirming the trial court's entry of the stalking no contact order on behalf of one woman against another woman who made various derogatory social media posts, watched her while at work, recorded her with her cell phone, showed up at her workplace at lunch time or closing time, parked her car near her work place, and parked her car outside of her residence); *Gakuba v. Kurtz*, 2015 IL App (2d) 140252, 39 N.E.3d 589 (affirming the trial court's dismissal of the request for a stalking no contact order by a petitioner who sought the order against the county state's attorney who had filed three counts of aggravated criminal sexual abuse against the petitioner); *Ivancicts v. Griffith*, 2017 IL App (4th) 170028, 90 N.E.3d 641 (affirming the trial court's denial of a neighbor's motion to vacate a stalking no contact order obtained by a homeowner against her neighbor who would sit in a chair on his property and stare at the homeowner, who yelled obscenities at the homeowner and mocked her, who played loud music directed at the homeowner's house, and who threatened to bulldoze the homeowner's shed and garage); and *Flood v. Wilk*, 2019 IL App (1st) 172792, ___ N.E.3d ___ (vacating a portion of the trial court's stalking no contact order that violated protected first amendment speech where the petitioner was a church pastor and the alleged offender was an estranged husband of a parishioner who showed up at an office entrance to the church after having been asked not to do so, repeatedly asked for appointments with the pastor, distributed numerous flyers and letters, wrote books, and sent numerous e-mails disparaging the pastor and the church).

¶ 31 In each of these cases, the victim was directly connected to the offender and had a direct knowledge of the "stalking" acts: former co-employees (*Henby*); current co-employees (*Nicholson*); mental health provider and former patient (*McNally*); woman stalking another woman at her place of work and home (*Piester*); criminally-charged individual and prosecutor

(*Gakuba*); homeowner and neighbor (*Ivancicts*); and pastor and estranged husband of a parishioner (*Flood*). The connection does not require that the victim know the specific identity of the offender, but there needs to be an awareness of the other person's presence and actions.

¶ 32 Our analysis of the propriety of McGowan's status as a victim also applies to the second act in Cook's course of conduct—Facebook and text messages between Cook and Vanessa. The messages were not sent or directed to McGowan and she could not view the private messages. Cook argues that these personal messages are constitutionally protected. Although section 10 of the Act provides that stalking does not include an exercise of the right to free speech that is otherwise lawful, the Act prohibits speech that amounts to threats of violence or intimidation. *Henby*, 2016 IL App (5th) 140407, ¶ 26 (citing *Nicholson*, 2013 IL App (3d) 110517, ¶ 20). "When words are a component of the stalking behavior, then the speech does not fall within constitutional protections." *Id.* While we do not determine whether the Facebook and text messages represent constitutionally protected speech, we find that McGowan, although mentioned, was not the target of the messages.

¶ 33 As stated earlier in this order, we do not find that McGowan was the actual victim of Cook's actions. The focus of Cook's actions was solely directed towards Anthony. McGowan was simply present at the scene. Cook and Vanessa talked about Anthony and schemed to put him back in prison on a parole violation. McGowan did not hide the fact that she was transporting her son on occasion, even though in doing so, he was violating his parole restrictions. Cook's act of showing up at the location of Anthony's class on June 30, 2017, to "catch" McGowan in Anthony's presence was not directed or intended to impact McGowan.

¶ 34 Activities found to be stalking behavior in case law and referenced in the Act are varied and not confined to a set category, unlike activities in other Illinois acts by which a victim can

obtain an order of protection from the offender. See 750 ILCS 60/101 *et seq.* (West 2016) (Illinois Domestic Violence Act of 1986, where the victims are those who were subjected to family violence); 740 ILCS 22/103 (West 2016) (Civil No Contact Order Act, where the victim is an individual who was subjected to a sexual assault and the respondent was the offender). While that variety could allow for a broad range of identifiable victims, we do not believe that the legislature intended the broad category of victims to encompass a petitioner who was not the object of the offender's acts. We find that the preponderance of evidence does not support the trial court's entry of the plenary stalking order and find that the trial court's entry of the plenary order was against the manifest weight of the evidence. 740 ILCS 21/30(a) (West 2016); *McNally*, 2015 IL App (1st) 134048, ¶ 12.

¶ 35 We do not address the other issues raised by Cook in this appeal, because our conclusion that McGowan was not a proper victim is dispositive.

¶ 36 Before concluding this order, we must address Cook's motion for sanctions and to strike McGowan's brief. Cook filed his motion because McGowan's brief on appeal was not compliant with Illinois Supreme Court Rule 341 (eff. Nov. 1, 2017). Rule 341(i) provides that an appellee's brief must conform to the rules. Ill. S. Ct. R. 341(i) (eff. Nov. 1, 2017). McGowan, *pro se*, used the form brief approved by the Illinois Supreme Court, but included no citations to legal authority. Typically, the supreme court rules about the contents of the briefs are compulsory, and this court could strike her brief. *Fryzel v. Miller*, 2014 IL App (1st) 120597, ¶ 25, 12 N.E.3d 684. However, to the extent that McGowan's brief was deficient, that deficiency would only serve to harm her position. Having reviewed McGowan's brief, she provided nothing other than fact-based statements and arguments to which Cook was able to adequately respond in his reply brief. Cook also asks this court to enter monetary sanctions against McGowan pursuant to Illinois

Supreme Court Rule 375(b) (eff. Feb. 1, 1994) because her brief was noncompliant. Sanctions are appropriate if a party's actions are frivolous. *Gakuba*, 2015 IL App (2d) 140252, ¶ 26. The purpose of Rule 375(b) is to punish the party. *Fraser v. Jackson*, 2014 IL App (2d) 130283, ¶ 51, 12 N.E.3d 62. Whether sanctions should be imposed is entirely within our discretion. *Fields v. Lake Hillcrest Corp.*, 335 Ill. App. 3d 457, 466, 780 N.E.2d 357, 364-65 (2002). We find that sanctions would be inappropriate in this case because McGowan is *pro se*; this appeal was not filed by McGowan; and McGowan was merely trying to reply to the factual statements and arguments advanced by Cook in his appeal. Therefore, we deny Cook's motion to sanction and to strike McGowan's brief.

¶ 37 CONCLUSION

¶ 38 For the reasons stated in this order, we reverse the St. Clair County circuit court's order denying Cook's motion for reconsideration of the plenary stalking no contact order.

¶ 39 Reversed.