

NOTICE
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2019 IL App (5th) 180407-U

NO. 5-18-0407

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

DOROTHY L. McCOMBS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Williamson County.
)	
v.)	No. 18-OP-233
)	
DONALD GADDIS,)	Honorable
)	Carey C. Gill,
Respondent-Appellant.)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The circuit court properly entered a two-year stalking no contact order in favor of petitioner and against respondent because respondent engaged in a course of conduct directed at the petitioner, and he knew or should have known that this conduct would cause a reasonable person to fear for her safety or suffer emotional distress.

¶ 2 The petitioner, Dorothy L. McCombs, filed in the circuit court of Williamson County a petition pursuant to the Stalking No Contact Order Act (Act) (740 ILCS 21/1 *et seq.* (West 2018)) against the respondent, Donald Gaddis, who is McCombs’ next-door neighbor. After hearing evidence, the circuit court granted McCombs’ petition and

entered a two-year stalking no contact order. For the following reasons, we affirm the circuit court's order.

¶ 3

BACKGROUND

¶ 4 On July 2, 2018, McCombs filed a verified petition for a stalking no contact order. In the petition, McCombs alleged that on dates between May 16 and May 29, 2018, Gaddis stood, with his arms crossed, on the sidewalk at the rear of her home and stared at her house. McCombs also alleged that Gaddis paced up and down in front of his house, corner to corner, while screaming and at one point, stood in downpouring rain for 45 minutes. McCombs alleged that about a month later, while she visited with neighbors outside her home, Gaddis screamed at the group in a threatening way and was arrested. McCombs alleged that later that same afternoon, Gaddis, after engaging in an altercation with an individual driving a black truck, told her that she had “done it now” and that she was “never coming back from this.” McCombs alleged that she feared for her safety. Pursuant to McCombs' petition, the circuit court entered an emergency stalking no contact order that expired on July 18, 2018. The circuit court ordered that Gaddis stay at least 25 feet away from McCombs, but the circuit court's order did not prohibit Gaddis' presence on his own property.

¶ 5 On July 18, 2018, at the hearing for a plenary order, McCombs testified that she was 72 years old, 5 foot 2 inches tall, and petite. McCombs testified that in July 2017, she and Gaddis engaged in a property dispute involving a tree. McCombs testified that around the same time, she was walking her dog when Gaddis stopped his car in the

middle of the street, jumped out of the car, and said he wanted to talk about the ongoing dispute.

¶ 6 McCombs testified that in October 2017, she called the police because Gaddis was banging on her neighbor's door, calling the neighbor out to fight in the street. McCombs testified that the police responded to the incident, which resulted in "the culmination of a day-long series of misbehavior on [Gaddis'] part." McCombs testified that as a result of this incident, she sought an order of protection initially entered in October 2017, extended in November 2017, and dismissed in February 2018.

¶ 7 McCombs testified that during the month of May 2018, Gaddis paced up and down the front of his house, and at one time, stood outside for 45 minutes in the rain. McCombs testified that Gaddis would "go back and forth and do exercises at one end of his property and then come to [her] end of the property and stare at [her] and [her] house." McCombs testified that she was "troubled" and "terrified" because he was "stalking" her. McCombs testified that on May 20, 2018, she took a photograph to show what he was doing. McCombs identified the photo, taken from inside her home, of Gaddis standing outside of her home with his arms crossed, looking her way. McCombs testified that Gaddis would stand like that for long periods of time and that she believed Gaddis was staring at her.

¶ 8 McCombs testified that on June 28 or 29, 2018, she was visiting with other neighbors in the street when Gaddis drove by, pulled over to the side of the road, and screamed at them, saying, "This will be settled in court." McCombs testified that she felt worried. McCombs testified that Gaddis then continued to his house, pulled into his

driveway, and ran down his driveway to stand and scream at her again. McCombs testified that the police were contacted and had arrived when Gaddis drove his car near the group and began screaming again, saying “You’re talking to liars.” After a police officer told Gaddis that he wanted to talk to him, Gaddis left, and another police officer followed and arrested him.

¶ 9 McCombs testified that later that afternoon, she heard arguing coming from outside her home. McCombs testified that she looked through the back window and saw Gaddis’ car parked near a black pickup truck, and Gaddis was arguing with the individual in the black pickup truck. McCombs testified that she exited her home, as did her neighbor Charlie Winstead, who had also heard the commotion. McCombs testified that Gaddis allowed the truck to leave, but he followed the black pickup truck around the corner. McCombs testified that while she and Winstead were standing at the corner, Gaddis drove by very slowly, rolled down his window, and yelled, “You’re not coming back from this” in a “very threatening” way. McCombs testified that Gaddis continued to his driveway, picked up a package in front his house, and started “charging” them. McCombs testified that Gaddis was running across his yard. McCombs testified that she called the police.

¶ 10 McCombs testified that she later observed the individual in the black pickup truck return and engage in a conversation with a police officer. McCombs testified that Gaddis was ultimately arrested a second time that day. The circuit court took judicial notice of case number 18-CF-383, wherein Gaddis was charged on July 2, 2018, with felony unlawful restraint (720 ILCS 5/10-3 (West 2018)) for knowingly and without legal

authority detaining Kevin Hall, ostensibly the driver of the black vehicle, in that Gaddis allegedly parked his vehicle behind Hall's vehicle, blocked him in, and refused to allow him to leave. Gaddis was also charged with disorderly conduct (*id.* § 26-1(a)(1)) for knowingly yelling at McCombs in an extremely aggressive manner so as to alarm and disturb McCombs. On July 2, 2018, in case number 18-CF-383, the circuit court set bond with bond conditions, including no contact with McCombs. McCombs filed her verified petition for a stalking no contact order the same day.

¶ 11 McCombs testified that because of Gaddis' behavior, her life had completely changed. McCombs testified that she no longer felt comfortable visiting her neighborhood friends. McCombs testified that 27 feet separated the edge of her house from the edge of Gaddis' house and that she wanted Gaddis to stay on his own property. McCombs acknowledged, however, that Gaddis had not entered her property but had remained on his property or on the street. McCombs also acknowledged that she had helped a neighbor, Brenda Grant, handwrite a petition for an order of protection against Gaddis. McCombs testified that Grant had forgotten her glasses and had told McCombs what to write.

¶ 12 Gaddis testified that he was 46 years old, was previously employed as a health inspector, and had lived in the neighborhood for more than eight years. Gaddis testified that he and McCombs' friction began when McCombs began feeding more than a dozen feral cats on her property. Gaddis testified that he trapped the cats on his property and took them to the Humane Society.

¶ 13 Gaddis testified that he had previously filed suit for nuisance against McCombs, that he believed that a pine tree leaning over his house may fall and damage his house, and that he had cut the pine tree's limbs that were growing over his property line. Gaddis testified that because he moved the cut limbs to McCombs' side of the property, she had begun the order of protection proceedings against him. Gaddis testified that during the same time period, McCombs called the police because he was looking at the tree.

¶ 14 Gaddis identified himself in the photo referenced by McCombs and noted that in the photo, he was standing on the sidewalk in front of his property. Gaddis testified that he was not staring at McCombs in the photo. Gaddis testified that he had not even seen McCombs when she took the photo.

¶ 15 Gaddis testified that on June 29, 2018, he had two encounters with the Marion city police. Gaddis testified that at approximately 8:30 a.m., he was arrested for violating an order of protection that had been dismissed and was no longer in effect. Gaddis testified that he spent three or four hours in the jail and that he thereafter walked from the Williamson County jail to the police station, where his vehicle was parked. Gaddis testified that in walking the mile to the police station, he walked through his neighborhood and noticed a truck that was driving back and forth near his house. Gaddis testified that after he entered his car, the driver of the truck pulled into his driveway. Gaddis testified that he believed the driver of the black truck was a private investigator hired by McCombs.

¶ 16 Gaddis acknowledged that he was arrested again as a result of his encounter with the driver of the black truck. Gaddis also acknowledged that he had communicated with

McCombs and Winstead, but asserted that he had remained nearly 50 feet away from McCombs. Gaddis explained that McCombs and Winstead had stood on the sidewalk in front of McCombs' house and that he had remained in his yard, two feet from the property line. Gaddis acknowledged that he had been "[p]robably loud," that he had been angry, and that he had told McCombs that she "sealed the deal and she's going to court." Gaddis testified that he had not told McCombs that she was "never coming back from this."

¶ 17 Gaddis acknowledged that four individuals, two of whom were officers who responded to the incidents in question, had sought orders of protections against him within the last year. Gaddis testified, however, that all four of those orders of protection had been dismissed.

¶ 18 On July 18, 2018, the circuit court entered a plenary stalking no contact order to take effect on that date, not to exceed two years. The circuit court found McCombs' testimony credible, noting that Gaddis had admitted to his presence in the photograph, to exercising outside, to yelling, and to making some of the statements as listed in McCombs' petition. The circuit court's order prohibited Gaddis from threatening to commit or committing stalking personally or through a third party; contacting McCombs in any way, directly, indirectly, or through third parties; and approaching within 25 feet of McCombs or her residence. The circuit court ordered that the 25-foot limitation did not prohibit Gaddis from remaining on his own property. The circuit court added typed language, not dictated by the language of the statute, into the preprinted form. Pursuant to this additional language, the circuit court ordered as a term of injunctive relief that "any

and all attempts at communication will be considered harassment,” including all social media and third party contact with McCombs “and/or protected parties.”

¶ 19 On July 24, 2018, Gaddis filed a motion to reconsider, which the circuit court denied on August 6, 2018. In denying Gaddis’ motion, the circuit court clarified that its prior ruling was based on the credibility of witnesses, including Gaddis’ admissions and McCombs’ testimony. On August 20, 2018, Gaddis filed his notice of appeal.

¶ 20

ANALYSIS

¶ 21 The legislature passed the Act in 2010 to provide a remedy for victims who have safety fears or emotional distress as a result of stalking and harassment. 740 ILCS 21/5 (West 2018). The Act recognizes that stalking is a serious crime and that victims of stalking fear for their personal safety and suffer emotional distress, leading many to alter their routines and some to relocate to other places to avoid the person who is stalking them. *Id.* The purpose of the Act is to provide stalking victims with a civil remedy requiring the offender to stay away from them and protected third parties. *Id.*

¶ 22 Pursuant to the Act in effect in this case, “a stalking no contact order shall issue” when the court finds the petitioner has been a victim of stalking. *Id.* § 80(a). “ ‘Stalking’ means 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 suffer emotional distress.” *Id.* § 10. “ ‘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, or threatens a person, engages in other contact, or interferes with or

damages a person's property or pet. *Id.* (“or communicates to or about” phrase included in version effective in 2018 but deleted by Pub. Act 100-1000, § 5 (eff. Jan. 1, 2019)). “Contact” is defined in the Act to include “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 being in the victim’s physical presence; appearing within the victim’s sight; approaching or confronting the victim in a public place or on private property; appearing at the victim’s residence; entering onto or remaining on property owned, leased, or occupied by the victim; and placing an object on, or delivering an object to, property owned, leased, or occupied by the victim. *Id.*

¶ 23 The Act provides that “[s]talking does not include an exercise of the right to free speech or assembly that is otherwise lawful.” 740 ILCS 21/10 (West 2018). “The Act only prohibits speech that constitutes threats of violence or intimidation.” *Henby v. White*, 2016 IL App (5th) 140407, ¶ 26. “When words are a component of the stalking behavior, then the speech does not fall within constitutional protections.” *Id.*

¶ 24 The Act’s focus involves whether the stalker “knows or should know that [the] course of conduct would cause a reasonable person to fear for his or her safety” or “suffer emotional distress.” 740 ILCS 21/10 (West 2018); *McNally v. Bredemann*, 2015 IL App (1st) 134048, ¶ 14. A “reasonable person” is defined as a “person in the petitioner’s circumstances with the petitioner’s knowledge of the respondent and the respondent’s prior acts.” 740 ILCS 21/10 (West 2018). “ ‘Emotional distress’ means significant mental

suffering, anxiety[,] or alarm.” *Id.* Whether a party has suffered emotional distress is generally a question of fact. See *Corgan v. Muehling*, 143 Ill. 2d 296, 312 (1991).

¶ 25 A petitioner is required to prove stalking by a preponderance of the evidence. 740 ILCS 21/30(a) (West 2018). “A trial court’s determination that a preponderance of the evidence shows a violation of the Act will not be overturned unless such a determination is against the manifest weight of the evidence.” *McNally*, 2015 IL App (1st) 134048, ¶ 12. A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or if the finding is arbitrary, unreasonable, or not based on the evidence presented. *Id.*; *Nicholson v. Wilson*, 2013 IL App (3d) 110517, ¶ 22.

¶ 26 Gaddis argues that the circuit court’s ruling finding McCombs credible was against the manifest weight of the evidence because McCombs’ testimony directly conflicted with her statements in her verified petition. Specifically, Gaddis argues that McCombs’ testimony that she did not know why Gaddis had been arrested on the morning of June 29, 2018, conflicted with a police report revealing that she knew Gaddis had been arrested for violating an order of protection. Gaddis argues that McCombs’ testimony that she was not motivated to retaliate because of Gaddis’ lawsuit against her conflicted with her lack of explanation as to why she mentioned it in her verified petition. Gaddis argues that the inescapable inference is that McCombs filed the petition at issue here because she was angry that Gaddis had filed suit against her. McCombs counters that Gaddis’ arguments are immaterial.

¶ 27 “The trial judge, as the trier of fact, is in a position superior to a reviewing court to observe witnesses while testifying, to judge their credibility, and to determine the weight

their testimony should receive.” *Clean World Engineering, Ltd. v. MidAmerica Bank, FSB*, 341 Ill. App. 3d 992, 997 (2003). “When the testimony of witnesses is conflicting, it is within the exclusive province of the trial court, as the trier of fact, to determine the witnesses’ credibility and the weight to be given their testimony.” (Internal quotation marks omitted.) *Hoffman v. Altamore*, 352 Ill. App. 3d 246, 253 (2004). Despite Gaddis’ contentions on appeal, sufficient evidence supported the circuit court’s finding that McCombs was a victim of stalking as defined by the Act. The testimony revealed that Gaddis engaged in a course of conduct directed at McCombs, and this course of conduct included two or more acts in which Gaddis directly observed, monitored, or threatened McCombs and engaged in other contact, including initiating and continuing contact with McCombs without her consent. 740 ILCS 21/10 (West 2018). The evidence revealed that Gaddis knew or should have known that this course of conduct would cause a reasonable person in McCombs’ position to fear for her safety or suffer emotional distress. *Id.*

¶ 28 Gaddis argues that because no evidence indicated that he entered onto McCombs’ property, that he physically threatened or touched her, or that he moved close enough to her to injure her, there was no evidence that McCombs had a reasonable fear for her safety. We disagree.

¶ 29 The record adequately supports a finding that Gaddis engaged in a course of conduct that included yelling, observing, monitoring, running at, and charging towards McCombs, and Gaddis knew or should have known that this course of conduct would cause a reasonable person, a person in McCombs’ circumstances with McCombs’ knowledge of Gaddis and Gaddis’ prior acts, to fear for her safety or suffer emotional

distress. See *id.* A person in McCombs' circumstances, a 72-year-old, petite female, with McCombs' knowledge of Gaddis, would reasonably experience significant mental suffering, anxiety, and alarm due to Gaddis' conduct, and the record demonstrates that McCombs did, in fact, fear for her safety and suffer emotional distress. Accordingly, the circuit court properly entered the plenary stalking no contact order.

¶ 30

CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court of Williamson County.

¶ 32 Affirmed.