2011 IL App (2d) 100235-U
No. 2—10—0235
Order filed August 19, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

SHEILA A. MANNIX,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 09—OP—1956
	)	
DANIEL P. SHEETZ, SR.,	)	Honorable
	)	Margaret J. Mullen,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

Held: Petitioner's arguments on appeal fail where they are based on the evidence adduced at a hearing and petitioner did not provide the reviewing court with a sufficiently complete record to evaluate the evidence from the hearing. In the absence of a complete record, the reviewing court will presume that the trial court's factual findings were based on sufficient evidence and its judgment conformed to the law and had a sufficient factual basis.

¶ 1 Petitioner, Sheila A. Mannix, appeals from the judgment of the circuit court of Lake County, denying her emergency motion for an order of protection against respondent, Daniel P. Sheetz, Sr. Petitioner argues that the trial court erred: (1) in finding the text message that was the subject of the proceeding would not cause emotional distress to a reasonable person; (2) because it fabricated part

of its oral findings; (3) for failing to order injunctive relief pursuant to the Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West 2008)); (4) for failing to apply the statutory standard of proof (750 ILCS 60/205(a) (West 2008)); (5) for failing to grant her motion for rehearing or order respondent's testimony to be forwarded to the State's Attorney to determine whether a perjury prosecution was warranted; (6) for violating her federal constitutional rights of due process and equal protection; and (7) for failing to report felonies as allegedly established by the testimony and other evidence presented at the hearing. We affirm.

¶ 2 We summarize the facts appearing in the record. On December 28, 2009, petitioner served respondent with her emergency petition for order of protection. On December 30, 2009, the emergency petition for order of protection was filed. Included with the petition was an addendum that included reference to other actions in which petitioner was involved, along with other documents purporting to set forth petitioner's history with respondent, her children, and all of the facts (as petitioner presented them) beginning in 1996. Essentially, petitioner was complaining of a text message sent by respondent, which she claimed to be "harassment" as defined by the Act. See 750 ILCS 60/103(7) (West 2008).

¶ 3 On December 23, 2009, at 3:40 p.m., the text message at issue was sent from respondent's phone to petitioner's phone. The message stated: "Kevin will be here on Christmas eve. Brian will not stay at your house until he is 18 at that point he can decide. Maybe you should grow up and stop using Kevin to try to do your dirty work."

¶ 4 Also on December 30, 2009, a hearing was held on the emergency petition for order of protection. Both parties were apparently in attendance. Petitioner did not include either a transcript of the hearing, a bystander's report, an agreed statement of facts, or any other method allowed to

present what occurred at the December 30, 2009, hearing. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005). Rather, petitioner obtained and presented only that part of the hearing transcript that contained the trial court's verbal ruling. At the end of the hearing, the trial court ruled:

> "The court has heard the witnesses, reviewed the petition and considered the arguments of the parties. It is admitted that the respondent sent the text message which is a[]part of what the plaintiff [*sic*] or petitioner's complaining about. The context was a discussion about Christmas visitation according to the respondent, who I find credible as to that issue. I find that the record fails to establish any statutory trigger for the issuance of an order of protection including harassment, abuse or interference with personal liberty, nor do I find that the text message would cause a reasonable person emotional distress.
>
> The burden of proof is on the petitioner, and she has failed to meet that burden of proof. Therefore, the request for emergency relief is denied and the cause is dismissed."

Petitioner asserts that, in denying the petition for order of protection, the trial court, among other things, fabricated the finding about Christmas visitation and ignored respondent's "impeached and blatantly perjurious testimony."

¶ 5 On January 29, 2010, petitioner filed a posthearing motion, entitled, "Petitioner's Motion for Reversal of Dismissal of Emergency OP Petition Due to Respondent's Verified Perjury and for Hearing for Plenary Protection Order, or in the Alternative, for Entry of an Order under 750 60/226 Directing State's Attorney Waller to Pursue Prosecution of 720 ILCS 5/32—2 Felony Perjury and 720 ILCS 5/32—4a Felony Harassment of a Witness in Conjunction with a Protection Order Under 725 ILCS 5/1112A—1, Prepared and Filed as an Offer of Proof." In the motion, petitioner sought

a rehearing or the entry of an order directing the State's Attorney to investigate and prosecute respondent's alleged perjury.

¶ 6 On February 9, 2010, the trial court heard the posthearing motion. Additionally, an assistant State's Attorney "stepped up," and petitioner notes that the assistant had not filed an appearance with the trial court. The trial court denied the posthearing motion. Petitioner claims that this proceeding was "rendered void by fraud upon the court which included direct evidence of alleged racketeering activity and federal funding fraud with the Respondent's introduction of the third-round custody evaluator, Jonathan Gamze's report into the proceedings." Petitioner filed a timely notice of appeal. (Petitioner subsequently filed a motion to vacate the December 30, 2009, and February 9, 2010, orders pursuant to section 2—1401 of the Code of Civil Procedure (735 ILCS 5/2—1401 (West 2008)), along with a number of other "additional post-judgment filings" which "will be the subject of evidentiary proceedings in other venues." The motion to vacate and "other post-judgment filings" are not at issue in this appeal.)

¶ 7 We first note that respondent has not filed a response brief in this appeal. Nevertheless, we will address the merits of this appeal pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 Petitioner first challenges the trial court's finding regarding respondent's text message. Specifically, petitioner appears to challenge the correctness of the evidentiary determination, namely that the "context [of the text message] was a discussion about Christmas visitation," and the propriety of the trial court's application of the law to the facts. This presents a situation not unlike the review of a motion to suppress, in which the trial court is called upon to make factual findings and then to apply the law to those facts. See *The Agency, Inc. v. Grove*, 362 Ill. App. 3d 206, 215

(2005) (noting the similarity of the question of a review of a restrictive covenant to a motion to suppress because the court makes factual findings and then applies the law to the facts it found). We think it is appropriate, then, to accord the trial court's factual determinations the deferential review of the against-the-manifest-weight-of-the-evidence standard, and to apply the non-deferential, *de novo* review to the court's application of the law to the facts. *The Agency*, 362 Ill. App. 3d at 215 (where there are disputed facts, the review is under the manifest-weight standard; legal questions (like the application of the law to the historical facts found by the fact-finder) are subject to *de novo* review).

¶ 9 As we observed in our factual summary, petitioner did not include a report of proceedings for the December 30, 2009, hearing, or a substitute (see Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)), with the exception that petitioner provided an excerpt of the report of proceedings that contained only the trial court's ruling. As a result, the record does not contain the evidence presented during that hearing, even though, apparently, the parties and other witnesses were present and were called to testify. It is well established that it is the appellant's responsibility to provide a sufficiently complete record on appeal to support his or her claims of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of a complete record, we must presume that the order the trial court entered conformed to the law and had a sufficient factual basis in the evidence. *Foutch*, 99 Ill. 2d at 392. Any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. Further, in the absence of a complete record, we will presume that the trial court had ample grounds supporting its ruling. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462, (1993).

¶ 10 Here, plaintiff challenges both the determination of the historical facts and the application of the law to those facts. The record, however, does not include the testimony and other evidence presented at the December 30, 2009, hearing, either via a verbatim transcript or other method allowed by the rules. The record contains only the trial court's six-sentence ruling. Because there is no record to support petitioner's claim of error that the trial court's factual findings were against the manifest weight of the evidence, we are required by *Foutch* to presume that the evidence supported the trial court's factual findings. *Foutch*, 99 Ill. 2d at 391-92. We are further required to presume, again pursuant to *Foutch*, that the trial court's application of the law to the facts was supported by ample grounds in the record. *Foutch*, 99 Ill. 2d at 391-92, *Boalbey*, 242 Ill. App. 3d at 462. Accordingly, we cannot say that the trial court's factual determinations were against the manifest weight of the evidence, and we cannot find error in the trial court's holding, that the text message at issue would not cause a reasonable person emotional distress. We must, therefore, reject petitioner's first issue on appeal.

¶ 11 Petitioner next contends that the trial court fabricated the finding that the context of the text message was a discussion about the Christmas holiday visitation schedule. Again, owing to the absence of a complete record, we are constrained by *Foutch* to presume that the evidence supported such a factual determination. *Foutch*, 99 Ill. 2d at 391-92. Accordingly, we reject petitioner's contention regarding the trial court's fabricating a factual finding.

¶ 12 Next, petitioner argues that the trial court erred in failing to order injunctive relief to preclude the use of the family courts to continue to further the domestic abuse against her. Petitioner's contention is muddled and unclear—is petitioner claiming that respondent is using judicial process to further the alleged domestic abuse, or is she alleging that the courts themselves are persecuting

her, or is she claiming something else entirely? Regardless of the precise target of this contention, our careful review of the record reveals no *evidence* (meaning testimony and the presentation of facts (as opposed to conclusions without factual support set forth in affidavits)) to support the contention that injunctive relief was warranted. Additionally, the incompleteness of the record on appeal constrains us to presume that the trial court's refusal to order injunctive relief as contended was supported by ample grounds. *Boalbey*, 242 Ill. App. 3d at 462.

¶ 13 Next, petitioner argues that the trial court did not follow the statutory standard of proof set forth in section 205(a) of the Domestic Violence Act, namely, that she was required to prove her claims by a preponderance of the evidence. Petitioner argues that she did, in fact supply sufficient evidence to support a finding in her favor. Again, the lack of a sufficiently complete record requires us to invoke the *Foutch* presumption regarding the evidence presented at the December 30, 2009, hearing, namely, that the trial court's determination was grounded in the evidence. *Foutch*, 99 Ill. 2d at 391-92. This means that, because the trial court found adversely to petitioner, we are required to presume that petitioner did not present evidence from which the trial court could have found by a preponderance that she had proved her allegations. Accordingly, we reject petitioner's contention on this point.

¶ 14 Petitioner next argues that the trial court erred in denying her posthearing motion seeking either a new hearing or the entry of an order directing that the State's Attorney investigate and prosecute respondent for perjury and witness harassment. Petitioner did not include a record of the proceedings on this motion or an authorized substitute. Once again, we must presume that the trial court's decision to deny the motion was supported by the evidence. *Foutch*, 99 Ill. 2d at 391-92. Likewise, regarding the claim of perjury against respondent arising from his testimony at the

December 30, 2009, hearing, because the record is incomplete regarding that hearing, *Foutch* constrains us to presume that the trial court's decision, not to launch an investigation into alleged perjury by respondent, was supported by the evidence. *Foutch*, 99 Ill. 2d at 391-92. We thus must reject petitioner's contention on this point.

¶ 15 Petitioner next contends that she was deprived of her constitutional rights due to the trial court's bias and prejudice against her. The difficulty with petitioner's contention here is her failure to develop a record. Generally, a judge's bias or prejudice must be shown to have arisen from an extrajudicial source. In other words, there must be a source other than the courtroom where the judge has learned about the party by participating in the case. See *In re Estate of Wilson*, 238 Ill. 2d 519, 554 (2010) (discussing showing necessary to demonstrate bias in a motion to substitute judge for cause). Likewise, a judge's previous rulings almost never constitute a valid basis for a claim of judicial bias. *Estate of Wilson*, 238 Ill. 2d at 554. There is nothing in the record to substantiate petitioner's claim of judicial bias. Further, petitioner does not point to anything in the record to support her claim. Instead, petitioner cites to a Rule 23 Order from an unrelated case, in which the trial court did not participate. See *Goone v. Bowman-Goone*, No. 1—07—2200 (May 2, 2008). While a proved instance of judicial bias would also demonstrate a deprivation of constitutional rights, petitioner has failed to support her claim in this case. Accordingly, we reject petitioner's contention on this issue.

¶ 16 Last, petitioner argues that, presumably, the alleged perjury occurring in the December 30, 2009, hearing triggered the trial court's (as well as this court's) obligation to report felonious actions to the proper authorities. Again, petitioner's precise argument is difficult to discern. As best we can make out, if her argument relates specifically to this case, the lack of a complete record means there

is nothing in the record that supports the contention. Alternatively, it also appears possible that petitioner is invoking her belief that the judicial system is being improperly used to harass and oppress her and harm her children while protecting respondent's actions. Again, notwithstanding her conclusory affidavits and statements, there is nothing in the record to substantiate this claim. Accordingly, we reject petitioner's final contention.

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 18 Affirmed.