2012 IL App (2d) 120473-U
No. 2-12-0473
Order filed June 28, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

DANIEL VINCENT ZOFKIE, Petitioner-Appellee, v. EVA MARIE POWERS f/k/a Eva Marie Zofkie, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of McHenry County. Nos. 12-OP-34 12-DV-162 Honorable Robert A. Wilbrandt, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

Held: Trial court did not err in entering plenary order of protection following hearing.

ORDER

¶ 1 On January 26, 2012, the circuit court of McHenry County issued a plenary order of protection against the respondent, Eva Marie Powers. The order of protection was sought by Powers' ex-husband, petitioner Daniel Zofkie, on behalf of the parties' children, and was entered following a two-day hearing at which four witnesses testified and both children were interviewed

in camera. Powers appeals, contending that the trial court erred in entering the plenary order without holding an additional hearing. We affirm.

¶ 2 Zofkie filed a petition seeking an order of protection on January 20, 2012. In it, he alleged the following. Zofkie and Powers were divorced in 2006, and shared joint legal custody of their two children, V.Z. (12) and B.Z. (10). The children resided with Powers; Zofkie was in the armed services and was stationed in Florida. Zofkie alleged that B.Z. telephoned him and said that she had been beaten by Powers on January 4, 2012, and had been deliberately injured by Powers' mother (B.Z.'s grandmother) on January 7, 2012. Zofkie called the police. B.Z. was admitted to a hospital for nine days of physical and psychological observation. Zofkie also reported complaints from B.Z. that Powers was neglecting them and not properly providing for the children's safety.

¶ 3 In his petition, Zofkie sought both "an Order of Protection" and "an Emergency Order of Protection." The trial court heard the petition on an *ex parte* basis on the same day it was filed. Finding that there were grounds for an emergency order of protection pursuant to section 217 of the Domestic Violence Act of 1986 (Act) (750 ILCS 60/217 (West 2010)), the court entered such an order. The order contained a provision setting February 10, 2012, for the hearing on the plenary order of protection. Powers was served with a copy of the emergency order of protection. On January 23, 2012, Powers, acting *pro se*, filed a motion to vacate the emergency order of protection. She set the motion for hearing on January 25, 2012.

¶ 4 On January 25, counsel for Powers filed an appearance and a "verified petition for rehearing of emergency order of protection and to advance the hearing on the plenary order of protection." In it, Powers alleged that Zofkie's allegations were false and were brought in retaliation for Powers' recent petition to increase child support. Both parties and their attorneys appeared before the court

that day and sought to proceed with a hearing. After being told that the parties wished to present B.Z.'s testimony and perhaps that of V.Z., the trial court laid out the ground rules under which B.Z. and V.Z. could be interviewed in chambers and obtained the attorneys' agreement. The trial court then stated:

> "All right. Then, the Court will note that the Petitioner has waived notice requirements on the verified petition for rehearing of the emergency order of protection, and the Court will call the petition for order of protection, and [counsel for Zofkie], as the Petitioner, you have the burden to go forward and the burden of proof."

The parties then presented opening arguments. Zofkie's centered on the allegations of his petition for an order of protection. Powers' attorney stated that his client and her mother would testify, and they would "specifically refute each and every claim" alleged.

¶ 5 Over the course of two afternoons, the parties presented testimony from four witnesses: Zofkie; his aunt who was present when B.Z. spoke with Zofkie in the hospital; Powers; and Powers' mother. In addition, the trial court interviewed both B.Z. and V.Z. *in camera* in the presence of the attorneys for the parties. (The interviews were transcribed and placed under seal.) Powers attempted to introduce B.Z.'s hospital treatment records into evidence, but the trial court sustained a hearsay objection. Powers' attorney argued in closing that the evidence did not sustain the allegations of the petition for an order of protection because the defense witnesses were more credible, the incidents that had occurred between B.Z. and Powers or Powers' mother were no more than ordinary mother-daughter conflict that arose because B.Z. was acting defiant and disobedient, and Zofkie had filed the petition in retaliation for Powers' motion to increase child support.

¶ 6 The trial court ruled in favor of Zofkie, stating that it was aware of the prior history between the parties and the child support motion pending in Winnebago County and that it was basing its ruling solely on whether the evidence showed that Powers had abused B.Z. under the definition of "abuse" in the Act.

> "The Court finds by clear and convincing evidence that the child, [B.Z.], was abused as defined under the Illinois Domestic Violence Act in ways that were not related to normal parental discipline."

The court then stated that it was entering a plenary order of protection that would last for seven months, expiring on August 27, 2012, under which Zofkie would have temporary custody of B.Z. The court commented that any further proceedings relating to the custody of the children or child support would have to be resolved in domestic relations court in either Winnebago or McHenry County. Powers objected to the court's ruling, arguing that the hearing had only been in reference to the emergency order of protection, and therefore the court could only enter an emergency order of protection that would necessarily expire within 21 days. The court rejected this argument, noting that Powers' motion explicitly sought to advance the hearing on the plenary order of protection, and stating that that was exactly the hearing that the parties had received. Powers filed a motion to reconsider that was denied by the trial court.

¶ 7 Powers now appeals, arguing that the rehearing sought by Powers under section 224(d) of the Act was necessarily limited to the issue of whether the emergency order of protection should have been granted and that the trial court lacked authority to issue a plenary order at the close of the hearing. As this is an issue of statutory construction, our review is *de novo*. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2003). In construing a statute, our task is to "ascertain and give effect to the

legislature's intent." *Lieb v. Judges' Retirement System of Illinois*, 314 Ill. App. 3d 87, 92 (2000). The best indicator of the legislature's intent is the plain language of the statute. *Lee v. John Deere Insurance Co.*, 208 Ill. 2d 38, 43 (2003). "When the statute's language is clear, it will be given effect without resort to other aids of statutory construction." *Id*.

¶ 8 We reject Powers' contention that the rehearing permitted by section 224(d) of the Act may only result in a new emergency order of protection rather than a plenary order. The relevant language of section 224(d) provides as follows: "Upon 2 days' notice to petitioner, *** a respondent subject to an emergency or interim order of protection issued under this Act may appear and petition the court to re-hear the original or amended petition" for an order of protection. 750 ILCS 60/224(d) (West 2010). That is exactly what the trial court did here: it reheard the petition for an order of protection. All of the allegations made by Zofkie in his petition were before the court during that hearing, and it is clear that Powers was attempting to refute those allegations through the evidence she presented. Nothing in the plain language of section 224(d), or any other authority cited to us by Powers, states that the trial court may only issue another emergency order of protection following such a hearing. To read the statute in this way would be to insert a limitation not created by the legislature, and this we may not do. *Petersen v. Wallach*, 198 Ill. 2d 439, 446 (2002).

¶ 9 Indeed, to read the statute as Powers proposes would run counter to the overall structure of the Act. The Act permits a petitioner who meets the requirements of section 217 (750 ILCS 60/217 (West 2010)) to obtain an *ex parte* emergency order of protection immediately, but limits the duration of that order to 21 days (750 ILCS 60/220(a)(1) (West 2010)) in order to protect the due process rights of the respondent to appear and be heard. A plenary order, which may last up to two years, may only be obtained once the respondent has received proper notice of the proceeding and

has had the opportunity to present his or her defense. 750 ILCS 60/219, 220(b) (West 2010). Here, Powers was served, filed an appearance, and had a full opportunity to present her defense to the allegations of the petition. Under these circumstances, there was no statutory bar to the entry of a plenary order of protection.

¶ 10 Powers argues that, regardless of the notice and full hearing she received, the trial court was not authorized to enter a plenary order of protection because she had not filed an answer nor been found in default, which is one of the requirements listed in section 219 of the Act for the issuance of such an order. That provision requires the petitioner to show that: (1) the trial court has jurisdiction of the matter; (2) the petitioner is entitled under section 214 of the Act to one or more of the remedies listed in that section; (3) the respondent has appeared or has been properly served; and (4) the respondent has answered or is in default. 750 ILCS 60/219 (West 2010).

¶ 11 We find that all of these requirements were met here. Although Powers filed no pleading formally designated as an answer, her verified petition for rehearing contained a sworn denial of the allegations in Zofkie's petition for an order of protection ("the allegations in Plaintiff's Verified Petition For Order of Protection are untruthful and fabricated"). Moreover, at the start of the hearing on Zofkie's petition, Powers' attorney stated that the defense would "specifically refute each and every claim" in that petition. Under the circumstances presented here, in which Powers appeared through counsel and sought an immediate and full hearing on the petition, we find that these statements served as an answer to the petition sufficient to meet the requirements of section 219. Powers was not entitled to any further hearing before a plenary order of protection could be entered.

¶ 12 The judgment of the circuit court of McHenry County is affirmed.

¶ 13 Affirmed.