

2019 IL App (2d) 180969-U
No. 2-18-0969
Order filed October 1, 2019

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

KELLY A. SHETLER,)	Appeal from the Circuit Court
)	of Jo Daviess County.
Petitioner-Appellee,)	
)	
v.)	No. 18-OP-47
)	
NATHAN L. VIRTUE,)	Honorable
)	Kevin J. Ward,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court had subject matter jurisdiction of petitioner’s petition under the Stalking No Contact Order Act, and thus its order thereunder was not void, even if petitioner was entitled to a remedy only under the Illinois Domestic Violence Act of 1986.

¶ 2 Respondent, Nathan L. Virtue, appeals from a plenary stalking no-contact order entered in the circuit court of Jo Daviess County. Respondent argues that the order is void for lack of subject matter jurisdiction. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 22, 2018, petitioner, Kelly A. Shetler, filed a verified petition for a stalking no-contact order against respondent. In it, she alleged that she had recently ended a dating relationship with respondent and that, since that time, respondent had been sending her “vulgar text messages from him on a regular basis,” calling her repeatedly, and posting things about her on Facebook. Respondent also told her that he had posted a sexual video of her on the Internet. The court issued an emergency stalking no-contact order and set the matter for a hearing.

¶ 5 The hearing took place on November 6, 2018. At the outset of the hearing, respondent’s counsel asked that the petition be dismissed. Counsel argued that petitioner could not bring an action under the Stalking No Contact Order Act (Stalking Act) (740 ILCS 21/1 *et seq.* (West 2018)), because under that act “[a] petition for stalking no contact order may be filed when relief is not available to the petitioner under the Illinois Domestic Violence Act of 1986 [(Domestic Violence Act) (750 ILCS 60/101 *et seq.* (West 2018))].” 740 ILCS 21/15 (West 2018). Counsel maintained that relief was available to petitioner under the Domestic Violence Act, because that act protected “any person abused by a family or household member.” 750 ILCS 60/201(a)(i) (West 2018). Counsel asserted that respondent fell within the definition of “family or household member” based on his prior dating relationship with petitioner. See *id.* § 103(6). The trial court disagreed with counsel’s argument that the availability of an order of protection under the Domestic Violence Act precluded the issuance of a stalking no-contact order under the Stalking Act and denied the oral motion to dismiss.

¶ 6 Petitioner testified that she was 40 years old and that she had known respondent for about 30 years. She stated that they had previously dated and that respondent had temporarily lived with her. When their dating relationship ended, they had wanted to remain friends, but respondent started leaving petitioner “horrible” messages. She testified about various text

messages, e-mail messages, and posts on social media. At the conclusion of her testimony, the trial court found that petitioner was credible and that the evidence established that respondent's actions constituted stalking. The court entered a stalking no-contact order effective through November 5, 2019.

¶ 7 Respondent now appeals.

¶ 8 II. ANALYSIS

¶ 9 Respondent argues that, because relief was available to petitioner under the Domestic Violence Act (*id.* § 101 *et seq.*), she was not entitled to relief under the Stalking Act (740 ILCS 21/1 *et seq.* (West 2018)). Therefore, according to respondent, the trial court did not have subject matter jurisdiction over the petition and thus the stalking no-contact order is void.

¶ 10 Petitioner has not filed a brief. However, as the record is simple and the issue relatively straightforward, we will consider the merits of respondent's argument. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (a reviewing court should decide the merits of an appeal where the record is simple and the claimed error is such that a decision can be made easily without the aid of an appellee's brief).

¶ 11 Subject matter jurisdiction refers to the power of a court to hear and determine cases of the general class to which the proceeding in question belongs. *Belleville Toyota v. Toyota Motor Sales, U.S.A.*, 199 Ill. 2d 325, 334 (2002); *Nationstar Mortgage, LLC v. Canale*, 2014 IL App (2d) 130676, ¶ 12. With the exception of a circuit court's power to review administrative actions, which is conferred by statute, a circuit court's subject matter jurisdiction is conferred entirely by our state constitution. *Belleville Toyota*, 199 Ill. 2d at 334; *Nationstar Mortgage LLC*, 2014 IL App (2d) 130676, ¶ 12. Under section 9 of article VI of the Illinois Constitution, the jurisdiction of circuit courts extends to all "justiciable matters." Ill. Const. 1970, art. VI, § 9.

“ ‘Thus, in order to invoke the subject matter jurisdiction of the circuit court, a plaintiff’s case, as framed by the complaint or petition, must [merely] present a justiciable matter.’ [Citation.] Although the plaintiff’s pleadings thus are pertinent, ‘[s]ubject matter jurisdiction does not depend upon the legal sufficiency of the pleadings.’ [Citation.]” *Nationstar Mortgage LLC*, 2014 IL App (2d) 130676, ¶ 12.

¶ 12 Respondent’s argument that the trial court’s order is void must fail. We find instructive this court’s decision in *Nationstar Mortgage, LLC*. There, the defendant argued that a foreclosure judgment issued in favor of the plaintiff mortgagee was void for lack of subject matter jurisdiction, because the plaintiff failed to plead its standing as required under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504(a)(3)(N) (West 2010)). *Nationstar Mortgage, LLC*, 2014 IL App (2d) 130676, ¶ 9. We rejected that argument, stating that the court’s subject matter jurisdiction “turns only on whether the claim, even if defectively stated, presents a ‘justiciable matter,’ *i.e.*, ‘falls within the general class of cases that the court has the inherent power to hear and determine.’ [Citation.]” *Id.* ¶ 14. We found that, as there was no doubt that the courts had the inherent power to hear and determine foreclosure cases, the plaintiff’s complaint invoked the court’s subject matter jurisdiction. *Id.* We stated further:

“A different outcome is not required by the fact that the purported defect in plaintiff’s claim was plaintiff’s failure to plead its standing. To be sure, the supreme court has stated that standing is ‘an element of justiciability.’ [Citation.] This is not to say, however, that a plaintiff who lacks standing cannot assert a ‘justiciable matter.’ Indeed, if such were the case, the plaintiff’s lack of standing would itself defeat the trial court’s subject matter jurisdiction, and the defendant could not forfeit the lack of

standing. [Citation.] Thus, though standing might be ‘an element of justiciability’ [citation], it is not a requirement for a ‘justiciable matter.’ ” *Id.* ¶ 15.

¶ 13 Here, a petition for a stalking no-contact order certainly falls within the general class of cases that the court has the inherent power to hear and determine. Indeed, section 45 of the Stalking Act expressly provides that “[e]ach of the circuit courts has the power to issue stalking no contact orders.” 740 ILCS 21/45 (West 2018). Thus, even if petitioner was not entitled to relief under the Stalking Act, this did not deprive the trial court of subject matter jurisdiction, and therefore the stalking no-contact order is not void.

¶ 14 To the extent that respondent argues that, even absent voidness, petitioner’s reliance on the wrong statute entitles him to relief, we disagree. Respondent does not deny that, had petitioner proceeded under the Domestic Violence Act, she would have been entitled to the same relief that she obtained under the Stalking Act. Compare 740 ILCS 21/80 (West 2018) with 750 ILCS 60/214 (West 2018). Nor does he assert that he suffered any prejudice from petitioner’s citation to the Stalking Act. See, e.g., *People v. Ryan*, 117 Ill. 2d 28, 37 (1987) (citation in an information to an incorrect statutory provision is not fatal where it is not so misleading as to cause prejudice). Thus, even if petitioner was not entitled to proceed under the Stalking Act, the mere citation to the Stalking Act was not fatal.

¶ 15 **III. CONCLUSION**

¶ 16 For the reasons stated, we affirm the judgment of the circuit court of Jo Daviess County.

¶ 17 Affirmed.