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2019 IL App (3d) 180521-U

Order filed June 20, 2019

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2019

JESSIKA N. KODAT,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Petitioner-Appellee,)	Grundy County, Illinois
)	
v.)	Appeal No. 3-18-0521
)	Circuit No. 18-OP-70
)	
DANIEL M. HOLM,)	Honorable
)	Sheldon R. Sobol
Respondent-Appellant.)	Robert C. Marsaglia
)	Judges, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err when it granted petitioner's request for a stalking no contact order as she established by a preponderance of the evidence that respondent engaged in harassing and threatening behavior against her.

¶ 2 Petitioner Jessika Kodat sought emergency and plenary stalking no contact orders against respondent Daniel Holm. The trial court entered the emergency order and a trial thereafter took place. The trial court granted Jessika a plenary stalking no contact order. Daniel appealed. We affirm.

FACTS

¶ 3

¶ 4

Petitioner Jessika Kodat filed a verified petition for a stalking no contact order on June 5, 2018. At a hearing on the petition, Jessika testified that an incident had occurred the prior day where respondent Daniel Holm drove within a foot of her vehicle as she waited to turn left at an intersection near her home. Jessika said Daniel made eye contact with her while he veered into her lane. A month prior, Daniel had tailgated her and kept staring at her “the entire time.” At that incident, he drove his truck within less than five feet of her vehicle. In October 2016, Daniel had jumped out of a ditch in front of her house as she slowed to turn her vehicle into the driveway. In September 2016, Daniel had told her brother that he planned to rape her. The trial court determined that there was evidence of stalking conduct of a harassing nature. It found good cause for the emergency order and entered a five-day stalking no contact order, prohibiting Daniel from coming within 500 feet of Jessika, her house or workplace. The emergency order was extended until July 27, 2018.

¶ 5

On July 27, 2018, a plenary hearing took place on Jessika’s petition. Steven Kodat, Jessika’s father, testified. He and his family had lived at their current residence for three years. In September 2016, Jessika called him from the driveway around 9:30 p.m. and said Daniel had jumped out of the ditch in front of the house and sprung at her. Daniel had no reason to be in front of their house. Later that same month, Steven’s father was hosting a charity fossil event on certain property the father owned on Mazon Creek. During the event, Daniel was in his kayak on the river taunting and “accusing people of different various things.” Steven and Daniel had a verbal altercation, which Daniel videotaped. When Steven told Daniel to put down his camera, Daniel responded that he was going to rape Jessika. Steven took Daniel’s comment as a threat toward his family. He told both his wife and Jessika about the threat. Daniel would drive by the

house 1 to 15 times per day, often videotaping. Daniel would also honk the horn, yell obscenities and gesture with his middle finger. These events occurred daily.

¶ 6 On cross-examination, Steven explained that the police were called during the incident where Daniel threatened rape because Daniel was trespassing. He told the sheriff about the rape threat but it was not in the police report. There was an ongoing issue between Daniel's family and Steven's father. On June 4, 2018, when Daniel drove by the house videotaping, Steven also videotaped Daniel driving by. Daniel slowed down to three-to-four miles per hour. Daniel took three videos that day. On redirect, Steven said he had been videotaped by Daniel other times. The road that passed Steven's house was not the direct route for Daniel and his family to get to their house. There were other options to get to the Holm residence without passing the Kodat house.

¶ 7 Jill Kodat testified. She was Jessika's mother. Her first encounter with Daniel was in early 2016 at her father-in-law's property near Mazon Creek. Daniel was kayaking and videotaping them. The same thing happened one week later. On a daily basis, Daniel would drive by the Kodat house, honk, stop, slow down, scream obscene language and make obscene gestures. He would sometimes be videotaping. She filed numerous police reports about the harassment but it had not helped. The sheriff was called after Jessika phoned her father when Daniel leaped out of the ditch. Between the call to the sheriff's department and the arrival of an officer, Daniel drove back and forth in front of the house at least 12 times and taped a minimum of five times. On cross-examination, Jill said Jessika had told her about the rape threat but because Daniel had been arrested that day, she did not further pursue it.

¶ 8 Jessika testified. Her first encounter with Daniel took place in September 2016. As she was turning into her driveway, Daniel jumped out of the ditch in front of the house with a scooter

in one hand and a kayak paddle in his other hand. She parked in the driveway and called her dad because she was fearful. She later discovered a spot in the ditch that was flattened down where Daniel had hidden himself. In mid-September, Daniel was kayaking and videotaped Jessika and Jill. In October, Adam Holm, Daniel's father, and Daniel were in their vehicle and swerved into her lane. Daniel or another family member would drive by the Kodat house daily. If anyone was outside, they would stop and tape, yell or perform obscene gestures. After her father told her about the rape threat, she worried. She did not feel safe at home. She did not want to go out and be blindsided in public where she was unsure how to react. She also felt threatened by the June 4, 2018, incident where Daniel came within inches of her vehicle as she waited to turn. She reported the incident. On cross-examination, Jessika said she also reported the second incident where Adam swerved into her lane in October 2018.

¶ 9 Adam Holm testified for the defense. He lived with his wife and two sons, including Daniel. They owned another parcel of property which contained fossils that was landlocked which they accessed via kayak. Their use of the property caused issues with the Kodat family. After an October 2016 incident with the Kodats, Daniel started to carry a camera. Adam did not have a camera or cell phone. On June 4, 2018, Adam drove by the Kodat property three times while running errands. He never stopped by the Kodat house and did not swear or gesture at them. On cross-examination, Adam admitted he did not own the landlocked property until after 2016. He did have a camera in his car at one time. He had seen Daniel videotape one time. There were other routes available to reach his house that did not pass by the Kodat house.

¶ 10 Daniel testified. He denied that he threatened to rape Jessika. He denied that he jumped out of the ditch. He never went on the Kodats' land but he used his "riparian rights" to kayak by the property. He drove by the Kodat house two times on June 4, 2019. He never stopped, swore,

yelled or gestured. He did not swerve into Jessika's lane. He had a new pickup truck that was his baby and he would not endanger it. He recorded the Kodats because they followed and confronted him. A video he made on his cell phone was played in court but was not included in the record on appeal. On cross-examination, Daniel clarified that because Steven always followed and tried to confront him, he videotaped him as on June 4. He admitted he began taping before he saw Steven. He again denied that he was in the ditch but acknowledged that he talked to a detective about it. At that time, he said he was on his scooter with his paddle but left his "canoe" at the river. He saw a vehicle coming so he went into the ditch. He only taped the Kodats once or twice and it was on that same day. He also taped them when they were by the Holm driveway. In addition, he would tape Steven when he was "trying to do stuff."

¶ 11 The trial court found that Jessika and her parents were credible and that Daniel and Adam were incredible. The court did not believe their testimony. In contrast, Jessika provided details to support her testimony. There were some gray areas but not regarding the threat, drive-bys, videotaping, gesturing and yelling. The trial court found Jessika feared for her safety. It entered a plenary stalking no contact order through July 27, 2020. The order prohibited Daniel from threatening to or stalking Jessika, contacting Jessika by any means, obtaining a Firearm Owner's Identification Card (FOID) or owning or possessing guns. Daniel was further ordered to stay 500 feet away from Jessika and her place of employment. He appealed.

¶ 12 ANALYSIS

¶ 13 The issue on appeal is whether Jessika presented evidence sufficient to sustain her petition for a stalking no contact order. Daniel presents no coherent arguments in his brief but seems to challenge specific instances of stalking described by Jessika. He presents excerpts of testimony regarding his threat to rape Jessika; the incidents where he veered into her lane and

whether she reported them; and the incident where he leaped from the ditch. He asserts there was no evidence that he engaged in conduct that would support a stalking no contact order against him.

¶ 14 A person who has been a victim of stalking and fears for her safety or suffers from emotional distress as a result of the stalking may petition for a stalking no contact order. 740 ILCS 21/1 *et seq.* (West 2018). “ ‘Stalking’ means engaging in a course of conduct directed at a specific person,” and requires that the respondent knew or should have known that his course of conduct would cause a reasonable person to fear for her safety or suffer emotional distress. 740 ILCS 21/10 (West 2018). A “ ‘[c]ourse 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, threatens, or communicates to or about, a person [or] engages in other contact[.]” *Id.* Contact involves any contact with the petitioner, initiated or continued without her consent and in disregard of her desire that there be no contact, and includes being in the petitioner’s presence or sight, approaching or confronting her in a public place or on private property, or appearing at her residence. *Id.* A petitioner must prove stalking by a preponderance of the evidence. 740 ILCS 21/30(a) (West 2018). In determining a petition for a stalking no contact order, the court focuses on whether the stalker’s conduct would cause a reasonable person to be in fear for her safety or to suffer emotional distress. *Piester v. Escobar*, 2015 IL App (3d) 140457, ¶ 12. We will not reverse a trial court’s issuance of a stalking no contact order unless it was against the manifest weight of the evidence. *Id.*

¶ 15 The trial court found that Jessika established a course of stalking conduct by Daniel directed toward her that was unwanted and included threats, harassing drive-bys of her house,

regular videotaping of her, and gesturing and yelling at her. Adam and Daniel denied any harassing behavior, although they admitted to driving by the house and to taping the Kodats, including Jessika. Steven, Jill and Jessika testified to numerous occasions where Daniel videotaped them as he drove by the house. Steven and Jill testified regarding their concerns for Jessika's safety. Jessika described several instances where Daniel engaged in harassing behavior, including the June 4 incident, the tailgating incident where he drove too close to her car and the incident where he leaped out of the ditch as she turned into the driveway. The court determined that Jessika was in fear for her safety. It rejected Daniel's and Adam's versions of events and credited the testimony of Jessika, Jill and Steven. The trial court was in the best position to assess the credibility of the witnesses and we accept its assessments. See *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006) (reviewing court will not substitute its judgment for that of the trial court regarding witness credibility). We further accept its determination that Jessika satisfied the requirements for the issuance of a stalking no contact order and find the trial court properly entered the stalking no contact order against Daniel.

¶ 16

CONCLUSION

¶ 17

For the foregoing reasons, the judgment of the circuit court of Grundy County is affirmed.

¶ 18

Affirmed.