



In the Missouri Court of Appeals Eastern District

DIVISION TWO

L.M.M.,	)	ED109013
	)	
Respondent,	)	Appeal from the Circuit Court
	)	of the City of St. Louis
v.	)	1922-PN03162
	)	
J.L.G.,	)	Honorable Madeline O. Connolly
	)	
Appellant.	)	FILED: March 23, 2021

Introduction

J.L.G. appeals from the judgment of the trial court granting a full order of protection in favor of L.M.M. against J.L.G. On appeal, J.L.G. argues the judgment was against the weight of the evidence because L.M.M. failed to prove J.L.G.’s actions constituted stalking. We reverse and vacate the order of protection.

Facts and Procedural Background

On December 18, 2019, L.M.M. filed a Petition for Order of Protection against J.L.G. L.M.M. identified J.L.G. as L.M.M.’s boyfriend’s sister, and L.M.M. accused J.L.G. of coercing, stalking, and harassing her. L.M.M. asserted J.L.G. texted L.M.M. as often as 75 times a day, J.L.G. repeatedly texted and called L.M.M.’s employer making false accusations against L.M.M., and J.L.G. made fun of L.M.M.’s appearance. L.M.M. stated she was “worried [J.L.G.] will come to my employment, attacking me on social media.”

At a contested hearing, L.M.M. testified to the following. In December 2019, J.L.G. contacted L.M.M.'s employer, the Hilton St. Louis Frontenac, several times making various accusations against L.M.M., the essence of which was that, by employing L.M.M., the Hilton risked incurring a loss of business.¹ As a result, L.M.M. was questioned three times at work, not only about the substance of the accusations, but with concerns that a person associated with L.M.M. was disrupting other employees at the Hilton. On cross-examination, L.M.M. agreed that she and J.L.G. had on several occasions been involved in contentious text exchanges.² L.M.M.'s boyfriend, friend, and father all testified on L.M.M.'s behalf that J.L.G. had a long history of saying unkind things about L.M.M.'s appearance, which caused L.M.M. emotional distress, and that L.M.M. was stressed and worried J.L.G. would contact L.M.M.'s employer in an attempt to get her fired.

J.L.G. testified to the following. J.L.G. lived in Joplin, Missouri, while L.M.M. lived in St. Louis, Missouri, and J.L.G. had not seen L.M.M. since 2016. Since being served with the petition she had not contacted L.M.M. at all and had no intention of contacting L.M.M. in the future. J.L.G. characterized her relationship with L.M.M. as "very on and off," in that sometimes L.M.M. would reach out to J.L.G. and sometimes L.M.M. would tell J.L.G. not to contact her. Regarding contacting the Hilton, J.L.G. agreed she called the Hilton one time on December 16 or 17, 2019, on business unrelated to L.M.M.

¹ As this Court understands the events, J.L.G. accused L.M.M. of being unemployed and L.M.M. responded with a picture of herself wearing a Hilton St. Louis Frontenac uniform to prove employment there and told J.L.G. to "fuck off." J.L.G. then emailed the photograph to the Hilton, where J.L.G. had previously stayed as a guest on several occasions, both to report that L.M.M. was cursing and saying "cruel things" to guests while on company time and while wearing a Hilton uniform, and to say that, as a result of L.M.M.'s actions, J.L.G. would no longer be coming to the Hilton and that she would encourage her friend, a prominent wedding planner, to likewise refuse to do business with the Hilton.

² It appears from the transcript that several of these text exchanges were admitted into evidence, but they were not included in the record on appeal.

After the hearing, the trial court granted a one-year full order of protection against J.L.G., finding L.M.M. had proven her allegations of stalking, in that L.M.M. had alleged in her petition she was worried J.L.G. would come to her place of employment, which satisfied the requirement of actual fear of physical harm. The trial court then found it was in the parties' best interests that the order shall automatically renew after one year, making the full order of protection effective until February 2022. This appeal follows.

Discussion

In her sole point on appeal, J.L.G. argues the trial court erred in entering the full order of protection because J.L.G.'s actions did not satisfy the definition of stalking under Section 455.101 of the Missouri Adult Abuse Act,³ in that there was insufficient evidence to establish that J.L.G. purposely and repeatedly engaged in an unwanted course of conduct that caused L.M.M. fear of physical harm. We agree.

In reviewing the trial court's grant or denial of full orders of protection, this Court will sustain the judgment of the trial court unless there is no evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law. *K.M.C. v. M.W.M.*, 518 S.W.3d 273, 276 (Mo. App. E.D. 2017); *C.B. v. Buchheit*, 254 S.W.3d 210, 212 (Mo. App. E.D. 2008). We view the facts and reasonable inferences in the light most favorable to the judgment. *K.M.C.*, 518 S.W.3d at 276. "Because the trial judge is in the best position to gauge the credibility of the witnesses, in cases under the Adult Abuse Act, the discretion of the trial court should not often be superseded." *Id.* at 276-77. Nevertheless, courts must exercise great care to ensure that sufficient evidence exists to support all elements of the statute before entering a full order of protection. *C.B.*, 254 S.W.3d at 212.

³ All statutory references are to RSMo. (cum. supp. 2019).

The Missouri Adult Abuse Act provides that any adult may seek an order of protection by filing a verified petition alleging domestic violence, stalking, or sexual assault. Section 455.020.1. The petitioner has the burden of proof under the statute to establish the allegations by a preponderance of the evidence. Section 455.040.1. The applicable portion of the statute here is stalking. Stalking occurs when “any person purposely engages in an unwanted course of action that causes alarm to another person.” Section 455.010(14). In this context, “alarm” is defined as “to cause fear of danger of physical harm,” and “course of conduct” is defined as “a pattern of conduct composed of two or more acts over a period of time, however short, that serves no legitimate purpose” and may include following the other person, unwanted communication, or unwanted contact. Section 455.010(14)(a)-(b). Alarm has both a subjective and objective component, meaning that a person must subjectively fear the danger of physical harm *and* a reasonable person in the situation would likewise fear the danger of physical harm. *E.D.H. v. T.J.*, 559 S.W.3d 60, 64 (Mo. App. E.D. 2018). Where the petitioner does not present sufficient evidence that they fear physical harm or that a reasonable person would fear physical harm, an order of protection is not appropriate. *See id.*; *see also K.L.M. v. B.A.G.*, 532 S.W.3d 706, 710-11 (Mo. App. E.D. 2017).

L.M.M. here failed to present sufficient evidence of either the subjective or objective component. L.M.M. asserted in her petition and testimony that J.L.G. both repeatedly texted L.M.M. with criticisms of her appearance and character and contacted L.M.M.’s employer in an attempt to get her terminated, causing L.M.M. to worry J.L.G. would come to L.M.M.’s place of employment and would attack her on social media. L.M.M. did not assert that J.L.G. had made physical threats against her, that there was a history of physical encounters between them, or that she feared physical harm from J.L.G. Rather, both L.M.M. and J.L.G. testified they lived 300

miles apart and had not seen each other in several years. Although L.M.M. stated she was afraid J.L.G. would come to her work, she did not specifically assert she feared physical harm stemming from this event. *See T.R.P. v. B.B.*, 553 S.W.3d 398, 403-04 (Mo. App. E.D. 2018) (full order of protection inappropriate when petitioner never testified he feared physical harm because fails to meet subjective component of alarm). Further, their history of angry text exchanges without threats of physical violence is insufficient to prove L.M.M. had a reasonable fear of physical harm from J.L.G. *See K.L.M.*, 532 S.W.3d at 711 (without physical threats, there was insufficient evidence to meet objective component of alarm); *E.M.B. v. A.L.*, 462 S.W.3d 450, 453 (Mo. App. E.D. 2015) (sending numerous text messages that demonstrated anger but did not include threats of physical harm would not cause reasonable person to fear danger of physical harm); *see also M.N.M. v. S.R.B.*, 499 S.W.3d 383, 384-85 (Mo. App. E.D. 2016) (vague testimony, such as petitioner “didn’t know what [respondent] was capable of” was insufficient to establish reasonable alarm under stalking statute).

Instead of physical threats, L.M.M.’s petition and testimony focused on J.L.G.’s conduct in calling L.M.M.’s work in an effort to get her terminated from her employment. However, L.M.M.’s fear that J.L.G.’s actions might cause her to lose her job does not meet the legal requirements for stalking, in that it does not establish a reasonable fear of physical harm. *See Binggeli v. Hammond*, 300 S.W.3d 621, 625 (Mo. App. W.D. 2010) (petitioner’s fear that respondent’s conduct might cause her to lose her job was not sufficient to justify order of protection when that conduct did not cause petitioner to fear danger of physical harm). Likewise, although J.L.G. sent text messages to L.M.M. criticizing her appearance and character, and although L.M.M. feared J.L.G. would attack her on social media, texts and social media posts attacking someone’s character or appearance are not grounds for receiving a full order of

protection under the Adult Abuse Act. *See E.D.H.*, 559 S.W.3d at 65 (disparaging social media posts causing petitioner to fear harm to reputation are insufficient to prove stalking). Rather, the Adult Abuse Act is intended to prevent potential violence, not hurt feelings or harm to reputation. *See id.*; *see also Wallace v. Van Pelt*, 969 S.W.3d 380, 387 (Mo. App. W.D. 1998) (outlining purpose of Adult Abuse Act).

Even viewing the record in the light most favorable to the judgment, we do not find sufficient evidence from which the trial court could find either that L.M.M. subjectively feared physical harm, or that a reasonable person in L.M.M.'s situation would fear a danger of physical harm from J.L.G.'s conduct. The trial court therefore erred in granting the full order of protection based on stalking.

While L.M.M. did not file a brief in this case, she submitted to this Court a letter detailing her continuing stress and worry stemming from J.L.G.'s actions. Evidence of emotional distress, however, is not an element of stalking. It is true that emotional distress is an element of abuse by harassment,⁴ which L.M.M. raised before the trial court as a basis for the full order of protection. The trial court pronounced at the hearing that L.M.M. had met the elements of stalking but was silent on L.M.M.'s claim of harassment. In light of our reversal and because L.M.M. is pro se, we will briefly address why L.M.M. was not entitled to a full order of protection on her harassment claim, in the alternative to her stalking claim.

Prior to 2004, harassment had been an element of the definition of stalking.⁵ *See* Section 455.010, Historical and Statutory Notes; *see also P.D.J. v. S.S.*, 535 S.W.3d 821, 824 n.3 (Mo.

⁴ Abuse by harassment is defined as “engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress ... and serves no legitimate purpose. The course of conduct must be such as would cause a reasonable adult ... to suffer substantial emotional distress and must actually cause substantial emotional distress.” Section 455.010(1)(d), RSMo.

⁵ Section 455.010(10) previously read, as relevant to the issues here: “‘Stalking’ is when an adult purposely and repeatedly harasses or follows with the intent of harassing another adult. As used in this subdivision, ‘harasses’

App. E.D. 2017). Under the current statutory framework, however, abuse by harassment is now separate from stalking, and this Court has previously held that, because harassment is included only in the portion of the statute involving domestic violence, “[a]n order of protection based on abuse by harassment is available only to victims of domestic violence.” *P.D.J.*, 535 S.W.3d at 824.⁶

Here, L.M.M. was not a victim of domestic violence, in that J.L.G. is the sister of L.M.M.’s boyfriend, which is not a relationship that meets the definition for family or household members. See Section 455.010(5) (“domestic violence” is defined as “abuse or stalking committed by a family or household member” (emphasis added)); Section 455.010(7) (“family” or “household member” is defined as “spouses, former spouses, any person related by blood or marriage, persons who are presently residing together or have resided together in the past, any person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, and anyone who has a child in common”). Accordingly, L.M.M. could only pursue a full order of protection on the grounds of either stalking or sexual assault, and not on the grounds of abuse by harassment. See *P.D.J.*, 535 S.W.3d at 824; see also *L.M.D. v. D.W.D.*, 540 S.W.3d 472, 475 (Mo. App. W.D. 2018) (where parties were not present or former adult family or household members, only grounds available under Section 455.020 was stalking); *Fowler v. Minehart*, 412 S.W.3d 917, 921 (Mo. App. S.D. 2013) (same). As discussed above, there was insufficient evidence from which the trial court could find that the conduct complained of here entitled L.M.M. to a full order of protection under the Missouri Adult Abuse Act.

Point I is granted.

means to engage in a course of conduct directed at a specific adult that serves no legitimate purpose, that would cause a reasonable adult to suffer substantial emotional distress.” Section 455.010(10) (2000).

⁶ To the extent that this Court’s holding in *P.D.J. v. S.S.*, 535 S.W.3d 821 (Mo. App. E.D. 2017), conflicts with this Court’s earlier caselaw, it is better practice to follow the most recent published caselaw from our own Court.

Conclusion

The trial court's judgment granting a full order of protection is not supported by substantial evidence, and it is therefore reversed and vacated.

Sherri B. Sullivan, J., and
Lisa P. Page, J., concur.


Robin Ransom, Presiding Judge