IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

R.K.,

Respondent,

v.

JOHN M. KELLY,

Appellant.

DOCKET NUMBER WD84037

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: August 31, 2021

APPEAL FROM

The Circuit Court of Caldwell County, Missouri
The Honorable Jason A. Kanoy, Judge

JUDGES

Division Two: Chapman, P.J., and Mitchell and Thomson, JJ. CONCURRING.

ATTORNEYS

R.K., Braymer, MO, Respondent, *pro se*.

John M. Kelly, Braymer, MO, Appellant, *pro se*.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

R.K., Respondent,
v.
JOHN M. KELLY, Appellant.

WD84037 **Caldwell County**

Before Division Two Judges: Thomas N. Chapman, Presiding Judge, and Karen King Mitchell and W. Douglas Thomson, Judges

John Kelly appeals the entry of a full order of protection against him and in favor of R.K. Kelly raises four points on appeal. In his first point, he argues that the trial court erred in entering the order because R.K.'s petition was unverified. For his remaining points, Kelly argues that the court erred in entering the order because there was insufficient evidence of the following elements of stalking: subjective alarm (Point II), objective alarm (Point III), and an unwanted course of conduct (Point IV). Because there was insufficient evidence of an unwanted course of conduct that caused R.K. alarm, we reverse the judgment and remand the case to the trial court with instructions to vacate the order of protection and deny R.K.'s petition.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Division Two holds:

1. We will sustain the judgment of the trial court granting or denying a full order of protection under the Missouri Adult Abuse Act (MAAA) unless there is no evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.

2. Although the trial court is in the best position to gauge the credibility of witnesses, we must exercise care to ensure that sufficient evidence exists to support all elements of the MAAA before affirming a full order of protection.

3. Any person who has been the victim of stalking may seek relief under the MAAA by filing a verified petition.

4. Under Rule 55.03(a), every pleading must be signed by at least one attorney of record or a self-represented party, and every filing made electronically must include a certificate verifying that the attorney or party signed the original pleading.

5. An unsigned pleading or an uncertified electronic filing will be stricken unless the omission is corrected promptly after being called to the attention of the attorney or party.

6. Because Kelly raised the verification issue for the first time on appeal, he waived it for purposes of appellate review.

7. Moreover, the lack of verification is effectively cured where, as here, the court entered its judgment after a hearing on the merits.

8. As the petitioner in a stalking case, R.K. bore the burden of proving, by a preponderance of the evidence, that Kelly purposely engaged in an unwanted course of conduct that caused R.K. alarm, that is, fear or danger of physical harm.

9. "Course of conduct" means a pattern of conduct composed of two or more acts over a period of time, however short, that serves no legitimate purpose.

10. 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.

11. R.K.'s petition alleged that she felt "unsafe" and "very threatened" by Kelly, and R.K. testified that Kelly used obscene language and hand gestures, but she offered no evidence that she was afraid of Kelly or feared that he would cause her physical harm.

12. Thus, there was insufficient evidence from which the trial court could have found that Kelly engaged in a course of conduct that caused R.K. to fear physical harm.

Opinion by: Karen King Mitchell, Judge August 31, 2021

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.