Missouri Court of Appeals
Southern District

In Division

E.M.,

Petitioner-Respondent,

v.

H.M.M.,

Respondent-Appellant.

Filed: September 2, 2026

Case Number SD39109

Missouri Court of Appeals
Southern District

APPEAL FROM THE CIRCUIT COURT OF GREENE COUNTY
Honorable Daniel R. Wichmer

VACATED AND REMANDED WITH INSTRUCTIONS

A full order of protection, effective for one year, was entered by the circuit court against Husband, H.M.M. ("Appellant"), under § 455.040 of Missouri's Adult Abuse Act ("the Act").[1] Appellant raises four points on appeal. His first point argues he was deprived of due process because he did not receive a meaningful hearing. His remaining three points claim the evidence was insufficient to prove domestic abuse by battery

[1] Unless otherwise indicated, all statutory references are to RSMo Cum. Supp. 2021, including changes effective Aug. 28, 2021, and all rule references are to Missouri Court Rules (2025).

under § 455.010(1)(c), domestic assault by battery under § 455.010(1)(b), and domestic assault by harassment under § 455.010(1)(e). Because the latter three points have merit, we vacate the judgment and remand the case to the trial court with instructions to dismiss Respondent's petition with prejudice.

On April 4, 2025, Wife, E.M. ("Respondent"), filed a petition for an *ex parte* order of protection, alleging Appellant "caused or attempted to cause [her] physical harm" on March 24, 2025, "placed or attempted to place [her] in fear of immediate physical harm" in November of 2024, and threatened her in December of 2024, and they got into arguments on March 27 and April 3, 2025. Respondent was denied an *ex parte* order, and her petition was set for a hearing on April 15, 2025. Appellant was not served but showed up on the day of the hearing, waived personal service, and agreed to proceed with the hearing *pro se*. Respondent also appeared *pro se*. After a hearing on the record, the trial court granted Respondent a full order of protection for one year.[2]

Standard of Review

"This Court will affirm the trial court's judgment on orders of protection unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law." ***C.C. v. Mannon***, 735 S.W.3d 602, 606 (Mo. App. S.D. 2026) (citation omitted). We view the evidence and the reasonable inferences

[2] The Order of Protection expired on April 14, 2026, and was not renewed. Though now moot, the public-interest exception applies to an appeal from an expired order of protection. § 455.007 (RSMo 2016); ***Woodard v. Conde***, 648 S.W.3d 760, 761 n.2 (Mo. App. S.D. 2022). Accordingly, we exercise our discretion to evaluate the substantive merit of Appellant's claim.

therefrom in the light most favorable to the judgment. ***Id.*** "Because the trial judge is in the best position to gauge the credibility of the witnesses, in cases under [the Act], the discretion of the trial court should not often be superseded." ***Id.*** (citation omitted).

The Act was not designed to resolve minor arguments between adults. ***Lawyer v. Fino***, 459 S.W.3d 528, 530 (Mo. App. S.D. 2015). There exists great potential for abuse of the Act, and real harm can result from its improper use. ***Id.*** Thus, courts must be certain that sufficient credible evidence supports *all* elements required for a protective order, and to be entitled to relief under the Act, the petitioner must prove allegations in a petition for an order of protection by a preponderance of the evidence. ***Id.***; ***Mannon***, 735 S.W.3d at 606.

Analysis

In Point 1, Appellant requests plain error review under Rule 84.13(c) because he claims he was denied a meaningful hearing and was therefore deprived of procedural due process by the manner in which the trial court conducted the hearing. Appellant failed to raise this constitutional defect with the trial court, and issues that are not presented to or decided by the trial court are not preserved for appellate review. ***Estate of Lambur***, 731 S.W.3d 512, 518 (Mo. App. S.D. 2026). Furthermore, *pro se* litigants are held to the same standard regarding preserving alleged errors for appellate review. ***Hardison v. McCracken***, 580 S.W.3d 49, 52 (Mo. App. S.D. 2019).

Assuming without deciding the trial judge conducted the hearing without requisite formality given the parties appeared *pro se*, we have reviewed the record and both sides were heard in this case. We therefore decline Appellant's request for plain error review in Point 1. He has not demonstrated manifest injustice or that the trial court's handling of the evidentiary hearing was "so egregious as to weaken the very foundation of the process[.]" *Accord* ***K.L.H. v. N.R.***, 726 S.W.3d 772, 776 (Mo. App. E.D. 2025); *contra* ***Grist v. Grist***, 946 S.W.2d 780, 782 (Mo. App. E.D. 1997).

Appellant's remaining three points challenge the trial court's finding that there was substantial evidence of domestic abuse by battery under § 455.010(1)(c), domestic assault by battery under § 455.010(1)(b), or domestic assault by harassment under § 455.010(1)(e). A not-supported-by-substantial-evidence challenge requires three sequential steps: (1) identify the factual proposition necessary to sustain the judgment; (2) identify all favorable evidence supporting that proposition; and (3) show why that favorable evidence, together with its reasonable inferences, lacks probative force such that the trier of fact could not reasonably find the proposition. ***Sprueill v. Lott***, 676 S.W.3d 472, 478 (Mo. App. S.D. 2023).

Point 2

Appellant's second point asserts a petitioner may prove domestic abuse by proving battery under the Act. A person commits battery by "purposely or knowingly causing physical harm to another with or without a deadly weapon[.]" § 455.010(1)(c).

There must be evidence of physical harm suffered to affirm a finding of battery. ***C.M.M. v. A.M.C.***, 707 S.W.3d 891, 896 (Mo. App. E.D. 2025). A lack of evidence of threats to physically harm the petitioner, or of any physical harm or pain suffered, renders a finding of battery to support an order of protection insufficient. ***Id***. at 896-97. This is the factual proposition necessary to sustain the judgment under a battery theory.

Respondent testified that Appellant threw an object at her back, that she threw it back and hit him on the forehead, and that Appellant then picked up another object and threw it at her back. The court concluded that Appellant threw the object but not that it hit Respondent. Respondent testified on another occasion Appellant held her against a wall and held her down. Respondent also testified that Appellant threatened to throw a cup of coffee at her and later did. Appellant admitted he grabbed the cup of coffee but the styrofoam cup broke in his hand and he did not throw it at her.

We find no evidence in the record that indicates Respondent suffered any physical harm. Neither party testified that Respondent suffered pain, bruising, soreness, injury, visible marks, or impairment of bodily function, or required medical treatment. The record contains no description of any physical effect caused by any of Respondent's allegations. ***Id***. (petitioner testified respondent shoved her to the ground, but the appellate court reversed because there was no evidence of pain, injury, or physical harm); *accord* ***J.R.C. v. S.L.F.***, 686 S.W.3d 673, 678-79 (Mo. App. E.D. 2024) (petitioner testified respondent pushed her against the wall, but appellate court reversed because

the record lacked evidence of physical pain). Accordingly, to the extent the trial court's judgment was dependent upon a finding of battery, there is not substantial evidence to support such finding and the judgment is vacated.[3]

Point 3

Appellant's third point states that a petitioner may prove domestic abuse under § 455.040.1(b) with an abuse by assault theory if the court finds Appellant "purposely or knowingly placed or attempted to place [Respondent] in fear of physical harm[.]"

In addition to the evidence supporting this finding discussed under Point 2, Respondent testified she did not feel safe around Appellant and had stayed in hotels and Airbnbs to stay away from him. Respondent also claimed Appellant destroyed a *Lego* project she was working on and "destroyed the entire downstairs of our apartment while I wasn't there." On another occasion, Appellant broke a utensil holder by throwing it on the ground during an argument. Respondent testified Appellant held her up against a wall once, and he had held her down while claiming he was hugging her, and that he let her up after she "kick[ed]" and "fuss[ed.]" Finally, Respondent testified that Appellant asked her to buy him weapons, though she did not know the reason why.

[3] Pursuant to § 455.073 (RSMo Cum. Supp. 2022, eff. Aug. 28, 2022), the trial court "checked boxes on a pre-printed form" judgment mandated by law, but made no specific findings despite opportunity and a space on the form to do so. *Cf.* ***L.E.C. v. K.R.C.***, 674 S.W.3d 97, 107 (Mo. App. E.D. 2023). Consequently, we have no way of knowing from the Judgment or remarks on the record upon what findings the trial court used to base its judgment. However, had the trial court made specific finding(s) that Appellant posed a serious danger to Respondent's physical or mental health, the full order of protection would have been for a mandatory two-to-ten-year period rather than only one year. § 455.040.1(1); ***L.E.C.***, 674 S.W.3d at 107 n.10.

"In cases where our Appellate Courts have supported a finding that the appellant purposefully or knowingly placed or attempted to place the respondent in fear of physical harm, there are, at a minimum, allegations of either threats of physical harm or actions of physical violence." ***C.M.M.***, 707 S.W.3d at 897 (quoting ***J.R.C.***, 686 S.W.3d at 679). In both ***C.M.M.*** and ***J.R.C.***, the respondent's conduct was more severe than Appellant's in the present case and the trial court's Judgment and findings of abuse by assault were reversed. In ***C.M.M.***, the respondent shoved the petitioner to the ground, followed the petitioner in her car for several minutes, and yelled at the petitioner from his car when she stopped at a house and rang the doorbell. The petitioner testified the respondent also continued to show up at the marital home despite moving out, let himself into the home when the petitioner was not there, lingered in his car in front of the petitioner's home for an extended period, and that the respondent had access to cameras installed inside and outside the home. ***C.M.M.***, 707 S.W.3d at 897-98. The Eastern District emphasized the petitioner did not testify she feared for her physical safety regarding any of these complaints:

> She did not testify, for example, that she feared he would ram her off the road or that he would physically harm her if he caught up to her, such as by hitting her with his car or body. Given the lack of testimony to prove the element of threats or acts [of] physical harm, there was insufficient evidence of assault under the Act.

Id. at 897.

Similarly, in ***J.R.C.***, the petitioner did not testify to physical harm, fear of physical harm, or acts of past violence, but instead only testified that "on one occasion, after she

had lunged at him, [the respondent] pushed her back to the wall which 'kind of startled' her." ***J.R.C.***, 686 S.W.3d at 679.

In the present case, we agree with the trial court that both parties' conduct was troubling. However, there was no evidence Respondent received threats of physical harm or actions of physical violence. Upon a direct question from the trial court, "Okay. Has he threatened any other type of physical harm to you?" Respondent replied, "No." The trial court circled back to this inquiry later in the hearing:

> [THE COURT:] Is he threatening you at that point? Like –
>
> [Respondent:] He just comes really close to me, and he won't leave me alone. And I –
>
> [THE COURT:] What is he saying?
>
> [Respondent:] He just continues to talk and say, like –
>
> [THE COURT:] So there's no threats? There's no, like, get the hell out of the house?
>
> [Respondent:] No. I've had to be the one leaving the house because he won't leave.

Accordingly, to the extent the trial court's judgment was dependent upon a finding of abuse by assault, it is not supported by substantial evidence and is therefore vacated.

Point 4

Under Appellant's final point, harassment is domestic abuse under the Act and defined by § 455.010(1)(e) as "engaging in a purposeful or knowing course of conduct involving more than one incident that alarms or causes distress to [Respondent] and

serves no legitimate purpose." The definition requires the conduct "must be such as would cause a reasonable adult … to suffer substantial emotional distress and must actually cause substantial emotional distress to [Respondent.]" ***Id.*** "Thus, harassment relies on both objective and subjective criteria[.]" ***J.R.C.***, 686 S.W.3d at 680.

"[S]ubstantial emotional distress" means "the offending conduct must produce a considerable or significant amount of emotional distress in a reasonable person; something markedly greater than the level of uneasiness, nervousness, unhappiness, or the like which are commonly experienced in day to day living." ***Id.*** (citation omitted). Repeated communication by itself "typically does not rise to the level of harassment[.]" ***Lawyer***, 459 S.W.3d at 532.

Appellant claims Respondent failed to produce sufficient evidence that he engaged in a course of conduct that would cause a reasonable person substantial emotional distress and that actually caused Respondent substantial emotional distress. In addition to the evidence discussed in points 2 and 3, Respondent added that Appellant humiliated her in November of 2024 on a trip to Hawaii, calling her names because she could not complete a hike.

Even viewing the evidence in the light most favorable to the judgment, Appellant engaged in a course of conduct of about five instances over the course of six months where the parties argued and Appellant broke some personal items in the home, as well as a *Lego* project Respondent built. By Respondent's own admission, she was never hurt

or physically threatened. These incidents alone did not rise to the level of harassment, because while "annoying and boorish," such conduct would not cause "substantial emotional distress in a reasonable person." ***J.R.C.***, 686 S.W.3d at 680 (quoting ***H.E.S. v. T.J.B.***, 628 S.W.3d 234, 237 (Mo. App. E.D. 2021)); ***M.N.B. v. A.J.R.***, No. ED 113699, 2026 WL 1871089, at *2 (Mo. App. E.D. June 30, 2026).

The Eastern District's recent decision in ***M.N.B.*** is instructive. In ***M.N.B.***, the parties had been in a year-long "tumultuous" relationship. "[T]he court made a record and astutely found both parties engaged in 'extremely toxic behavior' during their relationship[,]" but determined "[a]ppellant was not 'any credible physical threat' to [p]etitioner's safety because their previous physical altercations 'went both ways' and 'were very minor.'" ***M.N.B.,*** 2026 WL 1871089, at *1. The trial court found that neither battery nor assault occurred, and surmised the appellant likely had a basis of his own to ask for an order of protection against the respondent. ***Id.*** However, the trial court determined there was harassment under the Act because the appellant had called the respondent multiple times and sent numerous text messages, and therefore ordered the full order of protection. ***Id.*** The Eastern District reversed, finding these incidents alone did not rise to the level of harassment, because while the appellant's conduct might have been "annoying and boorish," his conduct would not cause "substantial emotional distress in a reasonable person." ***Id.*** at *2 (quoting ***J.R.C.***, 686 S.W.3d at 680).

Like in ***M.N.B.***, crucial to our holding is the court's very specific findings on the record concerning the reciprocal behavior of both Respondent and Appellant. In the present case, during the hearing, the trial court expressed several reservations that Respondent failed to prove a basis for relief. The trial court explained, "I don't know that [Respondent] can prove the basis for an order of protection today[,]" but that the relationship had a "high potential for someone to be seriously injured or killed." The court elaborated:

> But I don't know that … given the fact of you guys have a history of going back and forth as the initiator on violence, that, on this particular occasion, that an order of protection can be proven because of the history…. [F]or the purposes of the order of protection, you [Respondent] indicate, at times, you've pushed [Appellant], scratched him; [and] he threw something at you this time.

The court advised the parties they needed to stay away from each other.

At the conclusion of the hearing, the trial judge granted the full order of protection, but further explained, "I'm granting it because [Respondent] filed first. But what I hear is it's not a healthy relationship, and it's a dangerous one. And it's – seems like it's gone both ways. Okay?"

Without more than Appellant's conduct evidenced on the record, we hold there was nothing to cause Respondent the requisite "substantial emotional distress in a reasonable person" to establish harassment as required by the Act. Therefore, to the extent the trial court's judgment was dependent upon a finding of harassment under the Act, it is not supported by substantial evidence and is therefore vacated.

Conclusion

The parties' interaction in this case constituted occasionally intense but otherwise normal arguments between two adults. The trial court picked up on the fact that the relationship was not healthy and their behaviors went both ways, with both parties being the initiator. But as previously noted, the Act "was not designed to resolve minor arguments between adults." ***Lawyer***, 459 S.W.3d at 530. While we are sympathetic to the trial court's desire to provide a solution for the parties by separating them and avoiding a potentially dangerous situation in the future, we are constrained by the law and the standard of review. Consequently, there was insufficient evidence that Appellant's behavior rose to the level that the law requires for an order of protection under these facts. We grant Appellant's points 2, 3, and 4 because the record does not contain substantial evidence to support the trial court's determination that Respondent proved either domestic abuse, assault, or harassment under the Act. The Judgment is vacated, and the case is remanded with instructions to the trial court to dismiss Respondent's petition with prejudice.

JOSEPH L. HENSLEY, J. – OPINION AUTHOR

BECKY J. WEST, C.J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS