Commonwealth of Massachusetts

Appeals Court for the Commonwealth

At Boston,

In the case no. 10-P-747

VICTORIA B. SOAL

vs.

JOHN L. PIMENTEL.

Pending in the Newton District 2009 PO 115

Court for the County of Middlesex

Ordered, that the following entry be made in the docket:

Order extending G. L. c. 209A abuse prevention order affirmed.

By the Court,

Clerk

Date April 11, 2011.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

10-P-747

VICTORIA B. SOAL

vs.

JOHN L. PIMENTEL.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Before us is the appeal of John L. Pimentel from the extension of a restraining order issued under G. L. c. 209A, § 3.[1] Among other things, the restraining order ordered Pimentel to refrain from abusing Victoria B. Soal, to have no contact with her, and to remain away from certain locations. Pimentel argues that the District Court judge erred in concluding that Soal had proved that she was reasonably in fear of imminent serious physical harm at the hands of Pimentel. We disagree.

1. Background. When she sought the order in 2009, Soal, who is Pimentel's daughter, was a nineteen year old resident freshman at Boston College. She was estranged from Pimentel as a

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[1] The current status of the order, which was to expire on November 19, 2010, unless extended further, is unclear from the record. In any event, the matter is not moot. See Smith v. Joyce, 421 Mass. 520, 521 (1995) (statute requires appropriate law enforcement agency to destroy record of vacated orders); Wooldridge v. Hickey, 45 Mass. App. Ct. 637, 638 (1998) (defendant has surviving interest in establishing order not lawfully issued to remove stigma from his name and record and prevent collateral use in future proceedings); Jones v. Gallagher, 54 Mass. App. Ct. 883, 887 (2002); Dollan v. Dollan, 55 Mass. App. Ct. 905, 905 n.2 (2002).

result of a lengthy history of physical and emotional abuse of her and her mother. A judgment of divorce, entered in Middlesex Probate and Family Court in 2008, awarded full custody of the children, including Soal who was then a minor, to the mother. The divorce put strict constraints on Pimentel's interaction with Soal, ordering that Pimentel not have parenting time with the children and that "[h]is contact with the children shall be limited to correspondence on paper or cards."

After the divorce, Soal legally changed her name and sought to keep her whereabouts private and concealed from Pimentel. She had been successful in that regard for a number of years until, out of the blue, she received a package from the defendant at her dormitory address.[2] Alarmed that Pimentel now knew her whereabouts, she sought a restraining order in which she alleged that Pimentel's undertaking to locate her college residence address and send her a package placed her in fear of imminent serious physical harm given the prior history of abuse and intimidation.

After a hearing at which both Soal and Pimentel appeared and testified, a District Court judge found that in the totality of the circumstances, Soal's fear of imminent serious physical harm was objectively reasonable. We discern no error in that

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[2] During that period, Soal had no contact with Pimentel other than indirectly through cards or notes given to the mother's lawyer or sent to the mother's address.

determination.

2. Discussion. The judge's factual findings and conclusions have a basis in the record and are entitled to deference. See Ginsberg v. Blacker, 67 Mass. App. Ct. 139, 140 n.3 (2006). At the hearing, Soal described how, over a lengthy period, Pimentel physically abused her and the other children by striking, hitting, punching, and throwing objects at them, and hitting her with a chair. She described Pimentel as emotionally abusive and controlling and related that his sending a package to her college dormitory room was his way of intimidating her and letting her know that he now knew where she lived. The judge heard and credited this testimony. The judge also heard and rejected Pimentel's explanation for his actions in attempting to learn Soal's new name and track her down and concluded that he did so "to let her know that he knew where she was."

Findings that are based on credibility assessments are uniquely the province of the trial judge and we will not disturb them on appeal. See Commonwealth v. Boucher, 438 Mass. 274, 275-276 (2002); C.O. v. M.M., 442 Mass. 648, 654-655 (2004). On the record before us, Soal satisfied her burden of demonstrating by a preponderance of the evidence that viewed in the context of years of abuse, Pimentel's action of tracking down her residential address at school and sending a package to that address reasonably placed Soal in fear of imminent serious physical harm.

See Frizado v. Frizado, 420 Mass. 592, 596-597 (1995); Jones v. Gallagher, 54 Mass. App. Ct. 883, 890 (2002); Keene v. Gangi, 60 Mass. App. Ct. 667, 669-670 (2004); Vittone v. Clairmont, 64 Mass. App. Ct. 479, 481 n.4 (2005).

That the physical abuse of Soal by Pimentel was in the past and that the Probate and Family Court order did not prohibit him from contacting her through cards and notes is not determinative of Soal's entitlement to a protective order. Rather, "[t]he judge will look to the defendant's words and actions, not standing alone or in a vacuum, but in the context of the 'attendant circumstances.'" Vittone v. Clairmont, supra at 486-487. What matters is whether Pimentel's words and actions, viewed objectively and in their entire context, reasonably placed Soal in fear of imminent serious physical harm. The judge did not err in concluding that they did.

Order extending G. L. c. 209A abuse prevention order affirmed.

By the Court (Grasso, McHugh & Wolohojian, JJ.),

Clerk

Entered: April 11, 2011.